

*Friday,
1st October, 1897*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXVI

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ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA
ASSEMBLED FOR THE PURPOSE OF MAKING
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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 the Viceregal Lodge, Simla, on Friday, the 1st October, 1897.

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*.

His Honour Sir William Mackworth Young, K.C.S.I., Lieutenant-Governor of the Punjab.

His Excellency Sir G. S. White, G.C.I.E., G.C.B., V.C., Commander-in-Chief in India.

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

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

The Hon'ble M. D. Chalmers.

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

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

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

The Hon'ble Sir H. T. Prinsep, Kt.

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

NEW MEMBER.

The Hon'ble Sir G. H. P. Evans, took his seat as an Additional Member of Council.

ODDH COURTS BILL.

The Hon'ble SIR JOHN WOODBURN moved for leave to introduce a Bill to amend the Oudh Courts Act, 1891. He said :—"That Act provides for a Court of two Judicial Commissioners. It was not contemplated at the time that the Act was passed that a necessity should arise for a third Judicial Commissioner but I am sorry to say that necessity has now been established. According to the last return which we have received, there were upwards of 1,200 appeals pending before the Court of the Judicial Commissioners, and the limit of the number of disposals of appeals of the kind which they have hitherto reached has

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been 500. The result is that an appellant who lodges an appeal now will have to wait two years for its disposal. This is practically a denial of justice, and the Government of India have arranged, with the assent of my hon'ble friend Sir James Westland, on whom so many claims are made, and also with the sanction of the Secretary of State, that a third Judicial Commissioner should be appointed for a term of one year, in order to bring the list of appeals within manageable limits. In order to appoint a third Judicial Commissioner it is necessary to amend the law of 1891, and the opportunity is taken to carry out two amendments which are of importance. Under the Act of 1891, when the two Judicial Commissioners sitting as a Bench differ in opinion, a reference has to be made to the High Court at Allahabad for the disposal and decision of the case. Now that there are to be three Judicial Commissioners, the reference will no longer be to that High Court, but to the third Judicial Commissioner, and the judgment will be given in accordance with the opinion of the majority of the Judges of the Court. Opportunity has also been taken to add to the law in Oudh a provision which has been taken from the Lower Burma Courts Act by which the Judicial Commissioner is empowered to make rules for the recording of judgments and the taking of evidence, which will shorten and simplify the procedure of the Court, and which will, I hope, result in the speedy disposal of the great mass of litigation which is now pending. These are the only remarks I have to make."

The motion was put and agreed to.

The Hon'ble SIR JOHN WOODBURN introduced the Bill.

The Hon'ble SIR JOHN WOODBURN moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English and in the North-Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Government may think fit.

The motion was put and agreed to.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble SIR JOHN WOODBURN moved for leave to introduce a Bill to consolidate and amend the law relating to Agricultural Tenancies in the Central Provinces. He said :—"I must ask the Council to bear with me a little, while I explain and describe the circumstances under which the necessity for this legislation has arisen. The Central Provinces were constituted in 1861, by appropriation of areas from other great provinces of India. Tracts were taken from the North-Western Provinces, from Bombay, from Madras and from Bengal and

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added to the kingdom of Nagpur and made what are now known as the Central Provinces. The result was a very singular combination of races, a diversity of languages, of customs and at one time even of laws, which was perhaps peculiar in India. But one outcome of the organisation of the Central Provinces was the discovery that in that area proprietary rights were weaker and tenant rights were stronger than perhaps in any other province of India. The region was a backward one, not very thickly peopled, not easily accessible, with a scanty agriculture, a country in which tenants were of very great importance, and in which the maintenance of tenants in peace and contentment was a matter of necessity to the proprietor of land; but besides that the proprietary tenure was less certain and firm than it was in most other parts of India. In some parts there were Rajas of ancient standing and proprietary communities whose position was just as distinct and defined and clear as it was in the upper provinces of India. In other parts of the country the conduct and management of the villages rested in the hands of headmen, who were only representatives of the cultivators, and who had no distinct or definite proprietary rights; in other parts the management was entrusted by the Government to contractors and middlemen of various kinds who had no previous connection with the villages. All these classes were simultaneously recognised as proprietors of the villages to which they belonged, or in which they resided, by the executive measures which were taken under the administration of Sir Richard Temple. Behind that arrangement no one proposes to go. There has been discussion as to whether it was a good measure or bad one; but for evil or for good that decision has been taken, and nobody proposes to vary or alter that arrangement in any form. When the provinces were constituted a separate administration, the famous old Tenancy Act of Bengal—Act X of 1859—was extended to them as a temporary measure more with the object of providing a procedure for the Revenue Courts than with the intention of laying down any distinct rules as to the rights of tenants. What these rights would be was a subject of prolonged discussion which ended in the Act of 1883 which it is now proposed to amend. The Act of 1883 recognized three distinct classes of tenants. One of these was called in the Act "absolute occupancy tenants." These were tenants who had been long and permanently associated with the village, who had probably assisted in the foundation of it, who had built houses and wells, and in various ways taken a prominent part in the settlement. Next to them came a class which were called occupancy-tenants. They were villagers who were settled for more than twelve years in the village before the Act came into force. And the third class were called in the Act ordinary tenants, and included all the cultivators who were not embraced in the two upper classes of the tenantry.

