

*Friday,
10th August, 1900*

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

Vol. XXXIX

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ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA:
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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., c. 67, and 55 & 56 Vict., c. 14).

The Council met at the Viceregal Lodge, Simla, on Friday, the 10th August, 1900.

P R E S E N T :

His Excellency Baron Curzon of Kedleston, P.C., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.

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

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

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

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

The Hon'ble Mr. T. Raleigh.

The Hon'ble Sir E. FG. Law, K.C.M.G.

The Hon'ble Kunwar Sir Harnam Singh, Ahluwalia, K.C.I.E., of Kapurthala.

The Hon'ble Mr. C. L. Tupper, C.S.I.

The Hon'ble Mr. H. C. Fanshawe, C.S.I.

The Hon'ble Nawab Muhammad Hayat Khan, C.S.I.

PUNJAB ALIENATION OF LAND BILL.

The Hon'ble MR. RIVAZ presented the Report of the Select Committee on the Bill to amend the law relating to agricultural land in the Punjab. He said :—" I think it will be convenient if, in presenting the Report of the Select Committee on the Punjab Alienation of Land Bill, I explain somewhat fully the alterations which we propose to make in its main provisions.

" The Bill which I introduced in this Council last September imposed restrictions on permanent and temporary alienations of land in the following manner. In the first place, as regards permanent alienations, that is, by sale, gift or exchange, the proposal in this respect of the Committee of Punjab Revenue-officers which was convened by His Honour the Lieutenant-Governor in July, 1898, was that any permanent alienation of agricultural or pastoral land, as defined in the Punjab Tenancy Act, to a non-agriculturist, if

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made without the sanction of the Deputy Commissioner of the district, should be void, but that otherwise there should be no restriction on sales or other permanent transfers. I explained, when introducing the Bill, that the Government of India were unable to accept this proposal in its entirety, because it seemed to them that to allow permanent alienations, free from all restrictions, between so-called agriculturists was open to objection on two grounds. Firstly, because the definition of 'agriculturist' as framed by the Punjab Committee, that is, 'any person who either in his own name or in the name of his agnate ancestor was recorded as an owner of land or as a hereditary tenant in any estate at the first regular settlement,' or any other practicable definition of the term, must necessarily include numerous classes of persons who, although landholders since the early years of British rule or even prior thereto, are primarily traders and money-lenders by nature and profession, and not true agriculturists in any proper sense of the term; and, secondly, because even the *bona fide* agriculturist is frequently also a money-lender, and it was desirable to retain power to prevent such men from buying up land in a village where they would come in as outsiders and constitute a foreign element in the village-community. In modification, therefore, of the proposals of the Punjab Committee on this all-important part of the scheme under consideration, the Bill, as introduced last September, provided that all permanent transfers must receive the previous sanction of a Revenue-officer, but that sanction should be given, as a matter of right, in cases in which the Revenue-officer was satisfied that the intending transferor was a person who was not a member of an agricultural tribe, or, in cases where the intending transferor was a member of an agricultural tribe, that the transfer was either to an agriculturist (as defined by the Punjab Committee) holding land as a proprietor or occupancy-tenant in the village in which the land sold or otherwise permanently alienated was situated, or to another member of the same agricultural tribe residing in the same district.

"Of these provisions we propose the following modifications. In the first place, in deference to a strong body of opinion on this point, we think that the sanction of a Revenue-officer need not be obtained in cases where such sanction must be given as a matter of right. This was only intended as a precautionary measure, and we agree, on the whole, with those who think that the advantage to be gained in this respect would be outweighed by the inconvenience which would be caused to those with whose free right of permanent alienation there is no necessity for interfering. In one respect, however, we propose to restrict the free right of alienation by members of non-agricultural tribes, namely, when a member

