Thursday,
14th February, 1895

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXIV

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1895

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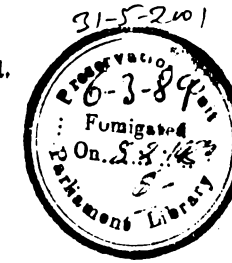

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1895

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 on Thursday, the 14th February, 1895.

PRESENT:

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.
His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. P. MacDonnell, K.C.S.I.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.
The Hon'ble Sir Luchmessur Singh, K.C.I.E., Mahárájá Bahádur of Durbhanga.
The Hon'ble Baba Khem Sing Bedi, C.I.E.
The Hon'ble P. M. Mehta, M.A., C.I.E.
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 Mahárájá Partab Narayan Singh of Ajudhiá.
The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble Sir F. W. R. Fryer, K.C.S.I.
The Hon'ble C. C. Stevens, C.S.I.

QUESTIONS AND ANSWERS.

The Hon'ble MR. PLAYFAIR asked:—

"I. Whether, having regard to the expressed desire of the Government of India to supply its wants, by purchase in the local market, of articles of *bond*

fide manufacture, Government will call for tenders for stores and supplies simultaneously in India and England?

"II. Whether Government is prepared to give substantial effect to the Resolution of the Finance Department, No. 185 of the 10th of January, 1883, which in paragraph 28 clearly and distinctly announces the desire of the Government of India to give the utmost encouragement to all efforts to substitute for articles obtained from Europe articles of *bonâ fide* local manufacture or indigenous origin as set forth in the Resolution, which reads as follows:—

> 'His Excellency the Governor General in Council therefore desires again to invite the special attention of Local Governments to the expediency of supplying the wants of Government by the purchase in the local market of articles of *bonâ fide* local manufacture. The Government of India is desirous to give the utmost encouragement to every effort to substitute for articles now obtained from Europe articles of *bonâ fide* local manufacture or of indigenous origin, and, where articles of European and of Indian manufacture do not differ materially in price and quality, the Government would always be disposed to give the preference to the latter, and the Governor General in Council desires to remind all officers of Government that there is no reason why articles manufactured in India should not be obtained locally, even although the raw material necessary to their manufacture may have been originally imported from Europe.'

"III. Whether Government will issue instructions under the Resolutions, No. 185 of the Financial Department, dated the 10th January, 1883, and No. 2650, dated the 25th June, 1891, making it incumbent on all officers of Government to call for tenders in India for manufactured articles of iron and steel made up from imported materials but increasing the scope of the appendix in Resolution No. 2650 of 1891 to include bridges and other structures of dimensions equal to those already successfully constructed by Indian manufacturing firms?

"IV. Whether it is not a fact that those Resolutions have of late years been ignored in favour of indents on the Secretary of State?

"V. Whether, if Indian firms are able and willing to comply with all the terms and conditions imposed by Government for the efficient manufacture and supply of such articles, and if the rates tendered are favourable, Government will obtain their requirements from these Indian firms?

"VI. Whether Government is prepared to submit a return of all completed indents or orders for articles manufactured of iron or steel procured out-

side of India, and a return of similar articles obtained in India since the passing of the Resolution of the Financial Department, No. 2650, dated Simla, 25th June, 1891."

The Hon'ble SIR JAMES WESTLAND replied:—

"In answer to Questions II, III, IV and V, I have to say that the policy of the Government in the matter is fully set forth in the documents quoted by the Hon'ble Member, and that no information has ever been laid before them tending to show that these orders have been ignored, or that substantial effect has not been given to them. The Government of India continue to recognize the advantages, *cæteris paribus*, of obtaining supplies in India, and will again draw the attention of Local Governments and Departments to the subject.

"If the progress of manufacture in India has rendered it possible to add new articles to the list, attached to the Resolution of 1891, of articles that may, in accordance with that policy, be procured in India, any proposals for such additions will, as a matter of course, be willingly received and considered by the Government.

"As regards Question No. I, as it is the Secretary of State and not the Government of India who calls for tenders in England, the question is, it is presumed, whether the Secretary of State will arrange for the simultaneous calling for tenders in India in competition with English ones. The Government of India have no information as to whether such a measure has been considered by the Secretary of State of recent years. The memorial submitted in 1890 by the Indian engineering firms did not contain any such proposal, and there are obvious difficulties in arranging for inspection and comparative testing.