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" Now the legislature in 1883 found that the position and incidence of the tenure of even this ordinary class was so strong that instead of extending the occupancy sections of the Bengal Act, it was decided to confer upon the ordinary tenant powers and privileges which were very much in excess of the privileges given even to occupancy-tenants in other parts of India. To the extension of the system of occupancy tenancy the legislature then took strong exception on the ground that experience had shown in the North-Western Provinces and in Bengal the difficulty of preventing the evasion of the law by the landholders by the plan of constantly moving the tenants from one field to another and so preventing them from acquiring the rights of occupancy-tenants. As a matter of fact, the privileges which were conferred upon these classes of tenants were these. The absolute occupancy tenant was declared practically a proprietor. He was entitled to transfer his rights in his holding, without reference to anybody, to anyone he liked to assign them to. His rent was fixed, like the revenue of the proprietor, for the period of settlement. The occupancy tenant—the tenant of the next class—was endowed, for the first time in the history of the province, with the power of transfer, but subject to the approval and consent of the landlord if the transfer was to be made to a transferee who lay out of the family of the transferor. His rent was to be fixed for ten years by the Settlement-officer, and provision was made that if the landlord wished to enhance his rent during the period of settlement, it was to be subject to the approval and consent of the Revenue-officer. The ordinary tenant, the last grade of the three, was also, and for the first time in the history of the province, credited with the power of transfer of his holding ; but it was decided that his power of transfer should be entirely subject to the consent of the landlord. His rent was to be fixed for a period of seven years instead of ten years ; it might or might not be fixed by the Settlement-officer, unlike the occupancy-tenant, whose rent must be fixed ; but once fixed it was to remain unchanged for seven years. On the expiry of these seven years the landlord might enhance the rent by private contract ; but two curious provisions were inserted to protect the tenant from arbitrary and excessive enhancement. One of these was that if the tenant did not choose to pay the enhanced rent it was open to him to surrender the land and take compensation for improvements and further compensation for disturbance equal to seven times the yearly increase of rent demanded. The other provision was that he might protect himself by purchasing the right of occupancy at a sum equal to two and a half times the amount of his rental.

" It may interest the Council to know the proportion in which the different classes of tenants hold land in the Central Provinces. The absolute

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occupancy-tenants hold 17 per cent. ; the occupancy-tenants 44 per cent.; and the ordinary tenants 39 per cent.

“ This law has been working for fourteen years. The enquiries of the Settlement-officers show that, as regards ordinary tenants, the hopes and anticipations of the legislature have not been realized, and the present law is a curious illustration of the fact that benevolent and well-meant measures, however benevolent and excellent they may be, often take a long time to reach the understanding of the people. For fourteen years this has been the law of the land which I have attempted to describe, and up to the present time the occupancy-tenant has not learnt the extent and value of its powers. It has never sunk into the mind of the ordinary tenant that he can protect himself by purchasing the right of occupancy or by claiming compensation for disturbance. The investigations which the Settlement-officers have been making for the last half dozen years have disclosed that in certain parts of the country landlords enhance by means which have been accepted by the ordinary tenant without complaint in the belief that he could not resist them and in the belief that there was no method by which he could protect himself from arbitrary enhancement. These excessive rents the Settlement-officers have been able throughout the country to reduce to what are now considered fair rents with the consent of the landholders.

“ I think the greatest credit is due to the landholders that when the oppressiveness of the rent was brought to their notice they have accepted so generally the recommendations of the Settlement-officers ; but it is not right that matters of this kind should rest entirely on the personal influence of the Settlement-officer. An authority should be given to him to reduce rent where it is excessive and to maintain a fair rent for the future. The proposals, therefore, of the Government of India now are, not that we shall depart from the principles of the Act of 1883, but that we shall develop them in a manner which is more consonant with the habits and knowledge of the people themselves ; and the main part of the amendments in this direction which I have now to recommend to the Council are that the law should be so altered in regard to the ordinary tenant that the Settlement-officer shall be given the liberty to fix rent. The law, as it at present stands, evidently contemplates that he shall be authorized to raise rents where they are inadequate. It is necessary that he should be given authority also to confirm rents, where they are fair, and to reduce them when excessive.

