

*Thursday,
29th March, 1894*

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
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 Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House, Calcutta, on Thursday, the 29th March, 1894.

P R E S E N T :

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

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

The Hon'ble Sir A. E. Miller, K.T., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble J. Westland, C.S.I.

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

The Hon'ble Dr. Rashbehary Ghose.

The Hon'ble Sir G. H. P. Evans, K.C.I.E.

The Hon'ble Fazulbhai Vishram.

The Hon'ble C. C. Stevens.

The Hon'ble Gangadhar Rao Madhav Chitnavis.

The Hon'ble H. F. Clogstoun, C.S.I.

The Hon'ble W. Lee-Warner, C.S.I.

The Hon'ble P. Playfair.

The Hon'ble Maharájá Partab Narayan Singh of Ajudhiá.

Q U E S T I O N S A N D A N S W E R S .

The Hon'ble DR. RASHBEHARY GHOSE asked :—

(1) Whether the Chief Commissioner of Assam originally proposed an increase of land-revenue in revising the assessments in the Assam Valley Districts amounting on an average to nearly 70 per cent., and in a large number of cases to about 100 per cent.

(2) Whether the raiyats of the affected districts submitted memorials complaining of the excessive character of the increase, and whether the Chief Commissioner of Assam rejected those memorials and confirmed the rates originally fixed by him.

[*Dr. Rashbehary Ghose ; Sir Antony MacDonnell.*] [29TH MARCH,

(3) Whether, after the rejection of those memorials and about four months before the final orders of the Government of India were passed, the Chief Commissioner did not reduce the increase in the rates to about 50 per cent. in a large number of cases and an average of about 40 per cent.

(4) Whether the Chief Commissioner did not pass orders for the realisation of the revenue according to the revised scale of rates while the appeals submitted to the Government of India against his orders were still pending.

(5) Whether the Chief Commissioner did not disallow the prayer of the raiyats for the postponement of the realisation of the increased revenue till the final orders of the Government of India were passed.

(6) Whether, as stated in the newspapers, a large number of Gossains or religious dignitaries of the Hindu religion and other respectable persons in the Kamrup District were confined in the lock-up at Rangia, and were, while so confined, employed on earthwork as a form of out-door labour.

(7) Whether the Government revenue in the lower districts of the Assam Valley is not now being realised by the agency of the respectable inhabitants of the place, who have been appointed special constables for the purpose of realising Government revenue.

(8) Whether the Government of India will be pleased to lay on the table papers showing (a) the cause or causes of the recent riots in the different places in Assam; (b) the places where such riots occurred, and the circumstances under which the police used arms for the purpose of suppressing the riots; (c) whether, as stated in the newspapers, ball cartridge was used by the police; (d) the number of people killed and wounded in each place; and (e) the places, if any, where the police fired upon the crowd without the authority of the Magistrate.

The Hon'ble SIR ANTONY MACDONNELL replied :—

" *First question.*—The answer is that in some cases the increase, as originally proposed, was 100 per cent., but on the average the increase was 53 per cent.

" *Second question.*—The answer is in the affirmative.

" *Third question.*—The answer is yes: the Chief Commissioner, having observed the operation of the rules, reduced the increase from an average of 53 per cent. to an average of 37 per cent.

1894.] [*Sir Antony MacDonnell; Dr. Rashbehary Ghose.*]

" *Fourth question.*—The answer is yes.

" *Fifth question.*—The answer is yes, the raiyats having been at the same time informed that full credit would be given to them for payments in excess of whatever rates might be finally fixed by the Government of India. I may add that the Government of India have reduced the increase from an average of 37 per cent. to an average of 32·7 per cent., and have limited the maximum enhancement on an individual holding to about 50 per cent. on the previous rental.

" *Sixth question.*—Certain prisoners, arrested for rioting and confined in the Rangia lock-up, have been employed in constructing temporary houses for themselves, the accommodation afforded by the lock-up being insufficient. But on this point further detailed enquiry will be made.

" *Seventh question.*—The answer is no. Special constables have been appointed under the Act to assist in preserving the peace, but not for collecting the revenue.

" *Eighth question.*—The Government of India have reported on the occurrences to the Secretary of State, and intend to publish the correspondence for general information after the despatch shall have reached the India Office—that is, within about a fortnight. It may, however, be said that the reductions ordered by the Government of India had been communicated to the people before the riot at Mangaldai, and that the police in firing on the mob acted in self-defence and in the dispersion of an illegal assembly."