"As regards Question No. VI, the Government of India obtain, every year, returns of expenditure on stores from the various indenting officers. They are made up in three headings, namely:—

(1) Stores imported through the India Office.
(2) Imported stores purchased in India.
(3) Stores manufactured in India and substituted for stores hitherto imported through the India Office.

The returns for 1892-93, 73 in number, were, as usual, very voluminous, and were in ordinary course sent on in original to the Secretary of State.

They are, therefore, not now available. From the abstract of them I take the following figures under the last head :—

	Obtained from Government Factories.	Obtained from Private Firms.
	Rs.	Rs.
1890-91	9,23,925	78,68,848
1891-92	15,89,849	90,62,497
1892-93	17,96,580	98,19,118

Of the figures in the last column, iron goods reckon for Rs. 2,95,957, Rs. 5,85,389, Rs. 7,45,076 in the respective years. Of this last amount, Rs. 3,28,88: worth of stores were purchased under the orders of 1891 to which the Hon'ble Member refers.

"The returns for 1893-94 are now in course of collection; when they are complete, I shall be glad to place the figures for that year at the disposal of the Hon'ble Member."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS asked :—

"Is the Government aware that the tax, known as the Pandhri-tax, levied by Act XIV of 1867 in certain districts of the Central Provinces from all persons not engaged in agriculture, is felt by the people as inequitable and oppressive owing to the facts that no such tax exists in any other part of the country and not even in the other districts of the same province, and that the income assessable to the said tax is so low as Rs. 250 per annum; and will the Government, in view of these circumstances, be pleased to consider the tax as anomalous and do away with it as such?"

The Hon'ble SIR JAMES WESTLAND replied :—

"The Government of India are not aware that the Pandhri-tax is felt by the people as inequitable and oppressive; and they have certainly received no complaints about it for upwards of twenty years. The Government certainly cannot admit that it is inequitable and oppressive. It is a tax that comes down from ancient times of Native rule, and its incidence has been much lightened by the British Government, for, though levied thirty years ago on annual incomes of Rs. 75, it is not now assessed on any one whose income is less than Rs. 250. The Hon'ble Member is incorrect in saying that it is not levied in all the districts of the Central Provinces, for, though at first applying to the Mahratta districts only, it was afterwards made general, under the power given in Act

XIV of 1867. The tax is anomalous, of course, in the sense that it is not levied in other provinces of India, though a very similar tax, the thathameda, or, as it may be called, capitation tax, is levied in Burma; but the Government do not consider it desirable to regulate such matters with precise uniformity in all the provinces and among all the numerous races under its sway. On the contrary, they consider it eminently desirable, in matters of taxation, as in other matters, to have regard to local customs and national traditions.

"They see no occasion to consider, especially under present financial circumstances, the question of its abolition."

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

The Hon'ble MR. LEE-WARNER moved that the Report of the Select Committee on the Bill to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1886, be taken into consideration. He said:—"My Lord, after the considerate treatment which this Bill has received both in the Council and in the Select Committee, I need not trouble Your Lordship's Council with any observations that do not arise out of the corrections and additions made in the Select Committee, whose report I now ask this Council to take into consideration. The Bill looks as if it had expanded greatly upon the anvil under the blows of the hammer applied to it by the Select Committee. But in reality the increase of bulk is more in appearance than in substance. For in some cases we have found it easier to re-enact an existing section in another form than to make a small addition to it.

"I will now proceed to explain what we have done to the Bill committed to us.

"The first material changes occur in section 2, where that difficult crux arises—Who or what is an agriculturist? The solution necessarily gave rise to differences of opinion, and I may admit that, if we had been legislating for another part of India in which the village-system and the land-tenure differed, an agreement in favour of the definition adopted might have proved more difficult of attainment. In Bombay you have a large peasant proprietary and numbers of village-servants who are holders of alienated land. In view of these facts the Select Committee whose report was signed on 15th December, 1882, by Sir Charles Crosthwaite and Sir Courtenay Ilbert as well as by Sir Theodore Hope and the other members, recorded an opinion to which the

Select Committee of this year paid due deference. It must not be forgotten that twice before 1882 had this Council defined the status of agriculturist, and its third attempt was justified by the Select Committee in these terms :—

'It would probably be impossible to frame a definition which would not go too far one way or the other; but on the best consideration we have been able to give the matter we think that the nearest practicable approach to what is desired will be attained by including in the definition, first, every person who by himself, his servants or tenants, earns his livelihood wholly or principally by agriculture; and, secondly, every person who ordinarily engages personally in agricultural labour.'

