

*Friday,
11 March, 1892*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,

LAWS AND REGULATIONS

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

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*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the pro-
visions of the Act of Parliament 24 & 25 Vict., cap. 67.*

The Council met at Government House on Friday, the 11th March, 1892.

PRESENT :

His Excellency the Viceroy and Governor General of India, G.C.M.G.,
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, V.C., G.C.B., G.C.I.E., R.A.

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

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir A. E. Miller, Kt., Q.C.

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

The Hon'ble Colonel R. C. B. Pemberton, R.E.

The Hon'ble H. W. Bliss, C.I.E.

The Hon'ble J. Nugent.

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

The Hon'ble J. L. Mackay, C.I.E.

The Hon'ble Dr. Rash Behari Ghose.

The Hon'ble Sir John Edgar, K.C.I.E., C.S.I.

The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

MADRAS SMALL CAUSE COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS said :—

“ I was to have presented to-day the final Report of the Select Committee on the Bill to extend the jurisdiction of the Court of Small Causes of Madras, but I regret to say that it is not ready. The papers did not arrive from Madras till Monday, and then they had to be printed, as there was only one copy. The Committee has, however, held one meeting, at which it discussed, as far as time permitted, a long list of suggestions upon points in which the draft has been thought to be defective. Some of these defects undoubtedly exist, and as to one at least, which is likely to have a material effect on the constitution of the new Court, our opinions were equally divided. All these suggestions emanate from the High Court or Government, and ought, in our opinion, to be seen and

30 *MADRAS SMALL CAUSE COURT; AMENDMENT OF RANGOON
PORT COMMISSIONERS ACT, 1879.*

[*Sir Philip Hutchins; Sir Alexander Miller; Mr. Bliss.*] [11TH MARCH, 1892.]

considered by the people with whose interests the new Court will have to deal. Moreover, there has been a very general complaint that the time allowed for scrutiny of the Bill has been too short. In these circumstances we are unanimously of opinion that it will be better not to take the Bill into final consideration within the short remainder of the present session, and that it ought when fully revised to be re-published.

"In lieu, therefore, of the Motion standing opposite my name I will now, with Your Excellency's permission, move :—

That the Select Committee on the Bill to extend the jurisdiction of the Court of Small Causes of Madras be allowed to present a further Report on or before the 25th instant and to defer its final Report *sine die*."

The Hon'ble SIR ALEXANDER MILLER said :—

"I should like before the Motion is put to say one word with regard to the point upon which it has been mentioned that our opinion was equally divided, and to explain that in giving the casting vote which it became my duty to give I did so not with reference to my own opinion but following the view taken by the Government of Madras. It occurred to me that that was the proper way to exercise the casting vote where the Committee was equally divided, and therefore I should be glad that the point in question should be re-submitted to the Government of Madras, because, if they should alter their opinion, it may alter that of the Select Committee."

The Motion was put and agreed to.

RANGOON PORT COMMISSIONERS ACT, 1879, AMENDMENT
BILL.

The Hon'ble MR. BLISS moved that the Report of the Select Committee on the Bill to amend the Rangoon Port Commissioners Act, 1879, be taken into consideration. He said :—

"I have little to add to the Report of the Select Committee which is before the Council.

"The proposal that the meetings of the Rangoon Port Commissioners should be open to the public came from a private source, and seemed worthy of adoption. The Select Committee was, however, unable to accept the proposal without any qualification. Even in respect to the transaction of such business

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as the consideration of tenders put in by members of the Port Commission with the permission of the Local Government, for which it is now proposed to provide, it is evident that public debates might be most inconvenient. Members of the Port Commission may not be the only tenderers; other tenders may be put in by persons who are less well known; and in such cases it may be necessary to consider both the pecuniary and the professional competence of such other persons. The conduct and character of subordinates is another matter which it may at any time be necessary for the Port Commissioners to discuss. No doubt, in all such cases a *bonâ fide* discussion would be privileged; but it would none the less be most inconvenient and injurious to the free expression of opinion, and therefore prejudicial to the interests of the port, that such discussions should take place in the presence of reporters and be spread all over the place in the next morning's papers. The Select Committee was therefore of opinion that a legal power of declaring meetings of the Port Commissioners closed to the public should be reserved, and should be vested in the person presiding at the time, who will be responsible for the proper exercise of the discretion entrusted to him.