The Hon'ble DR. RASHBEHARY GHOSE asked :—

Whether the attention of the Government of India has been drawn to the conflict of opinion between the Punjab Chief Court and the Allahabad High Court in their interpretation of the word " object " in section 295 of the Indian Penal Code, the former regarding it as wide enough to include *animate* objects, and the latter restricting it to *inanimate* objects ; and whether, having regard to such conflict, the Government of India do not deem it expedient to set the question at rest by explicit legislation.

The Hon'ble SIR ANTONY MACDONNELL replied :—

" The answer to the first part of the question is yes. To the second part of the question, the Government has not as yet come to any decision on the subject."

[*The Mahārāja of Ajudhiā; Sir Antony MacDonnell; [29TH MARCH, Gangadhar Rao Madhav Chitnavis.]*

The Hon'ble MAHARAJA PARTAB NARAYAN SINGH OF AJUDHIA asked :—

1. Is the Government aware of the feeling which prevails as regards the management of religious endowments throughout the country, and is it aware that the funds of these endowments are misapplied and diverted from their original purposes, with the result that throughout the country a strong feeling exists of dissatisfaction at the mismanagement of endowments ?

2. Will the Government of India instruct the Local Governments and Administrations to enquire into this matter and submit reports at an early date ?

The Hon'ble SIR ANTONY MACDONNELL replied :—

" To question 1 I would reply : The Government has no recent official information on the subject, but it has noticed in the public newspapers certain expressions of dissatisfaction in regard to it.

" To question 2 I would reply : The position of Government as regulated by Act XX of 1863 in relation to religious endowments and trusts is one of neutrality : but that Act enables persons interested in such trusts to sue the trustees for misfeasance ; and a further remedy for malversation in respect to such trust-funds is supplied by section 539 of the Civil Procedure Code.

" It is for the persons or public bodies interested in the religious endowments in question to submit, if they are dissatisfied with such remedy, such representations as they think fit, accompanied by the evidence which they consider to support them, to the Local Government in the first instance, and through that Government to the Government of India, if they desire an enquiry to be made with a view to a better remedy being applied than those provided by the enactments I have mentioned. In the absence of any such well-supported representations, the Government of India do not propose to direct Local Governments and Administrations to enquire into the matter."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS asked :—

Is Government aware that under section 47 of the Central Provinces Land-revenue Act, 1881, sources of miscellaneous income cannot be taken into account in the assessment of land-revenue without the previous sanction of the Governor General in Council ?

1894.] [*Gangadhar Rao Madhav Chitnavis ; Sir Antony MacDonnell.*]

Was such sanction applied for by the Chief Commissioner or granted by the Supreme Government in the settlement already made in the Raipur and Bilaspur districts ?

Whether it is the fact that miscellaneous income of all sorts has been taken into account to form the basis of assessment in the above districts, and in other districts where the settlement proceedings are now in progress ?

Is it not the fact that miscellaneous income in many villages is of a trifling and precarious character, and in many instances is generally appropriated by the villages and not by the proprietors ?

Will the Government be pleased in view of the above facts to exempt such incomes of a trifling and precarious character from being taken into account in the matter of assessment ?

The Hon'ble SIR ANTONY MACDONNELL replied :—

“ The miscellaneous income referred to by the Hon'ble Member is the *julkur*, *bankur* and *phalkur* of the Bengal Revenue Regulations. To a share of this income the State has an incontestable right.

“ The settlement procedure in force in the Central Provinces was based on the rules in force in the North-Western Provinces, one of which runs as follows :—

‘ In addition to the assessment on rentals, the Settlement-officer may take into consideration the average receipts from natural products, such as fruit, fish and other sayar, and add them to the total of the corrected rent-rolls.’

“ I may further add that, in reporting for the sanction of the Government of India the special settlement procedure proposed for the Central Provinces, the Chief Commissioner submitted a pattern assessment statement which clearly exhibited siwai or sayar income among the assessable assets.

“ The Government of India approved of the Chief Commissioner's proposals, subject to a restriction which does not touch the present questions.

“ From this explanation it will be apparent that the answers to the Hon'ble Member's first, second and third questions are in the affirmative. To the first part of the fourth question the answer may also be in the affirmative, as doubtless there are estates without any sayar income, while that source of income is large in others. To the second part of the fourth question I can give no

[*Gangadhar Rao Madhav Chitnavis; Sir Antony MacDonnell; the Mahārāja of Durbhanga.*] [29TH MARCH,

answer, having no specific information on the point. To the fifth question the answer must be in the negative, because, while the share of the sayar income taken as revenue should never exceed a moderate proportion, it is not proper to exempt from assessment altogether without special reason any legitimate source of land-revenue. The proper course to follow in the cases, if any such there be, to which the question refers is to make sure that the right of the State is moderately and fairly assessed wherever siwai income exists and not otherwise."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS asked :—

Whether the Government would enquire fully and consider whether in the interests of improvident raiyats it is not desirable that occupancy-raiyats' holdings should be included in the first proviso to section 266 of the Civil Procedure Code.