"Those who desire to appreciate the difficulties of the question will do well to read Dr. A. P. Pollen's letter No. 386, dated 7th June, 1880, to the Bombay Government, in which in paragraph 64 he asked, in reference to nine classes of proprietors or land-workers, whether they were agriculturists. In a letter dated Simla, 30th July, 1881, Mr. Hope expressed his opinion upon Dr. Pollen's letter, and the final issue was the amending Act XXII of 1882, which with the rules 5 and 6 added in 1886 gave us the existing definition. The Select Committee has, I think, wisely resisted the temptation to insert the doubtful words 'by members of his family', or to exclude the whole class of inamdars and even holders of unalienated land who might, but do not, cultivate their lands. In the Dekkhan the village-servants are ranked amongst holders of alienated land, and the Acts of 1879 to 1886 were deliberately devised by Sir Theodore Hope in order to bring peace and improved procedure both to the agricultural classes of the four districts and to others also. There are, however, some important changes now introduced which deserve attention. In the first place, the repeal of section 73 opens to revision a decision as to status, and leaves it to judicial determination in the same way as any other question of fact. In the next place, the words added to rule 2, namely, 'within the meaning of the word as then defined' fix the date from which the status created by any of the Acts must have been acquired. The Committee, whilst it generously refrained from material alterations in the definition of status, decided however to protect the agriculturist worn out by old age, crippled by disease, or absent on military duty, from loss of his status. I must confess that, with all sympathy for the gallant Dekkhani absent on military service, I felt, and still feel, some fear that the operation of sections 11 and 56 acting upon the addition now made to the Bill will prove inconvenient in the case of the peasant-soldier engaging in loan transactions in a distant cantonment, and I should have wished

that the whole definition had been left alone. But I may at least frankly admit that the addition is cautiously made, and the explanation shows that the soldier who desires to be an agriculturist for the purposes of the Act must have acquired the status before he left the Dekkhan on service and must have satisfied the conditions annexed to the definition in rule 1. The other alterations in the section are unimportant, since the definition of 'standing crops' is only made clearer, not altered. But with this must be read section 10, which is devised to make standing crops moveable property for the purposes of attachment under the Act. It was considered better not to add to a defining section a new principle making standing crops moveable property just as they are made in the Registration Act. So we have made the addition in section 10. The last word has not yet been said upon section 7 of the Acts as amended by section 6 of the Bill. The proposal which I submitted to the Committee was threefold: first, to make section 7, which requires the summons to be for final disposal of the suit and the Court to examine the defendant as a witness, one of universal application, not only to suits under Chapter II of the Act, but also to all suits under the Acts; secondly, I wanted to secure that the cost of issuing the subsequent summons after the first appearance of the defendant should not fall on the plaintiff; and, thirdly, in view of the repeal of section 8 of the Act, to add a proviso that a written statement would not render the examination of the defendant unnecessary. I ought to explain the importance of section 7 of the existing Act. By its operation, out of 9,761 suits decided under Chapter II, in only 5·7 per cent. of the cases are there *ex parte* decisions, against 35 per cent. in Courts in the Presidency outside the 4 districts. Of these 9,761 suits, defendants were examined last year in 61·2 per cent. Again, of them, 8,690 suits were fixed for final disposal at the first hearing and 4,017 suits were then so disposed of. Again, written statements were admitted with the permission of the Court in only 252 cases out of the 3,518 contested suits decided under Chapter II. With these facts placed before them, the Committee decided that the section should remain in Chapter II, that no legislative direction as to relieving the plaintiff of the cost of issuing summons was desirable; and, as regards the explanation, they hoped that the addition of the word 'clearly' would emphasize the necessity to examine the defendant. These observations will, I hope, explain the position taken, and render it unnecessary for me at a later stage of our proceedings to enter into any lengthy discussion of the amendment which my hon'ble friend Mr. Mehta will move and which I cordially accept. Sections 7 and 8 were discussed in the correspondence before the Council, and I need only call attention to one clause of the latter section, which

has been misunderstood. The words 'made at the instance of the mortgagee thereof' are not inserted in forgetfulness of the fact that a mortgagor may ask for an order of sale. If he asks for it, we see no reason why the Court should not decree or order it without waiting for half a year. On section 9 I wish to observe that it is not precisely drawn as I could have wished to see it drawn; but since the Courts have a series of alternatives presented to their discretion, they will, no doubt, choose the one which best suits the equity of the case. A Court which continues the possession of the mortgagee under clause (3) for an undefined further period will of necessity have to take the accounts before it gives its final order of restitution. If then, or even before then, it knows exactly what the mortgage-debt payable to the mortgagee amounts to, and also what the profits of the possession are, it can fix a definite date when the possession shall terminate.