"The other additions now made to the Bill as it originally stood either emanated from the Local Government or are in accordance with the recommendations of the Port Commissioners supported by the Local Government. They will save a good deal of trouble and will facilitate the working of the port; and, as they do not go beyond the provisions of law applicable to other similar cases, it appeared to the Select Committee that they were not likely to be objected to by the public. Hence the recommendation that the Bill should be passed without re-publication.

"I may add that, on careful consideration, it appeared to the Select Committee inadvisable to adopt a proposal of the Port Commissioners that their power of sanctioning new works, without reference to the Local Government, should be considerably enhanced. A reference to the Local Government should never cause serious delay, and secures the advantage that all considerable projects must be reviewed by competent professional authorities, independent of those responsible for their preparation."

The Hon'ble MR. MACKAY said :—

"My Lord, the Bill now before your Excellency's Council contains a provision which, I believe, is foreign to all other Indian Port Trust Acts, and in this way it marks a new departure. Sub-section (g), which it is proposed to

32 *AMENDMENT OF THE RANGOON PORT COMMISSIONERS ACT, 1879; AMENDMENT OF COURT OF WARDS ACT, 1879 (B. C.); AMENDMENT OF LAND ACQUISITION ACT, 1870.*
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add to section 60 of the Act, provides that the meetings of the Commissioners shall be thrown open to the public except in such particular cases as the President may otherwise direct, and the provision, in my opinion, with the reservation, is a salutary one. The more light that is let in on the proceedings and projects of public bodies such as Port Commissioners, whose operations may do much to forward or retard the prosperity of the country and the progress of trade, the more likely are we to find prudence guiding their counsels, and I am therefore in favour of the new departure now proposed."

The Motion was put and agreed to.

The Hon'ble MR. BLISS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

COURT OF WARDS ACT, 1879 (B.C.), AMENDMENT BILL.

The Hon'ble SIR JOHN EDGAR presented the Report of the Select Committee on the Bill to amend the Court of Wards Act, 1879 (B.C.).

LAND ACQUISITION ACT, 1870, AMENDMENT BILL.

The Hon'ble MR. BLISS moved for leave to introduce a Bill to amend the Land Acquisition Act, 1870. He said:—

"I must begin by explaining that I have not undertaken the preparation and introduction of this Bill on my own initiative, but at the request of my hon'ble friend Sir Philip Hutchins, and with the advantage of access to the reports which have been received from Local Governments, and to the communications which have passed between the different departments of the Government of India, during a period of nearly ten years, on the question of the amendment of the Land Acquisition Act,

"The subject of the acquisition of land for public purposes and for Companies is one of considerable importance, both to the public fisc and to the proprietors and occupiers of land throughout the country. The system under which land is acquired and compensation settled is peculiar and somewhat complicated. It may, therefore, be convenient that I should give some account of preceding and existing legislation dealing with the subject, before stating the defects which have been found, in practice, in the latter, and the remedies which it is proposed to apply.

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"The earliest Act dealing with the subject which it is necessary to mention was Act VI of 1857, which was repealed by the law now in force. The method therein adopted of assessing compensation in disputed cases was an unfortunate one. The Act left the whole matter to the judgment of arbitrators, against whose decision there was no appeal whatever, unless upon the ground of corruption or misconduct, which were practically impossible of proof. The law contained, moreover, no statement of the principles which should guide the arbitrators in their awards, and imposed on them no obligation to give any reasons for their findings. The result was that, in the words of the then Advocate General, the public money was absolutely thrown away; indeed, in one case, he went further and said that the practical working of the law had led to something like robbery of the public money.