The Hon'ble SIR ANTONY MACDONNELL replied :—

" I understand the Hon'ble Member to ask the Government whether they will take into their consideration the question of imposing restrictions on the free transferability of raiyats' holdings. This is a most important matter on which various representations have reached the Government, but they are not at present in a position to state whether any action, and, if so, what action, may be suitably taken upon them."

The Hon'ble DR. RASHBEHARY GHOSE said that he had been requested, in the absence of the Hon'ble THE MAHARAJA OF DURBHANGA, to put the questions standing in his name. The questions were—

1. Is it not a fact that the Municipality of Benares has assessed the Hindu temples of worship, whereas the Muhammadan mosques and Christian churches have not been so assessed ?

2. Whether the Madras Proprietary Village Service Bill has received the sanction of His Excellency the Viceroy in Council ?

3. Will the Government be pleased to publish the report of Mr. J. D. Rees, while Head Assistant Collector of Tinnevely in 1879, on the increase of crimes in certain of the raiyatwari villages consequent on the changes in the immemorial village-system by the introduction of Village Service Act, which transferred the control of the village-watchmen from the inhabitants of the village to the direct control of Government.

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The Hon'ble SIR ANTONY MACDONNELL replied :—

" My Lord, these questions were submitted by the Hon'ble Maharájá on the 26th instant. They are therefore not within time, and under the rules might have been excluded, but, with Your Lordship's permission, I will answer them.

" The answer to the first question is supplied by official papers submitted to Parliament last year. From one of those papers, a letter from the Government of the North-Western Provinces, I make the following quotation :—

'Under clause (c), section 34 (of the North-Western Provinces Municipal Act), the Municipal Board has exempted from the rate all buildings which are exclusively used for religious purposes. A Hindu temple, equally with a Muhammadan mosque or Christian church or chapel, is entitled to the benefit of this exemption if it is not used for any purpose other than that of religious worship. But in Benares, as elsewhere, the premises of Hindu temples are frequently occupied by Brahmans and others for residential purposes, and in such cases exemption is not claimable. The Gonesh temple at Benares has been assessed to the water-rate because it has been occupied by about twelve persons. The Anapurna temple includes a refectory where Brahmans are fed and lodged. The Municipal Board has therefore held that these two temples are liable to pay the water-rate. The majority of the Members of the Board are Hindus and are elected by the townspeople, and may therefore be assumed to be not unfriendly to the claims of their co-religionists.'

" This statement of fact then justifies an answer in the negative to the Hon'ble Member's question.

" The answer to the second question is still under consideration.

" The answer to the third question is in the negative, the matter being one which would be more suitably submitted for the consideration of His Excellency the Governor of Madras in Council."

PRESIDENCY SMALL CAUSE COURTS ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER presented the Report of the Select Committee on the Bill to amend the Presidency Small Cause Courts Act, 1882. He said :—"I must take this opportunity of saying that under present arrangements the Bill will not be further proceeded with until a copy of the Report has been sent home and considered by the Secretary of State in Council."

[Sir Antony MacDonnell.]

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CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL moved that the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, be taken into consideration. He said :—" My Lord, it will be seen from the Report that the Select Committee have modified the Bill in only one point. The last provision of the Bill, that enabling the Local Governments to appoint village-headmen for the purposes of the Act, stood originally in the shape of an *explanation*. His Honour the Lieutenant-Governor of Bengal in his comments on the Bill drew attention to that provision, and demurred to its taking the form of an *explanation*. The Select Committee have met His Honour's wishes by throwing the provision into a separate section, and have also accepted His Honour's suggestion that Local Governments should be enabled to make rules in order to control the operation of the section. We were unable to accept the only other change in the Bill advocated by His Honour, namely, the exclusion of the word 'occupiers' from section 45, because, under the law as it now stands, the responsibility of reporting offences rests on 'occupiers,' and it is not the object of the Government to diminish that responsibility.