"In section 11, I was personally anxious to obtain a power of revising the Munsif's decision if he acted with such irregularity as to cause a miscarriage of justice. There are 89 Village-munsifs before whom 7,665 suits were instituted in 1893. Their decisions can only be revised for misconduct or corruption. They are honest men whose knowledge of law is very limited, and I do not think their usefulness would be impaired if their decisions were revised when they were guilty of material irregularity causing miscarriage of justice. A majority of the Select Committee, however, held the view that the finality of the Munsif's decisions was most desirable, and that it was not amiss if this village Hampden acted in consonance with village sentiment, although it might be in opposition to the view which the revising Judge might take. It was pointed out that in Madras the Munsifs exercised a final judgment on the questions brought before them. I doubt whether in Bombay our Village-munsifs new to the work can be put into the same category as the Madras Munsifs, but I am not prepared to appeal to the Council on this matter of opinion.

"In section 13 I would ask permission to correct a printer's error. The words 'any suit' should follow the word 'another' and not the word 'transfer.' I may also notice a few slips in drafting which are corrected in the copy of the Bill which I hope will be passed, namely, in section 5 add 'section' after 'following'; in section 8, after 'following' insert 'section'; in section 9 read: 'To section 15B the following shall be added, namely' section 12 will run: 'For section 44 the following section shall be substituted, namely'; in section 13 add 'clause' after '51' and for 'the Act' read 'this

Act'; from sections 14 and 15 delete 'of the Act'; section 17 should run: 'After section 71 the following section shall be inserted, namely'. These are mere verbal corrections which I shall ask the Council to accept.

"Sections 12 and 14 look very long, but they introduce very little new matter and swell the bulk of the amending Bill without altering the existing law in proportion. The permissive 'may' in section 14 is merely intended to give Government more liberty of action in districts to which the Acts are extended and not to alter arrangements in the four districts. Personally I should be very sorry to see the Assistant or Subordinate Judge dispensed with anywhere. The wording of section 14 is not satisfactory, and I shall presently ask the Council to correct it, with the full concurrence, I believe, of my colleagues on the Select Committee.

"Section 16 is not quite as the Local Government proposed, but the Committee were not wholly able to meet its views.

"Section 17 illustrates the care needed in altering the Dekkhan Relief Acts. Our new section 71A was intended to reproduce section 14 of the existing Act, so as to transfer it from Chapter III to Chapter XI, thereby giving a wider application to its provisions. But, so long as the old section 14 nestled under the shadow of section 13, it could not have been misunderstood as a direction that interest must always be allowed. There are cases where the parties have not agreed to interest, and where custom and the Interest Act do not contemplate the payment of interest. All we want to do is to regulate the rate of interest when payable, and I shall presently move an amendment to which I believe that the Members of the Select Committee will agree.

"There remains only section 18, which to my regret limits the special periods of limitation to the four districts in which they now run, and denies them to the districts or parts of districts to which this law may be hereafter extended. In the Dekkhan, with its uncertain rainfall and the natural tendency of a money-lender to take advantage of his creditors' difficulties, a short limitation means frequent renewal of bonds at enhanced amounts and a rapid accumulation of debt. For suits on bonds or on account stated, six years is the least period I would fix. My only consolation is that the raiyat, although we may fail to secure for him long credit, will gain by this Act the means of having his accounts fairly made up, will secure an opportunity to plead his cause, a simple procedure, the chance of conciliation, village-registration, great advantages in redemption suits, payment by instalments, and other advantages,

whilst the alteration of the limitation law for the whole of India will, I trust, bring at no distant date to the Bombay raiyat the benefit of longer credit without the grave objection of allowing two laws of limitation to operate in the same area.