"In moving for leave to introduce, and also in introducing, the Bill which, after many changes and much consideration, ultimately became Act X of 1870, the Hon'ble Mr. (now Sir John) Strachey gave illustrations of the waste of the public money to which this system of unqualified arbitration had led, and proposed, first, that, instead of arbitrators, against whose decision there was no appeal, selected judicial officers, assisted by assessors, should determine the value of the land to be acquired in all cases in which it was disputed; secondly, that if the Judge differed from the majority of the assessors as to the value of the land, an appeal should be allowed to the High Court, whose decision would be final; and, thirdly, that the law should distinctly prescribe those considerations which should, respectively, be taken into account, and be neglected, in determining the amount of compensation which should be allowed. These proposals form a principal part of the law as it now stands. They were a great improvement on the law previously in force, but have not, in practice, worked in an entirely satisfactory manner.

"The procedure for the acquisition of land under the existing law is as follows:—

"On its appearing to the Local Government that land in any locality is likely to be required for a public purpose, a notification to that effect is published; and the proper officers are thereupon authorised to enter upon any land in that locality, to survey the same, to examine the sub-soil and to do all other acts, including the marking-out of the land, necessary to determine the fitness of the land for the proposed public purpose and the boundaries of the precise area which will be needed therefor; and for all damage done by such entry on

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and marking-out of the land the officers entering thereon are required at once to pay such sum as may be agreed upon, or as, in case of dispute, shall be decided by the Collector to be proper. This part of the Act may be extended to the entry on, and marking-out of, land by the officers of Companies.

"The particular land which will be needed having been thus ascertained, a formal declaration has to be published by the Local Government that it is so needed, and for what purpose it is needed; and it is provided that such declaration shall be conclusive evidence that the land is needed for a public purpose, or for a Company, but shall not be made unless the compensation to be awarded is to be paid out of the public revenues, or from some Municipal Fund, or by a Company. Herein is a matter in regard to which an amendment of the existing law seems desirable. When the Act was passed, District or Local Funds hardly existed. They were therefore not mentioned. Now, their operations extend to almost, or quite, the whole of India. But it has been held by the Law Officers of the Bombay Government that the Act, as it stands, does not warrant the compulsory acquisition of land for such purposes as the construction of a local road or the erection of a school-house from Local Funds. Obviously it should do so.

"The declaration having been issued, the Collector proceeds to have the land measured and sends notices to all persons interested therein to appear before him and state their claims to compensation. This part of the Act also needs amendment, to enable land-owners to object, if they think fit, to the measurement of the land made under the Collector's orders.

"The next step is that the Collector proceeds to enquire into the value of the land and to determine the amount of compensation which should be allowed for it. In doing so, he is guided by the principles laid down for the guidance of the Court in sections 24 and 25, to which I shall refer again. His award is final, only if he and the persons interested agree as to the amount and apportionment of the compensation. If not, or if any one of the persons interested, no matter to how small an extent, fails to attend in obedience to the Collector's summons, or if any question of title arises, the Collector has no option but to refer to the Court the whole case of the settlement and distribution of the compensation. Pending the decision of the Court, however, the Collector may take possession of the land. To this part of the Act serious practical objections exist, to which I will revert.

