Thursday,
12th January, 1893

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXII

Jan.-Dec., 1893

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

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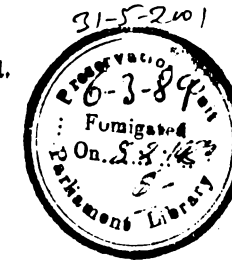

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1893

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 Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Thursday, the 12th January, 1893.

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.
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 Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble J. Woodburn, C.S.I.
The Hon'ble Raja Udai Partab Singh, C.S.I., of Bhinga.
The Hon'ble J. L. Mackay, C.I.E.
The Hon'ble Dr. Rash Behari Ghose.
The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.
The Hon'ble G. R. Elsmie, C.S.I.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble C. C. Stevens.

NEW MEMBERS.

The Hon'ble SIR GRIFFITH EVANS and the Hon'ble MR. STEVENS took their seats as Additional Members of Council.

LAND ACQUISITION ACT, 1870, AMENDMENT BILL.

The Hon'ble Mr. Woodburn moved that the Bill to amend the Land Acquisition Act, 1870, be referred to a Select Committee consisting of the Hon'ble Sir Philip Hutchins, the Hon'ble Sir Alexander Miller, the Hon'ble Sir Charles Pritchard, the Hon'ble Raja Udai Partab Singh of Bhinga, the Hon'ble Dr. Rash Behari Ghose, the Hon'ble Palli Chentsal Rao Pantulu and the Mover. He said:—

"I may perhaps take the opportunity to say that, speaking for myself, I think the main object which the Mover of the Bill had in view may be met

without very material alteration of the principles and procedure of the existing Act. The chief defect of the present law as explained in the Statement of Objects and Reasons is this. By the law the Collector must refer to the arbitrament of the Judge every case in which the owner of the land he acquires is dissatisfied with the award. And he is also compelled to refer to the Judge every case in which any one of, perhaps, a large number of persons interested in the award has failed to attend before him. It is in evidence that their failure in attendance is occasioned, in the great majority of instances, not by dissatisfaction with the award but by indifference; and the result has undoubtedly been, particularly in the Punjab, that large numbers of people have been subjected to unnecessary inconvenience and expense by the consequent proceedings in the Civil Court. It is possible, perhaps, to remedy this defect without making the considerable change of requiring a dissatisfied owner to institute a formal suit against the Collector of his district, and I shall ask the Select Committee to consider an alternative draft which would make the Collector's award final if it is not objected to within a reasonable time, but which would continue to the Collector his present duty of referring to the Judge every case in which exception is taken to his award."

The Hon'ble THE RAJA OF BHINGA said:—

"While admitting the necessity of dispensing with the services of the assessors, I cannot overlook the objectionable parts of this Bill. It is, however, a matter of great satisfaction to me to find my Hon'ble friend Mr. Woodburn proposing such valuable modifications, which, if carried out, are sure to meet the requirements of the case. In the words of a high Government official, the Bill as it stands now cannot help making 'the Collector a Judge in his own cause, throwing the burden of proof on the private owners of property whose rights and interests are assailed.' The same, however, cannot be said of a Judge who tries a case of a similar nature. The argument that the one is not less a Government servant than the other, and, consequently, both equally competent to try such suits, is not quite sound. All Principals and Professors attached to Government educational institutions are Government servants. They are, however, never appointed as the examiners of their own schools or classes. In human life impartiality as well as circumstances have scope for full play. I am one of those who have a great respect for the Collectors, and think that India can never expect to get a better class of officers. But with the best of motives I respectfully submit that they cannot avoid suspicion and mistrust if they are made to try cases under the new law. In comparison with the Presidency and other large towns the interests of the Mufussal are in greater