"It may interest the Council, in conclusion, to learn how very easy the process of collecting the revenue in the four districts has been. I have compared the figures of the four districts for the last year 1893-94 with those for two adjoining Dekkhan districts, namely, Bijapur and Nasik, and with the neighbouring Konkan district of Ratnagiri. The penalty which section 148 of the Land-revenue Code provides was inflicted in the four districts in 62 cases, while in Ratnagiri alone there were 239 cases. In Nasik and Bijapur it was inflicted in 22 cases. But when we come to distraints and sale of moveable property under section 154, the figures of the four districts aggregated seven cases against 58 in Bijapur, 5 in Nasik, and 177 in Ratnagiri. In no single case in the four districts was immoveable property other than land sold, but in eight cases occupancies were forfeited against eleven in Bijapur and thirteen in Nasik. As I have before remarked, Dekkhan society feels that it owes much to the effort made by Sir Theodore Hope on its behalf, and the adjoining Native States have also recognized the benefits of the Relief Acts. The day when the Acts could be described as measures of 'blundering benevolence' has passed for ever. The spirit in which this Bill has been received both by the Council and the Select Committee indicates a vast change of feeling and conviction which will strike every one who has studied the debates of 1879 and 1882. I do not pretend that the Acts are perfect, or that by themselves they can accomplish everything. But I trust that the Council will now be pleased to take the Report of the Select Committee into its consideration, and by passing the Bill enable the Government of Bombay to extend the Act judiciously to other districts, talukas and pethas of which the raiyats are anxiously looking forward to participation in the advantages enjoyed by their neighbours in Puna, Satara, Sholapur and Ahmednagar."

The Hon'ble SIR ALEXANDER MILLER said:—"I certainly do not intend to go into the general questions touched upon by the Hon'ble Member towards the end of his speech, but I think it would be convenient, as sections 8 and 9 are rather complicated, if I explained to the Council exactly what the operation will be if those sections are passed as they stand. When a suit is brought for foreclosure or redemption it is in every case the duty of the Court to take an account, but at the time when the decree for the account is made ordinarily the

decree goes on to direct that the mortgagor shall pay to the mortgagee the amount which shall be found due on taking the account with interest and costs, and that in default of payment he should be foreclosed or the property sold. Now, section 8 provides, by a new section, 15AA, that in such a case a foreclosure or sale cannot take place until a certain date which shall not be less than six months after the decree, and therefore which will give the mortgagor a reasonable time after the account has been taken, and after the amount which is due from him is known, before he can be foreclosed or his property sold, and give him a proper opportunity of raising the money and redeeming his property. Then there may be cases in which there would be great hardship if the whole of the money had to be paid at one time: by the law as it stands in section 15B, the Court may, instead of directing that the amount found due on the account be paid in one sum, direct it to be paid in instalments, and it is provided in section 15B that in such a case, when an instalment is not paid, only so much of the property as may be necessary to pay the instalment in arrear should be sold, and not what would be necessary to pay the whole debt. But it occurred to the promoter of this Bill, and it has been accepted by the Select Committee, that a case of this kind might arise: the mortgagee being in possession and the possession being a beneficial one, the redemption might be effected without any sale and without any necessity for the debtor paying any sum in cash whatever by merely continuing the mortgagee in possession for a limited time. He would in this way work the whole debt off, and afterwards, when the debt had been properly worked off, he would be bound to restore the possession to the mortgagor without any further claim. That is the effect of sub-section (*3*) as proposed to be added to section 9 of the Bill. But a third point arose, which is this. In order to work out the process which I have just described, it would be necessary, when the time for restoring the land came, that a further account should be taken to show that the debt had really been worked off, and it appeared that when the first account had been taken and the amount determined the Court might at the time take what I may call a hypothetical account and might be in a position to say 'We see that your earnings are so much and that they ought to wipe off so much of the debt per annum, and therefore we can fix a limit, at the end of which time the debt is to be presumed to be wiped off'; and accordingly sub-section (*4*), instead of directing that the mortgagee should remain until the result of the account shows the debt to be paid, authorises the Court to fix a time for which the mortgagee is to remain in, at the end of which period he is to go out and the mortgagor is to

resume possession of his property. Of course, the period fixed (taking one year with another) will be sufficient to secure that the debt is fully paid. The result will be that in every case where the mortgagor is not hopelessly insolvent he will, if this Bill passes, be in a position to redeem his property and not be liable to be sold out unnecessarily. I trust that the Council will agree in thinking that the Committee have improved the rule very materially in that respect.