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"The procedure of the Court, on a reference being made to it by the Collector, is regulated by Part III of the Act, and is peculiar. The Collector on the one hand, and the persons interested on the other, are required each to appoint one qualified assessor; and the two assessors and the Judge, sitting together, then proceed to determine the amount of the compensation to be allowed. For their guidance in doing so, sections 24 and 25 of the Act lay down what matters they are to consider, and what matters they are to neglect. Among the matters to be considered are the market-value and the damage caused by severance, by the injurious effects of the acquisition on the other property of the person interested and by the expense of a change of residence, if such is necessitated. The time as at which all these matters are to be valued is the time of awarding compensation. Among the matters to be neglected are, the degree of urgency which has led to the acquisition, the disinclination of the person interested to part with his property, and any increase in the value either of the land acquired, or of the other land of the person interested, which is likely to accrue from the use to which the land acquired will be put. It is then provided that the compensation awarded shall not be less than the amount tendered by the Collector, nor more than the amount claimed by the person interested; that if the Judge and one or both of the assessors agree as to the amount of compensation, their decision shall be final; that, if the Judge and the assessors disagree, the opinion of the former shall prevail, subject to an appeal, which usually lies to the High Court; that the assessors shall be paid fees not exceeding Rs. 500 each; that the Collector shall pay all the costs *pendente lite*; and that the Collector shall be finally cast in all costs, if the amount ultimately awarded exceeds, by ever so little, the amount of his original tender. In a separate part of the Act (Part IV), it is provided that disputes as to the apportionment of the Collector's award shall be settled by the Judge sitting alone.

"Part V of the Act deals with the payment of the compensation by the Collector, and provides that, in consideration of the compulsory nature of the acquisition, the Collector shall pay, in addition to the amount of compensation awarded, whether by himself or by the Court, a further sum of 15 per cent. on the market-value of the land. To this provision for the compensation of land-holders, so far as is possible, for the sentimental injuries often inflicted on them by depriving them of their property for the public benefit, there can be no objection. But to the further provision of section 42, that the Collector shall pay interest on the amount of the compensation (including the addition of 15 per cent.) from the time he has taken possession of the land, it seems

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to me that objections may justly be felt from the point of view of the public revenue. In nine cases out of ten—I might almost say in ninety-nine cases out of a hundred—the fact that compensation is not paid at the time possession is taken is due to the default of the persons interested in the land. Sometimes they raise unreasonable, and even frivolous, objections to the amount or the apportionment of the Collector's award. Sometimes they fail to attend at his enquiry, and thus compel him to throw the matter into Court. I cannot see why, in such cases, the public revenues should be burdened by the necessity of the payment of interest. Provided that the right is reserved to the persons interested to question the Collector's award, without prejudice from the fact that they have received its amount as a part payment, no liability to pay interest should subsist because they have declined to accept part payment or because they have been unwilling to agree among themselves as to the proportions in which they should share the payment tendered to them. In other words, interest should be payable only on any addition which the Court may make to the amount of compensation tendered by the Collector, on the amount of compensation by any accident not tendered at the time possession is taken of the land, and on the amount of the costs which the Collector may ultimately be ordered to pay to the persons interested. The Bill provides for the alteration of the law in accordance with these views.

"Part VI of the Act provides a simpler procedure for the acquisition of land, the temporary use only of which is desired as, for instance, for the excavation or storage of materials in the case of the construction of a railway. In case of disputes arising, in consequence of such temporary acquisitions, as to the amount of compensation to be paid, the Judge, sitting alone, is empowered to give a final decision. To this procedure no objection has been raised or can reasonably be felt. The Act makes no provision for the costs of references under this Part. The Bill supplies this omission, which was apparently accidental.

"Part VII of the Act lays down the procedure to be adopted when it is sought to acquire land for Companies. It indicates, though perhaps not so clearly as is desirable, that it is not intended that the law shall be put in force for the acquisition of land for all Companies, even though registered under the Indian Companies Act of 1882, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent. It is not intended, that is to say, that the Act shall be used for the acquisition of land for any Company in which the public has merely an indirect interest and of the works carried out by which the public can make no direct use. The Act cannot therefore be put in motion for the benefit