danger. A Collector might be an entirely new man, placed in temporary charge of a district, or one relying solely in such matters on the reports of the tahsildar or peskhar. In a country like India, under a foreign rule, it is of the utmost importance that the men in authority should be not only honest and impartial, but also, as far as possible, above suspicion. As regards the trouble and expense, I do not think the proposed change would be beneficial, unless the Collector's enquiry is to be of a summary nature—a procedure certainly undesirable. Again, the claimant in a suit of partition is allowed to pay court-fees only on the share claimed, and not on the value of the entire property. In connection with this, the Chief Commissioner of Coorg very justly remarks that 'for instance, the rival claimants to compensation are *A* and *B*. According to the award of the Collector, *A* is entitled to Rs. 100 and *B* to Rs. 200. *A*, however, contends that he is entitled to half the compensation awarded, and he accordingly sues *B* for the balance due to him. According to the draft amendment referred to above, *A* would be required to pay the court-fee on Rs. 300, while it seems more reasonable that he should be required to pay the court-fee on Rs. 50 only, the difference between the amount claimed by him and that awarded by the Collector.' Further, under the Limitation Act, the period assigned for bringing suits regarding lands taken up for public purposes by Government is one year, but according to the amendment it is too short. I would therefore respectfully beg to make two suggestions: (1) should the difference between the Collector's award and the value claimed exceed twenty per cent., the owner be allowed to have resort to the Civil Courts free of institution-fees; (2) the limitation under section 18 be extended to six months in one case, and one year in the other."

The Motion was put and agreed to.

PARTITION BILL.

The Hon'ble Dr. Rash Behari Ghose moved that the Bill to amend the Law of Partition be referred to a Select Committee consisting of the Hon'ble Sir Philip Hutchins, the Hon'ble Sir Alexander Miller, the Hon'ble Palli Chentsal Rao Pantulu, the Hon'ble Sir Griffith Evans and the Mover. He said that all that it was necessary for him to state at that stage was that the Bill had been, generally speaking, favourably reported upon by the different Local Governments, as well as by the officers and public associations consulted by them. It had also been approvingly noticed by the Press. At the same time he was bound to say that, while accepting what might be called the principle of the Bill, many of the communications received contained valuable

criticisms on what might be described as the details of the measure. Those criticisms he was sure would receive every attention from the Select Committee to which the Bill was now about to be referred.

The Motion was put and agreed to.

BILL TO LEGALIZE EXECUTION IN BRITISH INDIA OF CAPITAL SENTENCES PASSED BY BRITISH COURTS IN FOREIGN TERRITORY.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to legalize in certain cases the execution within British India of capital sentences which have been passed by British Courts exercising in or with respect to foreign territory jurisdiction which the Governor General in Council has in such territory be referred to a Select Committee consisting of the Hon'ble Sir Philip Hutchins, the Hon'ble Mr. Elsmie, the Hon'ble Sir Griffith Evans and the Mover. He said:—"The Bill is a very small one, and, as I fancy most of the members know, is merely introduced to remedy the inconvenience discovered in some of the small semi-independent States,—principally in the Bombay Presidency,—where in the few cases in which capital sentences have been passed by British Courts there is no proper machinery for carrying them into execution, and sometimes we have been left to the alternative of a scandal or an irregularity. It is desirable that that alternative should be removed by legalising within British India the execution of such capital sentences. The Bill will probably require some little amendment in its details, and I have no doubt that the Select Committee will be able to deal satisfactorily with them."

The Motion was put and agreed to.

PETIT BARONETCY BILL.

The Hon'ble SIR ALEXANDER MILLER also moved for leave to introduce a Bill for settling Bonds of the Municipal Corporation of the City of Bombay producing an annual income of one lakh and twenty-five thousand rupees and a Mansion-house and hereditaments called "Petit Hall" in the Island of Bombay, the property of Sir Dinshaw Manockjee Petit, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred by Her Present Majesty Queen Victoria on him for and during the term of his natural life, and from and immediately after his decease to hold to his second son, Framjee Dinshaw Petit, Esquire, and the heirs male of his body lawfully begotten and in

default of such issue with remainder to the heirs male of the body of the said Sir Dinshaw Manockjee Petit, and for other purposes connected herewith. He said :—"This is the second case which has arisen in which Her Majesty having conferred a hereditary honour upon a Native of India, the Baronet has been desirous of settling an endowment which will prevent the dignity from falling into poverty or disrepute at any future time. As the law at present stands there are difficulties with regard to perpetuities, and this object can now only be attained by a special Act of the Legislature. Whether a general Act may at any future time be passed that will meet these cases may be matter for consideration, but in the meantime the only way in which sanction can be accorded to the creation of a perpetuity is by a special Act. An Act of this nature was passed in the case of Sir Jamsetjee Jeejeebhoy in 1860, and it is now proposed to follow that precedent in the case of Sir Dinshaw Manockjee Petit."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also 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.

