

*Thursday,  
17th September, 1896*

ABSTRACT OF THE PROCEEDINGS  
OF THE  
Council of the Governor General of India,  
  
**LAWS AND REGULATIONS**

**Vol. XXXV**

**Jan.-Dec., 1896**

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

1896

VOLUME XXXV



Published by Authority of the Governor General.



CALCUTTA  
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA,  
1896

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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).*

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The Council met at the Viceregal Lodge, Simla, on Thursday, the 17th September, 1896.

PRESENT :

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

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

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

The Hon'ble M. D. Chalmers.

The Hon'ble Major-General Sir E. H. H. Collen, K.C.I.E.

The Hon'ble A. C. Trevor, C.S.I.

The Hon'ble Nawab Amir-ud-Din Ahmad Khan, C.I.E., Bahadur, Fakharud-doulah, Chief of Loharu.

The Hon'ble C. M. Rivaz, C.S.I.

CENTRAL PROVINCES ADDITIONAL JUDICIAL COMMISSIONER'S BILL.

The Hon'ble MR. WOODBURN moved for leave to introduce a Bill to provide for the temporary appointment from time to time of an additional Judicial Commissioner for the Central Provinces. He said:—"The Chief Commissioner of the Central Provinces has represented to the Government of India that some temporary assistance is very necessary to the Judicial Commissioner for the disposal of the appeals which have accumulated in his Court. I can say, from my personal knowledge, that the Judicial Commissioner himself is not in fault for the arrears which have so gathered. During the last three years the office of Judicial Commissioner has been held by Judges of notable assiduity and ability, but it was inevitable that the judicial business, like all other forms of official work in a growing Province, should increase, and the Government of India have admitted that it is necessary to afford the Judicial Commissioner some temporary help. When the case came to be considered it was found that the Civil Courts Act for the Central Provinces, which was passed in 1885, contained no provisions enabling the

[*Mr. Woodburn.*]

[17TH SEPTEMBER,

appointment of an Additional Judicial Commissioner, and that in order to validate the proposed appointment it was necessary to pass a special Act. That is the reason why the Bill which I have now the honour to ask leave to introduce has been prepared. It has been framed on the provisions of a similar Act passed in similar circumstances in Oudh in 1885, and opportunity has been taken of adding to it a provision which is necessary in order to provide for a case which I hope will be of more frequent occurrence in the future than it has been in the past, in which a Provincial Judge is promoted to the office of Additional Judicial Commissioner. A Judge so promoted cannot decide appeals from the judgments he has given in a lower capacity. The Code of Criminal Procedure contains a section which provides for that contingency. The Judicial Commissioner in regard to criminal appeals is empowered to transfer to the High Court of some other Province appeals from his own decisions as a Sessions Judge. A similar provision is necessary in regard to civil appeals, and a clause to that effect has been introduced into the Bill."

The motion was put and agreed to.

The Hon'ble MR. WOODBURN introduced the Bill.

The Hon'ble MR. WOODBURN 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 Administration thinks fit.

The motion was put and agreed to.

#### SINDH INCUMBERED ESTATES BILL.

The Hon'ble MR. WOODBURN moved for leave to introduce a Bill to amend the law providing for the relief of Jágírdárs and Zamíndárs in Sindh. He said:—"I have to ask the leave of the Council to introduce another Bill. It is to revive the Sindh Incumbered Estates Act of 1881. That Act was passed for the relief of embarrassed landowners in Sindh. They were invited and enabled to apply for the management of their estates by the officers of Government, but a period of six months from the passing of the Act was fixed for any such application, and that limitation once passed no further applications under the Act could be entertained. The main reason for that limitation I believe to have been that Government had been asked to provide the money by which the debts of the

1896.]

[ *Mr. Woodburn ; Sir James Westland.* ]

applicants were to be paid off. A similar help had been given to incumbered properties in Oudh in 1870, and a similar limitation was made in the Act for that Province. This limitation distinguishes the Incumbered Estates Acts of Sindh and Oudh from the Court of Wards Acts which are in force in most Provinces.

“ In Sindh there is no Court of Wards Act, but some assistance to indebted proprietors is necessary, and the simplest way of giving it is to re-enact the Act of 1881 without the provision which limits the period for applications.

“ The Government of India have agreed to this course, the more readily because it is no longer proposed to make the measures of relief solely dependent on loans from the State. In the Courts of Wards in other parts of India, bankers, both English and Native, are found very ready to lend money at moderate rates of interest on the security of the management of the Court of Wards, and it is obvious that the more local assistance of this kind is enlisted, the wider is the area over which the help of the Court of Wards to embarrassed proprietors can be given. The extent to which the Government of India can lend money for the purpose is limited, and all funds so provided are withdrawn from other and at least equally useful purposes. The indebtedness in Sindh, which has been represented by the Bombay Government, is evidence in itself that there is local capital in the Province, very willing to find investment in land. The Government of India has been pressed to take early action because foreclosure is threatened on some estates which the Local Government is anxious to save. It may be gathered, therefore, that local capital is more than willing to find investments in land.

“ The Government of India will give such pecuniary help as is necessary, but it will be in supplement of the local loans which the District Officers are able to raise in the local markets at moderate rates.

“ The Act of 1881, in the section which describes the liquidation-scheme of the Government manager, authorizes him in express terms to borrow from Government. These words are omitted in the Bill reviving the Act which I have asked leave to introduce. The manager's powers of borrowing money on the security of the estate are thus made general.

“ This and the removal of the time-limit are the only changes proposed in reviving the Act.”

The Hon'ble SIR JAMES WESTLAND said :—“ As the amendment of the Act of 1881, to make which the present Bill is proposed to be introduced into this

[*Sir James Westland.*][17<sup>TH</sup> SEPTEMBER,

Council, involves a small question of financial policy, I would ask Your Excellency's permission to make a few remarks regarding it.