“ Further, we shall have to consider when the ordinary tenant, rent is to be enhanced during the period of settlement by what method it should be enhanced,

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and how we shall ensure that the enhancement shall be fair. The plan of compensation for disturbance which was adopted from the Irish Legislation of the time has not taken root, and the proposal of the Government of India is that, as in the case of occupancy-tenants so in the case of ordinary tenants, there shall be a reference, where there is a dispute as to the propriety of enhancement, to the Revenue-officer. This is a manner of settling disputes which has long been the subject of discussion in different parts of India, and there was at one time a little hesitation in my mind as to this plan. It has not proved practicable in the North-Western Provinces, but we are advised that in the circumstances of the Central Provinces it will be so. For one thing they have now in the Central Provinces in the course of the settlement operations obtained a remarkably complete register of all agricultural conditions—the character of the soil, the rates of rent and the castes of the different villagers; but besides that in the Central Provinces there will be in future a shorter period of settlement than has been customary in some other parts of India; and advantage has been taken of these shorter settlements to arrange a rotation by which no more than two or three districts will be under settlement in one season. The result of bringing all the province under settlement at one time has been a serious disintegration of the revenue establishments and of the ordinary administration, but by this new system of rotation there will be a constant series of districts under settlement and the Chief Commissioner anticipates no difficulty of bringing to the service of each district an adequate succession of Revenue-officers, specially trained by settlement work, for the duty of adjudicating upon questions of the fairness of rents. This is the main change which has been made in the tenant law of the Central Provinces.

“ There are various minor points with which I do not think I need trouble the Council. For the most part they are small matters to be decided in Select Committee. I think it will be sufficient if, at this stage, I merely lay before the Council the general principles on which the amendment of the law has been undertaken.

“ On the other side there is a very important alteration which has been made in the interest of the landlord. The Act of 1891 provided that when a landholder sold his village he was entitled to reserve for his subsistence the lands of his home farm; but it has been proved by the experience of the last fourteen years that the pressure of the usurer, into whose hands the right of the landholder was departing, was so great that the landholders, as a rule, were compelled to divest themselves of the privileges which the law intended them to retain. In village after village—and I myself made very careful enquiries in the matter

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when I was in the Central Provinces—the landholder has been sold out and left absolutely without the means of subsistence. We propose in the Bill, which I have the honour to place on the table, to prevent the possibility of the landholder losing his home farm in future, and, by formally rendering void any contracts to the contrary, to preserve to him the means of subsistence.

“Lastly, and one of the most important principles of the Bill, is the proposal that we shall remove from the tenants of the occupancy and ordinary class those powers of alienations of their holdings which we gave them for the first time in 1883. I have said that as a body neither class of tenants has realised the privileges given to them by the Act of that year. It is convenient that it is so because the circumstance removes one of the greatest difficulties which the Government must face, should it undertake an interference with any established kind of usage. In the latest returns which I have received as to the extent to which these powers have been taken advantage of, I find that in the year 1893 only one per cent. of the area in occupancy-tenancies was mortgaged or sold and less than half per cent. in the class of ordinary tenancies, and in ordinary tenancies transfers were practically limited to two out of the eighteen districts; but, in the class of absolute occupancy-tenant, which has from ancestral times remarkable and peculiar privileges, the rate of transfer has been excessive. In that class of tenancy, which is the most valuable and the most important in some respects of all, the rate of progress was such that if it were maintained the absolute occupancy-tenant will be wiped off the register in quarter of a century. I do not think that that rate of progress will be maintained. They have learnt wisdom from the experience of the past. They have learnt more and more the value of their holdings and their position; and I have the anticipation from all the experience I have obtained that that rate of progress will diminish, but it is a warning to us. The powers of alienation were conferred on the occupancy-tenant and the ordinary tenant of the Central Provinces in the anticipation that a measure of the kind would enable the application of a larger capital to agriculture. As far as experience has gone these anticipations have not been realised, and it is further a matter of experience that tenants who have not these proprietary powers are still able to obtain all the capital which is really necessary for the working of their fields. The occupancy-tenant in the North-Western Provinces has no such power; nevertheless, there is no part of India in which the agriculture has been finer and more successful than it has been in the North-Western Provinces. In the Central Provinces large areas of waste have been given over by Government on lease to cultivators from whom all powers of alienation have been religiously withheld.

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The cultivators of these raiyatwari tracts in the Central Provinces are quite as persevering and quite as successful in agriculture as the occupancy-tenants.

“The Government of India, therefore, propose in this matter to retrace their steps, and, with the entire approval of every officer who has been consulted in the matter, the amendments have been prepared which I have now to propose that the power of alienation which the occupancy and ordinary tenants now possess shall for the future be withdrawn.