PRESIDENCY SMALL CAUSE COURTS ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER also moved for leave to introduce a Bill to amend the Presidency Small Cause Courts Act, 1882. He said :—

"Very considerable complaints have, from time to time, been made of the working of one at least of the Small Cause Courts established by the Act of 1882, and in two or three important particulars it has been found that the Act worked badly, and accordingly, after much consideration, it has been determined to introduce a Bill to amend that Act in three (there are other small amendments with which I need not trouble the Council) important particulars. At present, with the single exception of a rule that the Chief Judge of a Small Cause Court, and at least one-third in number of the Judges, must necessarily have been barristers or advocates, there is no qualification whatever for the office of Judge; though I have no doubt that the Governments which have

the appointment of the Judges to these Courts would always take care to appoint qualified men, there is absolutely nothing in the law as it stands which would prevent two-thirds of the Judgeships of any one of these Courts from being filled up by young gentlemen who had landed in India to join the Indian Civil Service the day before their appointment. We propose to provide for the future, while not altering the qualification of Chief Judge, that no person can be appointed a Small Cause Court Judge who has not secured a standing of five years either as a barrister of England, Ireland or Scotland, or as an advocate, attorney or vakil of a High Court in India, or as a Subordinate Judge. It is scarcely conceivable that any one can be fit for the office who has not satisfied one at least of these three qualifications. We also propose to provide that in the case of a man who has not got five years' standing in any one of such capacities, still if he can make up five years in all amongst his qualifications, that shall be sufficient qualification for him. This will get rid no doubt altogether of the one-third principle, which I may say incidentally was very nearly being found a great difficulty with regard tothe new Court in Madras, and, whilst retaining a barrister or advocate as necessary for the Chief Judge, it will require that every one of the other Judges shall be qualified in the manner I have mentioned.

"The second point on which amendment seemed to be imperatively called for was that the rules of procedure in Small Cause Courts were not found to work altogether satisfactorily, and accordingly we now propose to provide that the High Court under whose jurisdiction the particular Small Cause Court may be shall have power to make and alter all such rules of procedure as may be required. We consider that the proper authority to regulate the procedure in the Small Cause Courts is the High Court of the Presidency in which the Small Cause Court is; they will not make any alteration unless it is found desirable, but we propose to put the matter entirely in the hands of the High Court to make any such alteration by rule as they may consider necessary for the good working of the Small Cause Court.

"The third alteration is one on which I myself lay very great stress indeed. As the law stands at present, there is practically no appeal from the decision of a Small Cause Court Judge. You may indeed apply to him for a new trial, or you may move the Court under certain somewhat complicated and onerous conditions to call up the record for revision; but there is nothing in the nature of a direct appeal to any superior authority from the decision of a

Small Cause Court Judge. We propose to alter that,—to get rid of the complicated and onerous regulations which have been established for revision,—by providing that in every case in which the value of a suit exceeds Rs. 1,000 there shall be an appeal to the High Court by either party under exactly the same conditions as if it were an appeal from an original decision of the High Court itself in its original jurisdiction. On the other hand, in order to prevent a complication of appeals, we propose to provide that in the cases in which an appeal lies there should be no power to move the Judge himself for a new trial; that you are not to be entitled to go first to the Judge and see what you can do with him and then appeal when you fail; and that your remedy is to be one, and one only. We consider that in cases of the value of Rs. 1,000 and over the proper appeal is to the High Court.

"These are the only proposals in the Bill which it is necessary to mention. There are some minor details which are requisite for carrying out the three objects which I have mentioned to which I need not here refer."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR GRIFFITH EVANS craved leave to inquire whether any provision was made in the proposed Bill for the recording of evidence in appealable cases.

The Hon'ble SIR ALEXANDER MILLER said that the Bill provided that in any case in which an appeal would lie the Judge should take a note of the evidence and give the substance of his judgment. That, in fact, was more than had been found necessary in appeals in County Courts in England and less than was commonly done by Judges of their own motion. It was therefore considered that it would be quite sufficient.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette and the Calcutta Gazette in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

HABITUAL OFFENDERS BILL.