"Generally speaking, the Bill has been favourably reported on by Local Governments, but Native political associations are not in favour of it. Some are more pronounced in their opposition than others, but the following passage which I quote from the opinion of the Bengal Zamindari Panchayat appears to me to express moderate Native opinion :—

'The amendments, the Committee of the Zamindari Panchayat believe, have suggested themselves to the Legislature by the frequent occurrence lately of riots in several parts of the country, and they are of opinion that the amendments proposed are sound in principle. Having regard, however, to the backward condition of education in the country and the general ignorance of the rural population, also to the nature of their ordinary pursuits, habits and manners, there is reason to fear that the provisions of the draft Bill are calculated to throw on the public responsibilities which they are incapable of discharging and which may prove meddlesome in the hands of the police, as well as cause considerable annoyance to the mass.'

"In this opinion, my Lord, the soundness of the principle on which the Bill is based is not challenged, but it is thought that, owing to the ignorance of the people, the Bill will remain inoperative; while it is feared that, owing to the character of the police, it may be used as an engine of oppression. If Your Lordship permits me, I will say a few words on each of these objections, beginning with the last.

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"No one is more alive than I am to the defects in our police, nor, if I may be permitted to say so, has any one striven more earnestly for many years to correct them. The importance of this question of police reform is fully recognized, and already much has been done in all—I think I may say all—provinces to improve the prospects and *personnel* of the force. I do not think that the Native public realize the difficulties with which the Government have to contend in this matter. The Native public are urgent in their demands for a better police, but they forget that the morality of our police cannot be much better than the morality of the classes from which the police are drawn. Some improvement is no doubt effected by the checks and the discipline which we impose : but at bottom the morality of the police is the morality of the classes of Native society which furnish the police. Now, the Government of India cannot raise the standard of public morality by an order in the Gazette, and, if we are to postpone those precautions which the maintenance of law and order requires until the guardians of order shall have outgrown the frailties of their origin and environment, we shall have to wait a long time. As practical men, we must make the most of our instruments, doing, meanwhile, all we can to improve them. Besides, in the matter in hand, the police will have no arbitrary power of interference at all. Failure to comply with the injunctions of this Bill will not be a cognizable offence into which the police can enquire or with which the police can interfere of their own motion.

"The objection that the Bill, if passed into law, will be inoperative appeals to a different order of ideas—the prophetic order, if I may use the phrase. To an argument of this order all one can say is that he believes or does not believe. If he believes, there is nothing more to be said ; if he doesn't believe, the matter is equally at an end. My own experience of prophecies, my Lord, whether as prophet or as disciple, has not been encouraging, and I am therefore loath to take prophecy for argument in the present matter. I am assured by responsible administrators that the law is defective on the points with which this Bill deals ; I am assured by them that the proposals of this Bill are calculated to correct the defects, and my judgment confirms their assurances. In these circumstances we ought not to be deterred by forebodings of failure. If we do fail, we shall be no worse off than before.

"The Council will notice that the Calcutta High Court object to the inclusion of 'unlawful assembly' among the offences of which the public is by the Bill bound to give notice. It is hardly necessary for me to say that I entertain great respect for the opinion of the Hon'ble Judges of the Calcutta High

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Court, and I should in this matter have hesitated to differ from them did I not believe that the Hon'ble Court have not looked at the matter from our standpoint. Had the object of the Government of India been punitive, had we wished to secure the punishment of malefactors, I should have been disposed to accept the views of the Hon'ble Judges; but our object has not been punitive, but preventive. We want to prevent the commission of the crime more than to punish the criminal. Take the case of riots. Riots begin with unlawful assemblies, and, if we maintain (with the High Court) the obligation to report the commission of a riot, we should, I submit, take the riot in its inchoate form and nip it in the bud. This we cannot do unless we make it incumbent on people to report the occurrence of an unlawful assembly.

" But it is urged that an unlawful assembly may be a most trivial matter, not calling for the submission of any information to the authorities. That no doubt often is the case, and then the Magistrate would not expect a report and would naturally ignore the omission to make it. But an unlawful assembly may also be of a different complexion, and may lead to very serious infringements of personal rights and individual liberty. Then it becomes a very serious matter indeed, and leads to developments of much greater moment than even a riot. It is in connexion with such cases that this Bill has been considered necessary, and I submit to the Council that the power which it confers should not be withheld from Local Governments.