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of such a tribe acquires land hereafter as an 'agriculturist' from a member of an agricultural tribe. We think it obviously necessary that a member of a non-agricultural tribe should not have the power to sell or otherwise permanently alienate without sanction any land acquired under such conditions except to another agriculturist in the same village, or to a member of an agricultural tribe, and we propose to make provision accordingly. Then, as regards permanent alienations by members of agricultural tribes, we have been unable to accept a suggestion which has been put forward that no restriction should be placed on such transfers between members of any agricultural tribe, because we think that the widening of the market of free transfer to this extent would be open to the second objection which I have mentioned as applying to unrestricted transfer between agriculturists, namely, that the door would thus be opened to the money-lender who belongs to an agricultural tribe buying up land in a village where he would come in as an outsider. At the same time, we recognize the force of the objection which has been taken that if free transfers are limited too strictly to within the same tribe, the market, in the case of some small tribes, will be undesirably narrowed. We propose therefore to meet this objection by empowering the Local Government, with the sanction of the Government of India, to group together, when thought advisable, small and what may be called cognate tribes in the same district or in a group of districts, and to allow permanent alienation without restriction within such groups.

"As regards permanent alienations, therefore, the scheme of the Bill, as amended by the Select Committee, now stands thus :

"Any member of a non-agricultural tribe may, without sanction, make a permanent alienation of land to any person, except in respect of any land which he acquires hereafter as an 'agriculturist' from a member of an agricultural tribe. In this one case he will only be able to alienate, except with the sanction of the Revenue-officer, to another 'agriculturist' in the same village or to a member of some agricultural tribe.

"A member of an agricultural tribe may, without sanction, make a permanent alienation of land to a member of the same agricultural tribe, or, in certain cases, to a member of any other agricultural tribe included in the same group as his own tribe in the same district, or, if so notified, in a group of districts. In all other cases, every permanent alienation of land by a member of an agricultural tribe will require the sanction of the Revenue-officer.

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"We have revised the definition of 'agriculturist' so as to enable the Local Government, in cases where the first regular settlement has been made within the past thirty years, to go back to the record of some previous settlement; we have amplified the definition of 'land'; we have included 'exchanges' in, but excluded gifts or bequests for religious or charitable purposes from, the definition of 'permanent alienation'; we have made clear that the right of unrestricted purchase allowed to an 'agriculturist' as such can only be exercised in the actual village or villages in which he has acquired such status; and we have also made clear that the action of a Revenue-officer, when granting or refusing sanction to a permanent alienation, is purely executive, and that any such order sanctioning an alienation is no bar to a suit on any question of title, or to any question relating to any reversionary right, or right of pre-emption, in a Civil Court.

"And, lastly, I may mention under this head that the Punjab Government has at present under consideration a Bill to amend the present law of pre-emption as contained in the Punjab Laws Act, and I hope that the Bill in question will shortly be introduced in the local Legislative Council.

"I come now to temporary alienations of land, that is, alienations by means of mortgage, lease or farm. The Bill as introduced allowed for the future only two forms of mortgage, namely, either a usufructuary mortgage, with delivery of possession to the mortgagee, for a maximum period of fifteen years, and on the condition that at the end of the period of mortgage the mortgaged land would revert to the mortgagor or his successor in interest with the mortgage-debt extinguished, or a collateral mortgage which, in certain circumstances, might be converted into a usufructuary mortgage of the nature just mentioned. These provisions were in accordance with the recommendations of the Punjab Committee, except that the maximum period of mortgage was reduced from twenty to fifteen years. Existing mortgages were not interfered with, except when any such mortgage was by way of conditional sale. In these cases, the mortgage was to be null and void, but the Revenue-officer was empowered, on the application of either party, to order the mortgagor to execute a fresh mortgage of the usufructuary nature just mentioned, for a period of fifteen years, or for such less term as the Revenue-officer might consider equitable. We now propose the following modifications of these provisions.