The Hon'ble SIR PHILIP HUTCHINS moved for leave to introduce a Bill to provide for the more effectual surveillance and control of habitual offenders and for other purposes. He said:—

"Of the subjects first brought before me when I joined the Government of India, and before your Excellency when you assumed your exalted office, one of the most important was the apparent increase in the number of criminal offences and the growing inability of our police to cope with the criminal classes. The matter was referred to Local Governments and Administrations and, although it turned out that in most of the provinces crime had not really reached the formidable dimensions which had been supposed, it was nevertheless admitted that the administration of criminal justice was far less effective than it should be in most parts of the country, and various causes were assigned to account for the shortcoming. Most of these causes have been dealt with, and as far as possible remedied, executively. Chief among them were defects in the police force itself. This has now been thoroughly overhauled in almost every province, and measures have been taken, involving considerable expenditure, to improve the personnel of the force generally, and more particularly to secure better and more trustworthy men as investigating officers.

"But another result of our enquiries, and that on which I desire to lay stress in connection with the Bill which I am about to introduce, was to show very clearly that the improvement in communications which has been effected in recent years, chiefly by railways and the telegraph, has greatly facilitated the depredations of professional criminals, and has increased the difficulty experienced by the police in the detection and prevention of certain classes of crime. This difficulty, we believe, arises mainly from the fact that there is no provision of law authorizing the police in this country to keep habitual criminals under surveillance, so as to control and watch over their movements; for although some sort of police supervision over convicted and suspected persons is undoubtedly exercised in most parts of the country, this is an irregular arrangement and rests on no legal basis.

"Twenty years ago, in 1873, a proposal was submitted to the Government of India that legislation should be undertaken on the model of section 6 of 34 & 35 Vict., c. 112, with a view to the prevention of crime by controlling bad characters. The proposal was not then adopted for two reasons. In the first place, the precedent cited was a novel provision of the English law; it had not

been subjected to the test of experience, and it was thought better to wait for some years until the system had been fully tried. In the second place, the police of the country were also at that time a comparatively young body: they were not considered fit to be entrusted with such large powers of supervision. But the reports which were received by Lord Ripon's Government in 1881 in connection with the amendment of the Criminal Procedure Code, and the more recent reports submitted to us in connection with our late inquiry into the state of crime in the larger provinces in India, have made it clear that many of the authorities most competent to form an opinion on the subject are more than ever convinced that legal powers of surveillance over bad characters are indispensable if the police are to exercise any adequate check over habitual criminals. And, on the other hand, the two chief objections to the enactment of such a measure in India have been removed—the first by the successful manner in which the English Statute has worked, and the second by the fact, to which I have just adverted, that extensive schemes for re-organization of the police have already been carried out in many provinces, while others are being matured for improving the condition of the force and raising the standard of intelligence and honesty among its members. Moreover, as some form of surveillance is already carried out in most parts of India, it seems very desirable that it should be placed on a legal footing—that the limits within which it may be properly applied and the persons to be brought under it should, as far as conveniently may be, be declared by the Legislature, and that, as a consequence of such a declaration of what may be done, any excess of those limits or irregular interference with persons who are merely suspected should be redressed.

"With this object a Bill has been prepared to provide for the surveillance and control of habitual offenders and certain cognate matters. It had its origin in a draft Bill forwarded by the Punjab Government in 1889, in continuation of its report on the state of crime in that province. That Bill was forwarded for the opinion of Local Governments and Administrations and the High Courts; and, after a consideration of the replies received, we have modified the draft and put it into the form in which I shall shortly lay it on the table. There is, I think, a general consensus of opinion amoung the authorities consulted in favour of the principle of the measure, and particularly as to the necessity for more effective regulations for the control of habitual offenders.

"I will now proceed to explain in some detail what it is that we propose to enact. The provisions of the Bill fall roughly under four heads:—

(1) the improvement of the law of security for good behaviour;

(2) the surveillance of persons judicially declared to be habitual offenders;

(3) the modification of the procedure for the trial and adequate punishment of such offenders;

(4) the repression of certain offences against property by the assessment of compensation in the localities where they occur.