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of such a Company as a Spinning or Weaving Company or as an Iron Foundry, for although the works of such Companies are distinctly 'likely to prove useful to the public' (to use the words of section 48), it is not possible to predicate of them 'the terms on which the public shall be entitled to use' them—a condition precedent to the acquisition of land laid down in section 49. On the other hand, if the Government determined to entrust to a Company the working of coal or other minerals owned by it, on such conditions as to the payment of royalties or otherwise as it might deem fit, the operations of such a Company would be for a public purpose, for the furtherance of which the provisions of the Act might properly be applied. I mention this point because the question of the kind of Companies, for the purposes of which land may be acquired under the Act, has more than once been raised; and it is important both that the public should understand that the Act will not be used in furtherance of private speculations and that the Local Governments should not be subject to pressure, which it might possibly sometimes be difficult to resist, on behalf of enterprises in which the public have no direct interest. The only defect which has been found in this part of the Act is that its terms are such as to throw unnecessary difficulties in the way of the acquisition of land for Companies, such as Railway Companies, for the purposes of which the Government has contracted to provide land, and which are therefore, so far, Government undertakings. The Bill contains provisions which are designed to obviate those difficulties and to simplify the procedure applicable to such cases.

"Part VIII of the Act contains the usual miscellaneous provisions, two only of which are of present interest. One of these relates to the right of Government to withdraw from an acquisition of land once embarked upon. As the law now stands, it cannot do so if the Collector has made an award or a reference to the Court. But this seems an unnecessary restriction. A case has been reported by the Bengal Board of Revenue in which it was sought to acquire for the purposes of a Railway Company a small piece of land, of which it was already in occupation as a tenant at a yearly rent of Rs. 12-10-5. The value of the land was estimated at Rs. 330, for which sum it might have been worth while to acquire the freehold. When, however, the Collector came to enquire into the claims of the persons interested in the land, whose interests turned out to be complicated and conflicting, and undefined to an extent not known, or at least not recognized, at the time the estimate was framed, he awarded no less a sum for the land than Rs. 6,859. In such a case the Government should certainly be allowed to withdraw from the acquisition of land on payment of all costs and damages incurred and sustained by the other side; and I have so provided in the Bill.

"The other point in regard to which this Part needs alteration is with respect to the powers of Government in cases in which exorbitant damages are claimed on account of severance. It is considered that, in such cases, the Government should have the power of, at any time, deciding to take up the whole property. A provision to this effect appears to be the proper correlative to the existing provision of law that the owner of property, a part only of which it is proposed to take up, may compel the Government to acquire the whole.

"I must now revert to those parts of the Act which deal with the Collector's enquiry and award and with references to the Court and the procedure of the Court thereon. The first objection to be taken to them is that the power of the Collector is injuriously limited. The average Collector is probably better qualified than the average District Judge to form a correct opinion as to the value of land; he is quite as much to be trusted as the Judge to do justice between the Government and the claimants, and is in most cases not less capable of fairly deciding how the compensation should be distributed; and, at least as far as regards the agricultural classes, he is more in touch with the people than the Judge, and his decision is more likely to be received by them with acquiescence. Nevertheless, he has no real power under the Act. No matter how trivial or how absurd the difference of opinion as to the value of the land, or how palpably exorbitant the demands made, he cannot enforce his award, but is obliged to make a reference to the Court. The same rule applies, both if, out of fifty persons interested, one only fails to attend—a common case when it is sought to acquire land belonging to a village community, the presence of every member of which it is practically impossible to secure;—and also if the interest of any person affected is so slight that he will not take the trouble to attend before the Collector, even though legally punishable for neglect to do so, also a very common case. A good instance of this is given in the papers to which I have had access. In a case referred to the Court of Mr. Charles, the Additional Judge of the 24-Pergunnahs, specially appointed for the disposal of land-acquisition cases arising out of the construction of the Kidderpore Docks, the compensation awarded amounted to 2 annas 9 pies. Naturally enough, the parties interested in these few feet, or yards, of land did not appear before the Collector. The consequence was that they had to pay Court costs amounting to Rs. 2-8, or fourteen times the value of the land; and if the Judge had not disposed of the case (illegally, as it seems to me) by himself, instead of appointing assessors, the costs would have been ten times as much as they were. Nor is this a solitary instance of an absolutely trivial case being perforce referred to this same officer. Within a period of eighteen months, all the elaborate machinery