"In the first place, we think that, except as regards conditional sales, which ought, in our opinion, to be absolutely prohibited, there is no reason to impose any

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restrictions, whether as to form or period, on mortgages made by any member of a non-agricultural tribe to any person, or by a member of an agricultural tribe to a member of the same tribe or of a tribe in the same group. Then, in deference to the opinion expressed by a large number of the officers consulted on the Bill, we have extended the maximum term of usufructuary mortgage to twenty years, as was originally recommended by the Punjab Committee. We also propose, in adoption of a valuable suggestion made by Mr. Douie, the present Chief Secretary to the Punjab Government, and supported by the Lieutenant-Governor, to allow a third form of mortgage, whereby the mortgagor will retain an inalienable right of cultivating occupancy of the mortgaged land as the mortgagee's tenant, on payment of a fair rent which will be determined, in case of dispute, by a Revenue Court under the provisions of the Punjab Tenancy Act. A mortgage in this form may be made for any such term as may be agreed on, but the mortgagor will only be liable to ejectment from his cultivating occupancy if he uses the land in an improper manner, or, if his rent is payable in kind, if he wilfully fails to cultivate the land, or if a decree for an arrear of rent has been passed against him and remains unsatisfied; but, even if so ejected from his cultivating occupancy as a tenant, the mortgagor will retain the equity of redemption of his proprietary right on payment at any time of the original mortgage-debt. We also propose to give power to the Local Government to allow other forms of mortgage, at its discretion, in addition to the three forms just specified, so as to permit the use of any existing local kinds of mortgage which are of an unobjectionable nature. As regards conditional sales, we propose, as I have already mentioned, to absolutely prohibit the future use of this kind of mortgage in respect of land owned by any class of persons, and, as regards existing mortgages of this kind which have been made by any member of an agricultural tribe, we propose, in modification of the provision in this respect of the Bill as introduced, to allow the mortgagee to elect either to keep his present mortgage with this particular condition struck out, or to apply to the Revenue-officer to give him instead a usufructuary or collateral mortgage in one of the forms to be hereafter allowed by the Bill, on such conditions as to the amount of mortgage-debt and period of mortgage as the Revenue-officer may consider reasonable. Except in the cases which I have just specified, no existing mortgages will be interfered with in any respect.

"As regards mortgages, therefore, the scheme embodied in the Bill, as amended by the Select Committee, stands thus.

[*Mr. Rivas.*]

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" Any member of a non-agricultural tribe may mortgage his land in any form and on any conditions he pleases except by way of conditional sale. So may a member of an agricultural tribe when the mortgage is to a member of the same tribe, or of a tribe in the same group. But in all other cases a mortgage by a member of an agricultural tribe will have to be in one of the three forms which I have explained, or in some other form permitted by the Local Government.

" Existing mortgages will not be interfered with in any way, except when any mortgage which has been made by a member of an agricultural tribe contains a condition which is intended to operate by way of conditional sale. In this one class of cases the mortgage will be revised or altered in the manner I have described.

" The conditions which will apply to all mortgages made under our proposed enactment, and those which may be inserted by agreement between the parties, are specified in clauses 7 and 8 of the Bill. Some of these conditions I have already mentioned in explaining the forms of mortgage which will be permitted, and I need only say further under this head that, in the case of term-limited usufructuary mortgages, the mortgagor will be able to redeem his land at any time during the currency of the mortgage on payment of the mortgage-debt, or of such proportion of it as the Revenue-officer may consider to be equitable, and that in no case will the mortgagor be deemed to bind himself personally to repay the mortgage-money.

" As regards leases, we have amended the provisions under this head of the Bill as introduced by (1) including temporary alienations of the nature of a farm in the proposed restrictions; (2) extending the maximum period of a lease or farm to twenty years, and excising the condition that, if the alienor dies within this period, the lease or farm will terminate; (3) limiting the restrictions to cases where the lease or farm is by a member of an agricultural tribe to a person who is not a member of the same tribe or of a tribe in the same group. Thus the restrictions on leases and farms are brought into harmony with those on mortgages.

" We have made provision for allowing a person who has made a temporary alienation by mortgage, lease or farm for less than twenty years to make a further temporary alienation of the same land during the currency of the first transaction for a term not exceeding twenty years in all, but have retained the provision of the Bill as introduced which bars a further alienation of the same land during

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the currency of a mortgage, lease or farm, when the first temporary alienation has been made for the full term permitted.