"(1) The provisions for the improvement of the law relating to security are contained in sections 2 to 4 of the Bill. The existing law for the prevention of crime by habitual offenders is to be found in Chapter VIII of the Criminal Procedure Code, which authorizes the taking of security for good behaviour from any person who is 'an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to be stolen, or who habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.' By section 505 of the Code of 1872, Magistrates were further empowered to require security from persons who were 'of notoriously bad livelihood,' or 'dangerous characters,' but these words were omitted from the Code of 1882, in consequence of objections that the phraseology was vague, and that it placed in the hands of the police powers which are liable to abuse. It has been represented in many quarters that this omission has deprived the preventive part of the Code of much of its value; and the Local Governments of Bombay and the North-Western Provinces and Oudh, as well as the Chief Commissioner of Burma, recommend that the same or similar words should now be re-enacted. Sir Auckland Colvin has also pointed out that, under the existing law, security cannot be demanded from persons habitually committing such offences as kidnapping or professional poisoning. It is accordingly proposed to re-enact section 110 of the Criminal Procedure Code in a form which will both slightly enlarge and show much more clearly the several classes of persons from whom security may be required. The material changes are three in number; first, by clause (*f*) of the section, the words omitted in 1882 will be restored, but in such a shape as to render them free from the charge of vagueness and less liable to abuse—a man must be of a character so desperate and dangerous as to render it hazardous to the community that he should be at large, without any safeguard, before he can be bound over to good behaviour; secondly, in clause (*d*) mischief has been added to the list of offences the commission of which makes the offender liable to be called upon to furnish security—this addition has been made to meet the case of such offences as habitual cattle-poisoning, which is largely practised in certain parts of the country; thirdly,

in pursuance of a note to section 110, which will be found in Mr. Whitley Stokes' Anglo-Indian Codes, I have inserted a new clause (*c*) to provide for the case of a man who 'habitually protects or harbours thieves or aids in the concealment or disposal of stolen property.'

"Then it is proposed to make surveillance by the police an alternative in certain cases to the requisition of security. Section 3 of the Bill empowers the Magistrate to make an order for police surveillance instead of requiring security for good behaviour. Section 4 permits a person who has been ordered to give security, but has been unable to furnish it, to be kept under surveillance in lieu of being detailed in prison. Under section 8 of the Bill such orders for police surveillance will be subject to the same rights of appeal as are allowed by the Code in respect of orders to give security.

"The second main division of the Bill comprises sections 5 to 15, and makes provisions for the surveillance of persons who are 'habitual offenders' within the definition contained in section 5. This definition is framed on the principle embodied in 34 & 35 Vict., c. 112, and indeed the whole of this part of the Bill is based upon section 8 of that Statute. For the convenience of any one who may not have the Statute at hand to refer to, I will quote the entire section :—

'Where any person is convicted on indictment of a crime, and a previous conviction of a crime is proved against him, the Court having cognizance of such indictment may, in addition to any other punishment which it may award to him, direct that he is to be subject to the supervision of the police for a period of seven years, or such less period as the Court may direct, commencing immediately after the expiration of the sentence passed on him for the last of such crimes.

'Every person subject to the supervision of the police who is at large in Great Britain or Ireland shall notify the place of his residence to the chief officer of police of the district in which his residence is situated, and shall, whenever he changes such residence within the same police district, notify such change to the chief officer of police of that district, and whenever he changes his residence from one police district to another shall notify such change of residence to the chief officer of police of the police district which he is leaving and to the chief officer of police of the police district into which he goes to reside; moreover, every person subject to the supervision of the police, if a male, shall once in each month report himself at such time as may be prescribed by the chief officer of police of the district in which such holder may be, either to such chief officer himself, or to such other person as that officer may direct, and such report may, according as such chief officer directs, be required to be made personally or by letter.

'If any person subject to the supervision of the police who is at large in Great Britain or Ireland remains in any place for forty-eight hours without notifying the place of his

residence to the chief officer of police of the district in which such place is situated, or fails to comply with the requisitions of this section on the occasion of any change of residence, or with the requisitions of this section as to reporting himself once in each month, he shall in every such case, unless he proves to the satisfaction of the court before whom he is tried that he did his best to act in conformity with the law, be guilty of an offence against this Act, and upon conviction thereof he shall be subject to be imprisoned, with or without hard labour, for any period not exceeding one year.'