"The only other observation I have to make is that I have been always under the impression that a short period of limitation has always been to the benefit of the debtor, and that lengthening the period of limitation from three years to six years was rather offering a premium to creditors to hang back and not bring their suits, so that the amount due to them might not be discovered until it had largely accumulated."

The Motion was put and agreed to.

The Hon'ble MR. MEHTA moved that to section 7 of the Act, as proposed to be amended by section 6 of the Bill as amended by the Select Committee, the following be added, namely:—

"*Explanation.*—The compulsory examination of the defendant shall not be dispensed with merely by reason of the fact that the defendant has filed a written statement."

He said:—"As my hon'ble friend in charge of the Bill has already prepared the way for my amendment and indicated his approval, I shall very briefly state the reasons for moving it. In the existing Act the last clause of section 7 provided that—

'In every suit the Court shall examine the defendant as a witness unless, for reasons to be recorded by it in writing, it deems it unnecessary so to do.'

"In the Bill as first introduced it was proposed to repeal the last seventeen words of the section, namely:—'unless, for reasons to be recorded by it in writing, it deems it unnecessary so to do.' But, when the Bill was referred for opinion all those who had practically worked the Act deprecated the repeal of those words, and the Bombay Government, in dealing with the point, wrote as follows in their letter of the 5th September, 1894:—

'From section 3 should be omitted the words which repeal the last seventeen words of section 7. It is noticed that in the Statement of Objects and Reasons no explanation of the reasons for proposing the repeal of these words is afforded: and the Governor in

Council concludes that the omission of any justification was deliberate, the more so as at the time the Government of India's letter No. 198, dated February 21st, 1894, was then under the consideration of this Government. In its letter No. 1477, dated March 8th, 1893, this Government did not recommend the omission but rather proposed an extension of section 7, expressing its concurrence with Mr. Ranade. Moreover, as indicated by the District Judge of Ahmednagar, who served on the Commission, that body did not recommend the omission of the seventeen words, and their repeal would be regarded by all who have taken part in the administration of the law with deep regret. In order to give effect to the views of this Government as well as those of the Commission and of the officers consulted, I am to suggest that from section 3 of the Bill be expunged the words "and the last seventeen words of section 7" and that the whole section 7 be repealed, a fresh section being re-enacted as follows, either in Chapter I or XI as may be thought best:—

"In every case under the Dekkhan Relief Act, 1879, in which it seems to the Court possible to dispose of a suit at the first hearing, the summons shall be for the final disposal of the suit.

"In every suit the Court shall examine the defendant as a witness, unless for reasons to be recorded by it in writing it deems it clearly unnecessary to do so. The cost of sending further summons or warrants after the first process has been served on the defendant shall not fall on the plaintiff.

"*Explanation.*—The compulsory examination of the defendant shall not be dispensed with merely by reason of the fact that the defendant has filed a written statement."'

"The Select Committee accepted the view of the Bombay Government regarding the repeal of the seventeen words, and I think it may be taken, from what has just fallen from the Hon'ble Mr. Lee-Warner, that it was only by an oversight that the words which I now propose to add were not included in the Bill as amended by the Select Committee. Of course, it is very desirable that discretion should be given to the Courts to proceed with a suit in cases where it is not feasible to examine the defendant, but at the same time it is very important that one of the most essential objects for which the compulsory examination of the defendant is necessary should not be allowed to be defeated. It is a very favourite dodge with the saukar to get the defendant to file a written statement containing an admission of his liability and then keep him out of Court. It is for the purpose of not allowing such a dodge to be successful, and to enable the Court to see that the defendant has exercised an intelligent option in defending the suit, that I move that the words I propose to add should be inserted in the Bill."

The Motion was put and agreed to.

The Hon'ble MR. LEE-WARNER moved that in the proviso to section 52 of the Act, as proposed to be substituted by section 14 of the Bill as amend-

ed by the Select Committee, the words "Any Assistant or Subordinate Judge" to the end be omitted and the following words added, namely:—

"The District Judge may by order confer upon any Assistant or Subordinate Judge appointed under this section, as regards any district or part of a district for which he is so appointed, all or any of the powers specified in the order which vest in the District Judge under section 51."

He said:—"It will be observed that these changes exactly fulfil the intention of the section as it stands in the Bill."

The Motion was put and agreed to.

The Hon'ble MR. LEE-WARNER said:—"I also beg to move, for the reasons already stated in my remarks on the previous motion, that in section 71A of the Act, as proposed to be added by section 17 of the Bill as amended by the Select Committee, the following words be inserted after the words 'under this Act,' namely:—'where interest is chargeable such'.