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of his Court, aided by assessors, was set in motion in eleven cases in which the compensation awarded was less than Rs. 10 and in 29 cases in which it was less than Rs. 20. Mr. Heysham, a Deputy Collector who was for twelve years employed on land acquisition in, and in the neighbourhood of, Calcutta, and who has furnished a valuable report on the working of the Act, reports such cases to be numerous, and points out that the Act gives the Collector no option but to drive defaulters into the Civil Court against their own will and much to their detriment, and also to the inconvenience of the Collector and the unnecessary increase of, and delay in, business in the Civil Courts. Nor is this all. The whole of this, in many cases quite unnecessary, business, that is thus thrust upon the Civil Courts, has to be transacted at the sole cost of Government; for in no case are any court-fees charged, not even when the questions referred are as to the title to the land or any rights thereto or interests therein, regarding which conflicting claims are set up, or are as to the apportionment among the persons interested of the compensation awarded by the Collector, all of which are questions of purely private interest, in which the Government, as the custodian of the public interests, is in no way concerned. And the injustice, as I consider it, to the Government does not end here. The Collector is burdened with the whole of the costs of the Court's enquiry—often a very considerable sum—if his award is enhanced by ever so small a sum. A man might, for instance, be offered by the Collector seventy thousand rupees for a piece of land sought to be acquired; he might claim a lakh; and the Court might award him Rs. 70,050 only. Yet the Collector would have to pay the whole of the costs, not to speak of interest on the whole sum, for a period which might extend to two or three years. I cannot consider this just. The community has its rights in such matters, as well as the private individuals with whom it deals through the agency of the officers of Government. It is obvious also that the direct and strong tendency of the existing provisions as to costs is to stimulate claimants to object to the Collector's award and to encourage them in preferring extravagant claims. The law should not lend itself to this.

"Then there is the question of the employment of assessors to aid the Court. The Act provides for the appointment of qualified assessors, but it omits to define the word "qualified," and it must be obvious to every one who is acquainted with the circumstances of this country that "qualified" assessors are not obtainable here, in the sense in which the word "qualified" will usually be understood, that is, qualified by education and by practical experience of the matters on which they are required to pronounce opinions. In England there

are many men, in all parts of the country, who make land valuation the business of their lives. In this country, there are no such persons, save perhaps a very few in three or four of the larger towns. What happens in practice is that the person interested appoints an assessor, who is virtually pledged beforehand to endeavour to protect and advance his interests. The Collector's assessor is under no such understanding, it is true, but is very probably indisposed to go against the Collector. The assessors are supposed to be remunerated by the fees provided for by the Act, but it is credibly reported that in heavy cases the claimant's assessors receive additional fees by private arrangement, while it is certain that the Collector cannot secure the services of competent persons from want of power to grant them adequate remuneration. Under all the circumstances, it seems to me idle to suppose that the employment of assessors can in any way lighten the labours of the Court, or relieve it of responsibility, or ensure justice as between the Government and the persons interested.