"Following these lines, section 5 of the Bill requires two convictions under Chapter XII or XVIII of the Indian Penal Code, and it will further be necessary before a person can be declared a 'habitual offender' that the Court or Magistrate shall be satisfied on the evidence, of which the convictions will only be part, that the accused habitually commits crime or depends on crime as a means of livelihood. The maximum period for which any person may be ordered to be kept under surveillance in such cases is, in the English Act, seven years, from the date of the expiration of the substantive sentence; and such orders will be subject to the same rights of appeal and revision as if they formed part of the substantive sentence to which they are attached. Presidency Magistrates and District and Sub-Divisional Magistrates are empowered, on the application of the person concerned, to accept security in lieu of surveillance, and also to release him from surveillance when this can safely be done. The details of the rules as to the supervision of persons under surveillance must necessarily differ to some extent according to the local circumstances and requirements of each province. Accordingly, it is not proposed to include any general rules in the Bill; each Local Government will have power to frame such rules for its own territories; but, in order to secure some uniformity of principle, the lines on which such rules should proceed are generally indicated in section 12, and the rules will require the previous sanction of the Government of India. Finally, section 15 extends the obligation which section 45 of the Code imposes upon village headmen, hand-holders and others, to report the movements of bad characters, so as to include reports as to the movements of persons ordered to be kept under surveillance.

"The necessity for some such provisions as these was strongly pressed on us by Sir James Lyall, lately the Lieutenant-Governor of the Punjab, than whom no one had a more intimate acquaintance with the needs of that province. He urged that the provisions of the Code regarding the taking of security from bad characters (the only preventive measure recognised by the law) had proved an inefficient substitute for a system of authorised surveillance, and that it was necessary that they should be supplemented by an enactment legalizing the

surveillance of habitual offenders. The improvement in communications effected in late years, he said, had not only encouraged and facilitated the operations of those classes of criminals who are in the habit of leaving their homes to commit crimes at a distance and returning with their plunder, but had also greatly diminished the deterrent effect of an order to furnish security for good behaviour. It will, however, be better that I should quote his exact words, or those used by his Secretary under his instructions:—

'The development of railways, and the increased means of procuring employment at a distance from their homes, has rendered the loose characters more able and willing to leave their villages and take up their abodes elsewhere. The deterrent effect of being placed on security has therefore been much impaired. The offender is bound thereby to remain in any particular locality, and neither by inclination nor by the difficulty of communications is he precluded from seeking new scenes wherein to indulge his criminal propensities. The result is that old offenders on security resume their careers of crime in places distant from their homes—perhaps in other provinces—where their antecedents are unknown, and where, even if they are convicted, a light sentence alone may be meted out to them. Again, security for good behaviour cannot be taken at the time of conviction; separate proceedings have to be instituted subsequently. District Magistrates in the Punjab have multifarious duties and are hard-worked, and the result is that the power is only used intermittently.

'It is essential,' in Sir James Lyall's opinion, 'that the police and Magistrates should have the means of knowing how certain classes of criminals are conducting themselves after their release from jail, and this end can only be attained effectively by the establishment of a system of surveillance which shall disclose their movements to the officers responsible for the administration of the criminal law.'

"It is to those proposals of the Punjab Government that this Bill endeavours to give effect, with such modifications as appeared desirable, having regard to the replies received from other Local Governments and the High Court of Calcutta. The only persons who can be subjected to surveillance are persons of so bad a character that under the existing law they can be required to furnish security, or persons who have been judicially declared to be habitual offenders.

"The Governments of Bombay and Bengal, however, would go beyond these proposals and legalize surveillance over unconvicted persons who are merely suspected to be bad characters. The Government of Bombay report that the most experienced district officers believe it to be impossible to secure any effective control of habitual offenders without legalizing the roll-call system for the surveillance of unconvicted bad characters, and these will not be reached by the Bill though they form the classes from which the habitual offenders in the jails are recruited. And my hon'ble friend the

Lieutenant-Governor of Bengal would like to frame rules for two classes of bad characters—convicted 'habitual offenders' and unconvicted 'suspected persons.' The latter class would be subject to less stringent regulations than 'habitual offenders,' but rules should, he thinks, be made for their registration, and for domiciliary visits, searching of their houses and information as to their movements. These remarks come from eminent authorities and are entitled to the highest consideration, but, as at present advised, the Government of India are even more impressed with the obvious objections to the maintenance of anything like *public* registers of mere suspects or the establishment of a system of legalized supervision over unconvicted persons. The Government are unwilling to go beyond the principle of the English Statute, which only permits interference in the case of convicted criminals. The police in India, as in all other countries, must of course maintain *secret* registers of suspects, and keep a watch over the movements of persons supposed to be bad characters, but we are not prepared to give them power to interfere with or harass such persons, as we fear that such power would be very constantly and grievously abused.