" The last point I wish to notice is that clause (f) of the Bill (as it now stands, after the incorporation in the law of the provisions of Act III of 1894) is objected to as being too wide and as likely to lead to the harassment of the *public*. But I would point out now, as I was careful to point out in my speech introducing the Bill, that clause (f) of section 45 does not apply to the general public, but only to the village-officers enumerated in the first clause of the section—that is say, to village-headmen, village-watchmen, village-accountants, village-police-officers and the owners and occupiers of land with their agents. The obligation of giving information in response to the Magistrate's call under clause (f) touching matters affecting the preservation of the peace will, if this Bill becomes law, be imposed—not on the general public—but on those persons enumerated in the section who from their position in the village and means of information are specially able to give it, and who by order of the Magistrate, with the previous consent of Government, have been directed to give it. This is a very different thing from placing an obligation on the public generally.

1894.] [*Sir Antony MacDonnell; Dr. Rashbehary Ghose.*]

“ His Honour the Lieutenant-Governor in his written comments on the Bill is doubtful whether breaches of the obligation imposed by clause (f) can be brought home to the delinquents, and thinks that the clause will have little or no practical effect. But His Honour will, I think, admit that, if the provisions of the clause do have the effect anticipated, the effect will be far-reaching and beneficial in the interests of order. A provision similar to this has worked very usefully in Burma, and, as I said before, if the provision does not work in India, we shall be no worse off than we were. I would submit to the Council that when we have on the one side responsible and experienced administrators coming up to us with the statement that the law is defective on this point, and that the defect will be probably cured by this provision, which has already been tried with advantage—and when, on the other side, the soundness of the principle is admitted, while only doubts as to its effectiveness are expressed,—then I would, I repeat, submit to the Council that as practical men we are bound to give the remedy a trial. If it turns out to be ineffectual, no harm will have been done, while we shall have gained experience on a matter in which we can only advance securely by cautiously feeling our way. With these remarks, my Lord, I would commend this Bill to the acceptance of the Council.”

The Hon'ble DR. RASHBEHARY GHOSE said :—“ I wish to say a few words on the motion before the Council. The Bill has met with considerable opposition from my countrymen, but the opposition, if I understand it rightly, is not to the principle of the Bill, but only to the way in which it is feared it may be worked by an unscrupulous police. Now, my Lord, I must say I am not altogether free from such misgivings, possibly because, as Sir Antony MacDonnell would say, I cannot rise superior to my environments. But two considerations have mainly influenced me in giving my support to the Bill. The first duty of the Government is to keep the peace, and when a spirit of lawlessness is abroad, if its responsible advisers think that special powers are needed to maintain the public peace, anybody who opposes such a measure must incur a very serious responsibility, which I, for my part, am not prepared to risk in the present instance. The second consideration is that section 44 of the present Act, the proposed addition to which has called forth the strongest opposition, imposes upon the public the duty of giving notice of a great many offences, but I have never heard that it has been oppressively used by the police. Sir Antony MacDonnell has warned us against prophesying till you know; but there is a well known saying that the best prophet of the future is the past. The history of section 44 is a blank, like the chapter on snakes in the famous History of

[*Dr. Rashbehary Ghose; the Lieutenant-Governor.*] [29TH MARCH,

Iceland. There can be therefore no serious cause for alarm, at least in the minds of those who believe that by widening the responsibility of the public you would not add a new terror to section 44. The offence, moreover, is not a cognisable one. On these grounds, although fully appreciating the anxiety of my countrymen, I am prepared to give my support to the measure."

Hir Honour THE LIEUTENANT-GOVERNOR said:—"I did not intend to make any remarks on this Bill, as the objections which I had taken to it have been mentioned with perfect fairness by my hon'ble friend in his opening speech; they have been considered by the Select Committee, and some of the suggestions have carried weight; while others have not been thought of sufficient importance to necessitate any alterations in the terms of the Bill. I do not therefore wish to press them any further. My only reason for making a remark on the present occasion is that I wish to refer to an observation which fell from the Hon'ble Dr. Rashbehary Ghose, who seemed to imply, if I understood him rightly, that the Bill was likely to be altogether a dead-letter. I should be very sorry if this impression got abroad. I believe that the genesis of the Bill arose to a great extent out of the lamentable anti-cow-killing riots which occurred in various places up-country last year, and because it was found necessary to strengthen the hands of the Executive with a view to putting down any recurrence of cases of this kind. But I should very much regret if an impression got abroad that when cases of this kind occurred—if widespread and nefarious conspiracies should again be hatched over a large extent of country, inducing Hindus to attack Muhammadans in the exercise of their religious privileges or of their private rights—I should, I say, be sorry if any impression got abroad that the Government would not take advantage of the provisions created by this amended Bill to punish any headmen of villages, or any officers of any kind who could be proved to be cognisant of such conspiracies beforehand, and who had failed to report them to the Government whose business it is to put such riots down. Speaking for myself, I can safely say that my endeavour will be to work these sections effectively if any such unfortunate occurrences should again break out, and I sincerely trust that if the law does turn out to be a dead-letter, as the Hon'ble Dr. Rashbehary Ghose seems to think it will, it will be a dead-letter for this reason, that it will arise from fear of the consequences of the provisions of the Bill being given effect to, so that it will not be necessary to put the law into force because conspiracies will not be hatched or riot will not break out. I trust it will be distinctly understood that it is the intention of the Government to put this law into force, and, if occasion should unfortunately occur, that the Bill will not be allowed to remain a dead-letter."