“There is in this connection a very difficult and important question—the question of sub-leases. A hereditary cultivator may die leaving a widow and an infant son. The widow and the infant son are unable to carry on the cultivation. There must be some one in possession of the holding who can get the agriculture carried on. But the danger of every plan of sub-leases has been recognized throughout these discussions. If you admit a sub-lease, you admit a hold on the soil. What is called a sub-lease to the Revenue-officer may be in effect a mortgage of the holding, and there is the extreme danger that if you admit a plan of sub-lease at all your intention of withdrawing the power of alienation may be altogether frustrated. Nevertheless, one cannot but admit that there are circumstances in which sub-leases are essential, and not only essential but just, and the only solution of this very difficult problem at which we have been able to arrive is that a sub-lease should only be permissible for a term not exceeding one year and renewable, but subject to the condition that at the end of any single year it may be cancelled. This is the only adjustment we have been able to make to meet the necessities of a hereditary tenure without opening too wide the entrance for secret transfers.

“The sum total of our proposed amendments is not very large, although some of them are of high importance, but they follow on amendments which were passed in 1889, and, on the advice of the Legislative Department, we have decided to embody all in a single consolidated Act, instead of bringing in a mere amending Bill.

“Now, my Lord, I think I have explained to the Council as briefly as was consistent with clearness the circumstances in which we have made our proposals and the extent of the proposals themselves. They are designed on the one hand to protect the tenant from excessive enhancement, and on the other to protect the landholders from absolute ruin in those cases in which improvidence or misfortune compel them to part with their lands. The ordinary tenant in the Central Provinces is already a hereditary tenant. He is already protected by the law in name. The proposal is that the protection which he shall receive in future shall be made by a method which is within his knowledge and consistent

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with the customs of his country. The protection is one which we have already extended to occupancy-tenants, and it is a simple extension to make it include ordinary tenants. If our proposals are carried—as I hope they may be—we shall insure that ordinary tenants shall be started fair by the fixation of their rents at settlement, and that rents which are enhanced in the future are maintained within fair limits; and if our proposals as to the withdrawal of the power of alienation are carried out, we shall have the confident hope that the holdings of the tenants in the Central Provinces shall be, what they were intended to be, hereditary in the occupation of the agricultural families to whom they belong.

“The experience of the last fourteen years has disclosed certain weaknesses in the Act of 1883. Weaknesses are discovered and brought to light in the course of time in every Act of every legislature. These weaknesses we hope now to remedy. It is impossible to predict anything in legislation, but I venture to hope, on the basis of the experience of fourteen years which we are now applying, that there will be no further necessity for legislation in regard to the tenants in the Central Provinces for at least another generation. It must be the earnest wish of us all that a region which is still in the throes of unparalleled and terrible disaster shall now emerge into a new era of agricultural prosperity and peace.”

The motion was put and agreed to.

The Hon'ble SIR JOHN WOODBURN introduced the Bill.

The Hon'ble SIR JOHN 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 may think fit.

The motion was put and agreed to.

CENTRAL PROVINCES LAND REVENUE ACT (1881) AMENDMENT BILL.

The Hon'ble SIR JOHN WOODBURN moved for leave to introduce a Bill to further amend the Central Provinces Land-revenue Act, 1881.

He said:—“These amendments are few. There are only two of them of any importance. One of them contains that amendment of the law as to the home farm

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of land-owners to which I have referred in my remarks on the Tenancy Bill. The other one is for the improvement of the law for the protection of a class of people known to the law in the Central Provinces as *thékádars*. *Thékádars* are people who are employed by owners of land to bring land under cultivation under various conditions and sometimes under special contracts. But where there was no special contract—and there are a very great number of cases where there is no special contract—it has been necessary to make some provision for these *thékádars* when they are ejected. In some cases they have brought the whole of the land under cultivation at the expenditure of large capital. They have made tanks for the irrigation of the fields; they have made wells for the necessities of the village; they have brought at their own expense a large number of tenants and labourers to commence and carry on the agriculture of the tract. Of course the conditions under which agriculture has been established vary from village to village; and the proposals which are included in the Bill which I now hope to introduce give a larger authority to the Chief Commissioner than he possesses at present to arrange the terms that shall be made for the compensation of these people, if they are ejected, according to the circumstances of the case. These are the only provisions which it is necessary for me to explain to the Council at this stage."

The motion was put and agreed to.

The Hon'ble SIR JOHN WOODBURN introduced the Bill.

The Hon'ble SIR JOHN 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 may think fit.

The motion was put and agreed to.

The Council adjourned to Friday, the 15th October, 1897.

J. M. MACPHERSON,

SIMLA;

Secretary to the Government of India,

The 5th October, 1897.

Legislative Department.

NOTE.—The meeting of Council which was fixed for the 23rd September, 1897, was subsequently postponed to the 1st October, 1897.