" We have retained the provision which enables the Revenue-officer, either of his own motion or on the application of the person entitled to possession, to eject a mortgagee, lessee or farmer who remains in possession after the expiry of the term for which he is entitled to hold under his mortgage, lease or farm.

" We have also retained the provision of the Bill as introduced that a permanent alienation which requires sanction, but which is made without sanction, shall be treated as a usufructuary mortgage made in the first form prescribed by the Bill, and we have further provided that any mortgage made by a member of an agricultural tribe in any manner or form not permitted by the Bill shall be revised and altered by the Revenue-officer so as to bring it into accordance with such form of mortgage permitted by the Bill as the mortgagee may appear to be equitably entitled to claim, and that any lease or farm made by a member of an agricultural tribe to a person other than a member of the same tribe or of a tribe in the same group for a longer term than twenty years shall be deemed to have been made for only twenty years.

" As regards the restrictions on hypothecations of agricultural produce by members of agricultural tribes which were included in the Bill as introduced, we have, in modification of the absolute prohibition of such transactions, proposed to allow alienations or charges of this description to be made for a period not exceeding one year, or in special cases for a longer period with the sanction of the Revenue-officer.

" We have retained the provision which forbids the sale of land in execution of a decree or order, but have so far modified such provision as to make it applicable only to land belonging to a member of an agricultural tribe, and we have also made clear that the prohibition only applies to a decree or order of a Civil or Revenue Court. The prohibition as to sale will not of course extend to temporary alienations of land for satisfying a decree which are made by the Collector, when so authorized by the Civil Court, under section 326 of the Code of Civil Procedure.

" We have retained but amplified the clause which prohibits the registration of any instrument contravening the provisions of the Bill; we propose to prescribe that transactions which require the sanction of a Revenue-officer shall not be

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entered in the record-of-rights or in the annual record under the Punjab Land-revenue Act until proof of such sanction is produced; and we have provided for the proceedings of Revenue-officers under the Bill being regulated by the procedure of the Punjab Land-revenue Act. We have also made clear that matters which the Local Government or Revenue-officers are empowered to dispose of under the Bill shall be excluded from the jurisdiction of the Civil Courts, and, in order that all proceedings before Revenue-officers under the Bill may be dealt with promptly and inexpensively, we propose to exclude legal practitioners from appearing in such cases.

"The last point which I need mention is that we propose no alteration in respect of the general application of the scheme embodied in the Bill, subject to any territorial or personal exemptions which the Government of India may from time to time make on the recommendation of the Local Government.

"I trust, my Lord, that I have succeeded in showing that, while the Select Committee have not altered the Bill which I introduced last September on any important point of principle, their proposed modifications of, and additions to, some of its provisions will have the effect of placing the scheme under consideration on a broader and more elastic basis. As regards the main object of the Bill, namely, the restriction of permanent and temporary alienations of land by the agricultural classes, the scheme, as it now stands, will, as regards sales and other permanent transfers, while adhering to the principle of limiting the market of unrestricted transfer to within the same village-community or agricultural tribe, enable the Local Government to meet the case of any tribes which are too small to provide any real market of sale within the tribe, by grouping them with other cognate tribes within the same district or a group of districts; and, as regards temporary alienations, the maximum period for which self-redeeming usufructuary mortgages and leases may be made has been extended from fifteen to twenty years, while another form of usufructuary mortgage is proposed under which the mortgagor may mortgage for any period he pleases, but on condition of retaining a cultivating right of occupancy in the mortgaged land on payment of a fair rent, and preserving his right to redeem the proprietary right whenever he may be able to do so.

"The amended Bill will now be republished, and the Select Committee will consider any opinions which may reach them before the 25th September. They will then present their final Report, and I hope that the Bill will be finally considered and passed before the end of the present legislative session."

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[*Mr. Rivas.*]

INDIAN CENSUS BILL.

The Hon'ble MR. RIVAZ presented the Report of the Select Committee on the Bill to provide for certain matters in connection with the taking of the Census.

The Council adjourned to Friday, the 24th August, 1900.

SIMLA;
The 10th August, 1900. }

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