1894.] [*Dr. Rashbehary Ghose; Sir Antony MacDonnell.*]

The Hon'ble DR. RASHBEHARY GHOSE, with the permission of His Excellency the President, said that his observations had been somewhat misunderstood by His Honour the Lieutenant-Governor of Bengal. His, the speaker's, remarks had been confined to section 44 only of the Code, the proposed amendment of which had caused widespread alarm, and he had wished only to draw attention to the fact that, although, even under the present law, the public are bound to give information of the commission of a variety of offences, it was not said by the critics of the present Bill that the law had been vexatiously or oppressively used by the police.

The Hon'ble SIR ANTONY MACDONNELL said:—"I think that I express the feeling of the Council when I say that we recognise the loyal and patriotic spirit which animated the remarks of the Hon'ble Dr. Rashbehary Ghose. He says that when responsible administrators think, with reference to events which have unhappily taken place, that it is desirable to strengthen the means of preserving order, that it becomes every patriotic and loyal subject of Her Majesty the Queen not to reject at once the demands which have been made by those administrators, but, where they are reasonable and do not exceed the bounds of wisdom, to agree to them. I consider that Dr. Ghose's remarks on this point are conceived in good spirit, and I wish to express my acknowledgments to him. I do not, however, take the same view that he does that this Bill will be inoperative. His argument on this point seems to be that because, in his opinion, section 44 of the Criminal Procedure Code has been inoperative, therefore this Bill must also fail. I am not prepared to admit that section 44 of the Criminal Procedure Code has been inoperative. I have no statistics at hand just now as to its working, but even if the general public have not given the information which the section requires, the information has, all the same, reached the authorities. It is not necessary that the public should give information to the police with regard to such offences as murder, attempted robbery, etc. The people who are injured in such cases come forward, and they take off the general public the responsibility of making these reports. The police are in possession of the reports regarding the serious offences in section 44, and it is only to enable them to get information with regard to other offences which individuals have not the same interest in reporting that we now desire to enlarge the bounds of the section.

"I have listened to my hon'ble friend the Lieutenant-Governor's remarks with satisfaction, inasmuch as they shew that this Bill will, in the interests of law and order, be put into operation, not oppressively, but in such a manner that

[*Sir Antony MacDonnell; Mr. Lee-Warner.*] [29TH MARCH, 1894.

information will reach the Executive in time to prevent such outrages as some of those which took place during the last year. It is unnecessary for me to say more, and I am glad to find that the Bill commends itself to the judgment of the Council."

The Motion was put and agreed to.

The Hon'ble SIR ANTONY MACDONNELL also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

DEKKHAN AGRICULTURISTS' RELIEF ACTS, 1879 TO 1886,
 AMENDMENT BILL.

The Hon'ble MR. LEE-WARNER moved for leave to introduce a Bill to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1886. He said :—
 " My Lord, the comparatively short Bill which I now ask leave to introduce represents the desire of the Government of Bombay to give effect to the recommendations made by a Commission of Enquiry appointed by the Government of India. If it does not go to the full length of the resolutions of that body, it goes further than the Local Government would of itself have proposed, and it continues the policy which the Government of Bombay has pursued since 1879 of courting full criticism and discussion upon an interesting experiment, and accepting amendments which will not interrupt the success of past legislation. Before explaining the amendments, I will briefly recall to mind the course of events leading up to the recent Commission which has now brought us to further legislation. On the 17th of July, 1879, the Hon'ble Mr. Hope introduced a Bill for amending the procedure of the Courts in certain classes of litigation in four districts in the Dekkhan, and relieving, so far as any Legislature can deal with a great agrarian and social problem, certain incidents of agricultural distress and discontent which had attracted prominent notice in that part of India. He catalogued his objects in these terms :—

' (1) Precautions against fraud by either debtor or creditor in their original transactions with each other; (2) interposition of friendly conciliation between disputants previous to litigation; (3) approximation of the Courts to the homes of the people; (4) some small simplification of procedure and diminution of the expense and technicalities arising

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ACTS, 1879 TO 1886.