"Another point as to which difficulties have arisen is that of the determination of the market-value of the land to be acquired. This has to be fixed as at the time of awarding compensation. But the award of compensation may not, frequently does not, take place for two or three years after the land has been taken possession of by the Collector. In the meantime, on the one hand, the buildings on the land, which constituted its main value, may have been removed to make room for a railway; or, on the other hand, a spacious public office may have been erected on what was a mere rubbish dépôt at the time when the Collector took possession. Can any one argue that such alterations ought to affect the amount of compensation to be paid for the land? Certainly not. Yet they undoubtedly must, as the law now stands. It is clear, in my opinion, that the market-value should be fixed as at the date on which the Government gave notice of its intention to acquire the land. Nothing occurring subsequently to that date should be allowed to affect the question. Neither should the market-value be lessened by the destruction by the Government of the buildings then standing on the land, nor should the owner be allowed to do anything to enhance the market-value before the date on which the Collector takes possession, as, for instance, by the erection of new buildings or by the execution of leases for fancy rents. In this respect, evidently, the law requires amendment. A definition also seems to be needed of the word "market-value." In the case of *Prem Chand Burrall and another versus The Collector of Calcutta* (Indian Law Reports, 2 Calcutta, 103), it was held that 'the fairest principle was to ascertain what is the market-value of the property, not according to its present disposition, but laid out in the most

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lucrative and advantageous way in which the owners could dispose of it.' As to this, I will only say that, if this is indeed the proper interpretation of the existing law, it is high time that the law was altered and the word 'market-value' clearly defined for the guidance of the Courts. I consider that it means, or at least ought to mean, no more than the sum for which the land might reasonably have been expected to have been sold, if put up to auction, without undue haste and under ordinary circumstances, immediately before the Government signified its intention to acquire it; and I have so provided in the Bill. But the definition of this term is not altogether free from doubt, for I understand that in some parts of the country the circumstances are such that really valuable lands are not readily saleable and have therefore but a small 'market-value' in the sense in which I should understand the term. The matter will no doubt receive careful consideration at the hands of the Select Committee to which the Bill is referred.

"A further ground of objection to the existing law is that, if the Judge and one of the assessors are agreed, there are no means of appealing, or even of obtaining a review of judgment, even in cases in which the award is based on a palpable error as to the facts. In one case which has been reported, the Judge confused local and standard bighas, one of which was double the area of the other, and applied the rates of value estimated for one standard to the other. In another case, the Judge illegally appointed four assessors, and, in agreement with one only of them, enhanced the Collector's award from Rs. 665 to Rs. 2,374. In neither of these cases could the Government obtain any redress, but was forced to pay the amount awarded.

"I could cite, from the papers placed in my hands, numerous other instances of hardship, and even of injustice, due to the provisions of the existing law, and affecting, sometimes property-owners, but more often the public, whose money is wasted. But I think I have said enough to convince both the Council and the public that the amendment of the law is urgently required. As to the form which that amendment should assume, it has been decided, after full and careful consideration, that the best plan will be to dispense with the necessity of the Collector's reference to the Court and with the employment of assessors, and to empower the Collector to make an award, which shall be binding on all concerned, both as to the amount and as to the apportionment of the compensation, unless altered by the decree of a competent Court in a regular suit. It may be objected to this proposal that the Collector is an executive officer, appointed by and the creature of the Local Government, to whom it is not proper