"We have recently received from more than one Government applications to make loans in order to redeem from their pecuniary difficulties persons of local distinction—either pensioners of Government or landholders—people who represent families of some local importance and who have been long held in respect by the people of the neighbourhoods in which they live. It has been necessary for the Government in connection with these applications to consider the general question of the extent to which public funds should be utilised for the purpose of the relief of local magnates, and the decision the Government has come to is to adhere to its previously declared policy of refusing, as a matter of principle, to intervene in matters of the kind. The question had been before the Government and had been decided by it before the present proposal of the Government of Bombay was made to apply Government loans, under the principle of the Act of 1881, to the relief of incumbered estates in Sindh. Now, we must admit it to be, to a certain extent, desirable on public grounds that the representatives of the families to which the natives in various parts of this country have been accustomed to look up should not through the action of our Courts be effaced and reduced to a state of poverty, even although that state of poverty may be what we consider the legitimate consequence of their own extravagance or want of thrift. It is, to a certain extent, a matter of public interest that this principle should be applied even to petty magnates who are merely the dominant members of the society of a village. This last, however, is a much more general question. It is a question which is at present before the Government of India in another shape and is receiving due consideration.

"I deal here, for the most part, with proposals to lend small sums of money—Rs. 5,000, Rs. 10,000 or Rs. 20,000—which are meant to relieve landholders and preserve the social position of people who have for a long time held a position of local distinction. Now, it is very natural that a local authority—a Collector or Commissioner for example—when he sees one of this class in pecuniary difficulties should fix his attention, to a large extent, upon the public aspect of the disadvantage of allowing him to be reduced to a position of dependence and perhaps poverty; and the means which the local authority sees most readily is that of Government coming forward and lending money at a cheap rate of interest in order to extricate the estate, or the individual, from his difficulties. He naturally sees that the direct result of such action would be that the creditor of the estate who has been pressing for his money would get it repaid; that

1896.]

[ *Sir James Westland.* ]

the debtor would be freed from the pressure of his incumbrances; and that the Government who has lent the money, and receives 5 per cent. on money that it can borrow at 3 per cent., would be a gainer. Everybody in fact would be satisfied all round, and everybody would be a gainer. But when these various applications are concentrated, as they are when they come before me, and when I am obliged to look at them from the general point of view, I see disadvantages—disadvantages as far as the Government is concerned, and disadvantages also even as regards the attainment of the results aimed at by an Incumbered Estates Act. So far as regards the Government, we have, unfortunately, far more pressing demands upon our loan funds than any that can be brought forward in respect of incumbered estates. For one thing, the railway policy initiated under Your Excellency's auspices not only absorbs the loan funds raised in this country but also necessitates application to the English money-market for sterling borrowing. The consequence is that any loans which we make to estates in this country, such as we would have to make if the Incumbered Estates Act of 1881 were renewed, would practically be made out of funds borrowed in sterling in England. With all these demands it is incumbent upon us simply as a matter of the proper management of the public finances, to restrict as far as possible the use of public funds for a purpose for which there is reasonable prospect of other funds being forthcoming. But, as I say, there is a disadvantage in our interference in these matters even from the point of view of those officers who are anxious to redeem the estates in their districts and divisions from indebtedness, for it is obvious that as long as the Government comes forward with loans at 5 per cent. it practically drives away other capitalists from the market. Now, I think it was Lord Northbrook who said, in talking of the policy of Government intervening in the matter of the import of grain into famine-stricken districts, that while Government can do more than any one merchant, still the sum and substance of all that Government can do is very much less than that which can be effected by all the merchants put together. We have, therefore, from the point of view of those who most strongly support this policy of redeeming estates to choose between these two courses:—Government may come forward with such small amount of money as it can afford, and can lend it at a low rate of interest, and this would tend to exclude all other capitalists from the market; or Government may keep in the background altogether, and by fixing a higher rate of interest for its own loans induce capitalists to enter the market and offer loans at a reasonable interest,—I think my Hon'ble friend Mr. Woodburn would probably set this down at something like 6, 7 or 8 per cent.,—and if these rates were available we believe that private capitalists

[*Sir James Westland.*] [17TH SEPTEMBER, 1896.]

would come forward and lend money for such purposes as the Bill now being introduced contemplates.

“The Commissioner in Sindh, when he reported on the present matter, pointed out that there was a great want of local capital in Sindh, and he was of opinion that, if Government did nothing to assist, there would be no means of carrying out the purposes of the Bill; but I find as a matter of fact that Government when it has lent money in Sindh has lent it at a much lower rate of interest than any private capitalist would be induced to lend, and that its action therefore has been such as to prevent private money being available for estates brought under Government management. We see, as Mr. Woodburn has pointed out, that as a matter of fact money has been forthcoming for loans by private arrangement on estates in Sindh, although it has not of course been lent at the low rate of interest which the local authorities expected the Government to lend it. We hope, therefore, that one effect of the withdrawal of Government from this particular form of business will be to induce private capitalists to come forward and lend money for the purposes of the Bill. It is not with the intention of making a profit out of usurious interest that the Government propose to lay down as a principle that in these cases they should not lend money except at such rate of interest as may reasonably be required by private capitalists, but purely with the intention of withdrawing from competition in a business which it is in the interests of all concerned much better to leave in the hands of private bankers and moneylenders.”

The motion was put and agreed to.

The Hon'ble MR. WOODBURN introduced the Bill.

The Hon'ble MR. WOODBURN 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 to Thursday, the 1st October, 1896.

S. HARVEY JAMES,

SIMLA;

*Secretary to the Government of India,*

*The 18th September, 1896.*

*Legislative Department.*