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from legal practitioners; (5) equitable jurisdiction to reduce all exorbitant, fictitious and fraudulent claims; (6) finality of judicial decisions, subject to adequate safeguards; (7) prompt and unfailing enforcement, through the Collector when necessary, of all adjudicated claims of reasonable amount; (8) discharge of the debtor from such claims, or the balance of them, as after all reasonable enforcement for a long period could not be fully realised, except by demoralisation and life-long bondage.'

"The Bill as amended became law in October, and, in 1881, 1882 and 1886, the Act, XVII of 1879, was further amended by this Council.

"A healthy and most beneficial criticism of the Act was excited both in this Council and elsewhere—a criticism to which must be attributed the popularity which the Acts have on the whole enjoyed in the districts where they run, and in the surrounding territory. Some of the fears which then racked the minds of observant critics may be mentioned. It was feared that any attempt to place the peasant-debtor, weighted with ignorance and inherited debt, and his creditor, with his superior advantages of purse and intelligence, upon a fairer footing would produce injustice by intercepting some of the legitimate profits of the moneylender's trade. The exercise of a correctional power over contracts and improvident bargains seemed a novel and dangerous task, and it was anticipated that the moneylending class would soon discover methods of evading the law, partly by insisting on the actual transfer of the land as security, and partly by means of fictitious proceedings before the conciliator or by other transactions. The demoralisation of rural society was predicted as a consequence of the temptations offered by paternal legislation to the setting up of false defences. Errors due to corruption, incapacity and irresponsibility were expected to flow from the substitution of revision for regular appeals. The system of conciliation would only create delay and offer opportunities for evasion of the Act and for corrupt practices. The 'blundering benevolence' of the provisions as to registration would lead to oral contracts. Such were some of the criticisms offered in this Council which found echo elsewhere. The amending Act of 1881 enabled Mr. Justice West to express in his usual weighty and thoughtful style the fears which occurred to his mind in looking forward to the probable effects of the Act. The Secretary of State for India, Lord Hartington, thereon called for a special report, which was drawn up and submitted by Mr. Woodward in 1883. Certain issues raised in it were subjected to further discussion by a Committee, sometimes called Mr. Gonne's Committee, and upon this information the Government of Bombay assured the Secretary of State for India that the Act

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had proved a success. In November, 1884, Lord Kimberley, the Secretary of State, accepted the following conclusions :—

'It is shown that cultivation has extended in area since the Act became law ; that it has not fallen off in quality ; that the revenue is realised as punctually as ever ; that it has ordinarily been paid from the produce of the land, not by borrowing or by the sacrifice of agricultural stock ; and that, in those tracts which have suffered at once from short harvests and low prices, the people have struggled against the difficulties of the seasons as successfully as they did before the Act was passed. It is the opinion of officers who possess intimate knowledge both of the working of the law and of the condition of the people that the moral effect of the law has been good ; that it has encouraged thrift, prudence and mutual help. Finally, it is confidently stated that the opinion of the raiyats themselves is altogether in favour of the Act.'

"Lord Kimberley's despatch eventually led to the amendments which were embodied in Act XXIII of 1886, and it is principally in regard to the sections then added to the original Bill that the Bill which I now seek leave to introduce asks for further powers from the Legislature. In 1888 Lord Cross suggested a special report upon the working of the Act if the continuance of the Special Judge was advocated. In April, 1889, Mr. Woodburn submitted his report, and it received the most searching criticism at the hands of Sir Raymond West, who had then become a Member of the Bombay Council. In view of the large issues raised, upon which, so far as the Bill is concerned, the Council need not be troubled to exercise its judgment, the Government of India decided to appoint an independent Commission, under the presidentship of Mr. J. W. Neill, to ascertain how far the results of the legislation had justified the anticipations of its promoters. The report of the Commissioners, dated 11th June, 1892, confirmed the opinions expressed by those who preceded them, that a load of debt had been taken off the raiyat's shoulders without demoralising him or shaking his credit and without ruining the moneylender. They affirmed the success of the six leading provisions of the Act, namely, (1) the provisions against *ex parte* decrees, (2) those for going behind the bond, (3) those for redemption-suits and suits for account, (4) those for payment by instalments, (5) the abolition of imprisonment for debt, and (6) the limitations upon sales of immoveable property to cases where it was specially pledged, and recommended the retention of conciliation and compulsory registration. They criticised each section of the Acts and advocated a series of amendments. They went further and proposed an outline of a general Act for agriculturists throughout India, and certain amendments of the general laws affecting all classes of the community in respect of contracts, civil