The Motion was put and agreed to.

The Hon'ble MR. LEE-WARNER then moved that the Bill, as now amended, be passed.

His Honour THE LIEUTENANT-GOVERNOR said:—"It must be very gratifying to all those who remember the long and bitter discussions which characterised the passing of the Act of 1879, and who like myself supported the views of Sir Theodore Hope and the promoters of that legislation rather than of Mr. Whitley Stokes, to observe the effect which the amendments which have now been passed are likely to have, that they will extend the operation of the law and not restrict it, and that nothing has been said or suggested in the discussions of this Act which mars or detracts from the eulogistic language used by the Hon'ble Mr. Lee-Warner and the Hon'ble Mr. Mehta in the former debate to the effect that this law provides for the raiyats justice which is substantial as well as equitable and cheap as well as speedy. I trust that the Government of India will take advantage of this wave of opinion passing over the country to do all that it can to extend the operation of the principles of this Act not only, as the Hon'ble Mr. Lee-Warner just now suggested, to other parts of the Presidency of Bombay, but to other Provinces in India in which similar requirements exist. I heard with great pleasure on a former occasion the remarks made by the Hon'ble Member in charge of the Home Department to the effect that the Government

is at present engaged in discussing this question in those parts of India in which it presents its most complex and difficult features, and that he hoped that before this Council ceased its sittings in Calcutta he would be able to break ground in the matter and to introduce a Bill in connection with one important aspect of the question in the Central Provinces, the other parts of India following in due course. I almost envy the Hon'ble Member the opportunity he has of connecting his name with a set of measures of this kind—measures of the most paramount importance and the most beneficial influence on the lives and prosperity of the agriculturists of this country—and I only trust that his affection for the land of his adoption will not interfere with his affection for the land of his official birth, and that the measure which he contemplates extending to the Central Provinces will not block the way to a similar measure to be applied to the Province of Bengal. It will be a matter of extreme satisfaction to myself if in the last year of my tenure of this office I am able to co-operate with him in introducing a measure of this kind which will produce the same results for the agriculturists of Bengal as has been shown on the highest authority to have been produced for the agriculturists in the Presidency of Bombay. The Government of Bengal has already, in a letter dated 29th October, 1894, represented to the Home Department of the Government of India how thoroughly it is in accord with the principles of this measure, and how strongly it advocates the introduction of, at any rate, the sections of the Dekkhan Raiyats' Relief Act—sections 12, 13 and 14—which contain the cardinal principles of its measures of relief. We have already Regulations to that effect working in the Sonthal Parganas,—one of these was passed so late as 1893, to extend and strengthen those principles where they had been to some degree encroached upon by the Courts of Law,—and I have laid before the Government of India the opinion of those best acquainted with the working of those Regulations, namely, the Deputy Commissioner of the Sonthal Parganas and the Judge who deals with the cases from that district, both of whom testified in strong language to the benefit which those measures have produced among the Sonthals. There are large tracts of similar character in Bengal, and indeed there is hardly any part of Bengal in which similar beneficial results would not be produced; and I sincerely trust that it will be found possible to lose no time in introducing a measure to this effect into this Council for the benefit of the Province of Bengal."

The Motion was put and agreed to.

ACT V OF 1861 (POLICE) AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL presented the Report of the Select Committee on the Bill to amend Act V of 1861 (*an Act for the Regulation of Police*). He said:—"I may, with Your Excellency's permission, say a few words in regard to the further progress made with this Bill. It had been agreed upon by the Select Committee that it would be desirable to take the debate on this Bill on next Thursday. The points of difference in regard to the Bill have now been reduced to practically two sections, and we thought that, as these two sections were matters of principle and not detail, it would have been possible for the Council to consider the matter within the space of one week. But I understand that a desire has been expressed for a little more time to consider the Bill, and Your Excellency's Government is of course most anxious to meet any desire of that kind so far as possible. It will be necessary, however, to consider how this desire can be met with reference to the state of public business, and I propose to submit to the Government of India certain suggestions which will, I hope, enable the Government to go as far as possible in the direction of meeting the desire which has been expressed."

The Council adjourned to Thursday, the 21st February, 1895.

J. M. MACPHERSON,
Offg. Secretary to the Govt. of India,
Legislative Department.

CALCUTTA;
The 22nd February, 1895.

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