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to assign such extensive powers relating to private property. But I know no reason why an executive officer should not be as careful and as just a man as a judicial officer; and if the Collector is appointed, and may be removed, by the Local Government, the same may be said of every District Judge in the country. I am pleased also to be able to say that the earliest proposal to enhance the Collector's jurisdiction in the way proposed came from a Bengali gentleman, Babu Mohiny Mohun Roy, who has published a useful pamphlet on the subject of the Land Acquisition Act, with suggestions for its amendment. But, in truth, there is no novelty in the proposal to permit executive officers to make awards which shall be binding unless set aside by a regular suit. By Act XXVIII of 1860, for example, relating to the survey of the Madras Presidency, if a boundary is in dispute, and if the disputing parties do not agree to go to arbitration or fail to attend for the investigation of the dispute, the survey officer may dispose of the case *ex parte*, and his decision is final until set aside by the decree in a regular suit; and there are similar provisions in most, if not all, of the Forest Acts in force in different parts of India. For instance, under the Indian Forest Act (VII of 1878), the only appeal allowed to persons who are dissatisfied with the decision of the Forest-settlement-officer (an officer appointed *ad hoc* by the Local Government) in regard to claims to rights of pasture or to forest-produce, is either to a Revenue-officer (of not lower rank than a Collector or a Deputy Commissioner), appointed by the Local Government to hear such appeals, or to a Forest Court, consisting of three persons, appointed by the Local Government for the special purpose of hearing such appeals. Now, it cannot be denied that rights of pasture or to forest-produce may be as valuable as any other rights of property, or that it is going a long way to empower Local Governments to appoint the judges in their own causes. Yet I do not remember hearing of any complaints of injustice being done in these forest cases. There are similar provisions in the Forest Acts in force in Madras and Burma. To boundary disputes, the Government is a party oftener than not; and it will not be denied that the determination of a boundary dispute may involve enquiries into the ownership of property of quite as much value as any that is likely to be taken up under the Land Acquisition Act. There have been recently, to my personal knowledge, several such cases in which the ownership of very valuable forests, extending over hundreds of square miles, has come before the Courts in the shape of suits to set aside the decisions of Survey or Forest-settlement Officers. I have never heard any complaints of this procedure, or that it has in any way worked injustice. The same kind of procedure also prevails, I understand, in the case of land-revenue settlements in several provinces, and with excellent effect, the decisions of the Settlement-officers being, as a rule, accepted without question.

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And there is in Burma an exact precedent for the course I advocate, of giving Collectors greater power under the Land Acquisition Act. By the Upper Burma Land Acquisition Regulation (IX of 1886), the Collector decides not only the amount of compensation (sections 11—13), but also (section 17) the apportionment of the compensation; and from his decision no appeal lies (section 37), though the Local Government may revise or cancel any order passed by him or may refer any point for decision by any Civil Court. If this procedure is not unjust in Burma, *a fortiori* it is not unjust to vest Collectors generally with the full powers I propose to give them, subject to the right of appeal, by either side, by the institution of a suit in a Civil Court. I feel therefore that I can with confidence recommend the proposed change in the law to the acceptance of the Council, especially as I understand that there will be no objection on the part of my hon'ble friend Sir David Barbour to my proposal that, in relation to the Court-fees Act, the measure of value of suits to enhance the amount of a Collector's award shall be only the excess claimed over the amount of the award, not the total amount of the claim. While, then, the law will no longer positively encourage extravagant claims to the injury of the public, and will put no unfair burden on the Government, it will but lightly press on those who think that the Collector's award has not done them justice. Suits as to title and as to the apportionment of compensation are private matters, of course, with which the Government is in no way concerned, and will be governed by the ordinary rules of valuation. I am sanguine that the result will be seen in a great decrease in the number of land-acquisition cases brought before the Courts, and in the consequent more speedy administration of justice in those Courts, in the suits between private persons which it is their primary duty to determine; while the petty landholders, whose interests are now so injuriously affected by the necessity imposed on the Collector of referring to the Court every trifling dispute and every *ex parte* case, will obtain a very great and welcome relief.

"I regret that I have been obliged to occupy the attention of the Council for so long a time, but I have been anxious to make it quite clear that the amendment of the existing law is essential in order to protect the public revenue. No doubt it will be necessary, with this object, to restrict the facilities now enjoyed by landholders, whose property is acquired by Government for the construction of public works, for obtaining compensation on a scale entirely satisfactory to themselves. But I trust that the public generally will remember that, in such a matter as this, the Government is not a separate entity, dealing with funds with which they have no concern, but their own representative, deal-

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ing with their own money, and bound to protect their interests against extravagant and unscrupulous claims.

"I may add that it is not proposed to proceed with the Bill until ample opportunity has been allowed to the Local Governments, and to others interested in the subject, to consider it and to express their views upon it."

The Motion was put and agreed to.

The Hon'ble MR. BLISS also introduced the Bill.

The Hon'ble MR. BLISS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 18th March, 1892.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 11th March, 1892. }