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procedure, evidence and limitation, which lie beyond the scope of this simple Bill. Upon their report the matured views of Sir Raymond West are not wanting, and a paper which he read before the Society of Arts in London on the 18th of May, 1893, will no doubt have attracted the attention of those who are interested in the whole question. Meanwhile, the Government of Bombay had in March of last year arrived at its conclusions upon the report, so far as that report dealt with the law actually in force in the Dekkhan, and addressed the Government of India. The Bill which I seek to introduce gives effect to the final decision of the Government of India upon the particular issues so raised.

"I have thought it my duty, my Lord, to give the Council this outline of the discussion through which the Acts introduced by Sir Theodore Hope have passed. The Council will not fail to observe the unusual degree of attention given to the operations of the Acts by the Local Government, the ability with which actual and potential objections to the Acts have been brought to public notice, the deliberate judgments passed by Her Majesty's Secretaries of State, and more recently by the Commission appointed by the Government of India, and the safe foothold thus obtained by experience and deliberation for further action. Having served in two of the districts in several capacities both before and after the introduction of the Dekkhan Relief Acts, I might be justified in stating the results and grounds of my own experience; but I think it unnecessary to trouble the Council with any general remarks in view of the more simple and narrow issue raised by my present motion. I am sure that the Council will attach weight to the view that a law dealing with contracts and transactions of rural society, which has been in force for nearly fifteen years in a certain area, could not be materially altered without a grave dislocation of existing relations and calculations, and that neither the opinion of the Local Government or of the population affected, nor that of the Secretary of State, nor that of the recent Commission would justify such a reversal of our past proceedings. The principle of avoiding great changes of law will, I trust, commend itself to this Council as a reasonable proposition, and as it involves no tax upon their critical or jural faculties will tend to disarm controversy. If that is conceded, I have only to show that the few amendments which it is proposed to introduce are reasonable and uncontentious.

"The changes which require mention are the following. A power to extend the Act to any other districts was conferred on Government in 1886; but there may be strong reasons for extending its operations to parts of a

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district and not to the whole of it. The district of Nasik, for instance, was created by severing talukas from Ahmadnagar and Khandesh, by the annexation of Peint, and by raising the core of the district round Nasik from a sub-district to the dignity of a district. With the Act in force in Ahmadnagar, its extension to the talukas in similar circumstances which have been transferred from it and added to Nasik might be necessary without bringing Peint or some of the Khandesh talukas under the law. Section 1 as amended will give this power. The alterations in section 2 in the definition of 'agriculturist' explain themselves, and, in one instance, the change of phrase from 'includes' to 'means' actually represents what was originally intended. A well-guarded addition is made to section 13, so as to give what effect is possible to the Commission's recommendations in favour of agreements for the set-off of profits against interest and assessment. The present section 14 is made of general application and transferred to Chapter XI as section 69B. The amendment to section 15D (3) is an obvious improvement, since it gives the mortgagor time to find the money payable under the decree, and so gives effect to the intention of the Legislature. It is probable that hereafter section 61 will be altered so as to place the village-registration under the district-officers. The administration of the Relief Acts was intended to be the especial care of the revenue-officers, and there is not a revenue-officer in Bombay outside the four districts who, in view of the great agrarian question (the sale of rights in the soil) that is pressing for decision, can afford to treat as of no concern to him the working of the Dekkhan Acts. The separation of village-registration from the control of the district-officers was not intended by the framers of the Act, and the Government of Bombay has been addressed on the subject of amending this section. A new clause has been added in new section 69A providing for payments out of Court, which is in accordance with the spirit of decisions passed by various High Courts in India. For the rest the omissions of sections 8, 9, 15, 19 and 73 of the existing Acts will no doubt meet with the approval of this Council, and they require no detailed explanation. In conclusion section 72 is amended so as to exclude from the special limitation period any new tracts of country to which the Dekkhan Relief Acts may be extended, in the expectation that the ordinary law of limitation will presently be amended so as to provide a reasonable time within which all suits will be brought."

The Motion was put and agreed to.

The Hon'ble MR. LEE-WARNER also introduced the Bill.

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The Hon'ble MR. LEE-WARNER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Bombay 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 *sine die*.

S. HARVEY JAMES,

SIMLA;
The 12th April, 1894. }

Secretary to the Government of India,
Legislative Department.