"The next part of the Bill comprises three sections, 16 to 18, and has been described by me as modifying the procedure for the trial and adequate punishment of habitual offenders. The principal provision under this head is contained in section 16, and consists in the amendment of section 348 of the Criminal Procedure Code upon the lines of the section which immediately follows it. The present section 348 provides that when a person who has been convicted of an offence punishable under Chapter XII or XVII of the Penal Code (offences relating to coinage, the stamp law and property) with imprisonment for a term of three years or upwards is again accused of any such offence, he shall ordinarily, if the Magistrate before whom he is accused considers him to be a habitual offender, be committed to the Court of Session. The result is that almost every petty case in which the accused is an old offender has to be sent up for trial at the sessions, not because of any inherent difficulty or importance of the offence itself, but simply because, in view of the bad character of the offender, the Magistrate cannot inflict on him an adequate punishment. But section 349, which, as I have said, immediately follows, proceeds on very different lines: it provides that, when an inferior Magistrate has found a person guilty of an offence over which he has jurisdiction, he may, if he considers such punishment as he can himself inflict to be inadequate, send up the prisoner to his superior with his recommendation for an enhanced sentence.

"Many years ago, in 1885, when the Criminal Procedure Code was last under revision, the High Court of Madras suggested that the procedure as between Magistrate and Sessions Court in section 348 should be assimilated to that laid down in section 349 as between inferior and superior Magistrates. But here again I should prefer to quote the Court's own words and the reasons which it gave for its proposal. The Registrar wrote:—

'With regard to the amendment in procedure which the High Court desires to see adopted I am to say that under section 349, Criminal Procedure Code, a Magistrate of the second or third class can now convict of an offence cognizable by himself, even though the offender seems to deserve a more severe punishment than he is empowered to inflict, and may refer the case to the District or Divisional Magistrate to whom he is subordinate to pass sentence. All the reasons which induced the Legislature to make this provision apply, the High Court considers, with even greater force to those cases which become cognizable by the Court of Session, merely because the offender has been previously convicted and seems to be an habitual criminal. The sessions divisions, I am to point out, are in this presidency very large, and it entails a great hardship on the witnesses, in cases of petty theft and the like, that they should have to attend the sessions simply because the accused is an old offender. The Court believes that this liability often leads to a failure of justice and the illegal compounding of offences.'

"Precisely similar reasons have been advanced by the Chief Commissioner of Burma also, and he has added that Magistrates themselves are disinclined to put the Sessions Court to the trouble of trying cases of a petty character, merely because a long sentence is demanded owing to the antecedents of the accused. The result of course is that Magistrates too often dispose of such cases themselves, notwithstanding their inability to pass a sufficiently deterrent sentence.

"The arguments in support of this proposal seem to the Government of India to be entitled to much weight. The proposal also commended itself to the Select Committee before whom it came originally, and I understand that the only reason why it was not incorporated in the Bill which became Act X of 1886 was that this would have necessitated a republication of that Bill and its postponement for nearly a twelve month. The cases contemplated are, as a rule, in no way complicated; the evidence is generally of a simple character, and a committal to sessions is necessary merely because it is beyond the power of a Magistrate to pass an adequate sentence. The existing procedure causes great delay and inconvenience, and exposes the parties and witnesses to the trouble of attendance in Court on two occasions. Under the revised section they will be relieved from the second attendance unless the Sessions Judge finds some defect in the proceedings, or sees reason to doubt the correctness of the convic-

tion, in which case he will recall and re-examine such of the parties or witnesses as he may think fit, or do whatever else may be necessary to ensure justice being done.

"It has been suggested by the High Court of Calcutta as a preferable course that such cases should be tried by the District Magistrate, and that he should be empowered under section 30 or section 34 of the Code to pass adequate sentences. There are two objections to this alternative. I think it is undesirable to give such high powers to Magistrates in settled districts, and it seems much better that cases of this description should go before a purely judicial officer. Moreover, I apprehend that it would not meet the difficulties which led the Madras Judges to propose the alteration of the law. Their main object was to save witnesses from being brought from great distances into head-quarters, and from the temptation to hush up cases in order to save themselves such hardship and inconvenience. But the District Magistrate is himself at head-quarters; or when he is not at head-quarters he will be on circuit, and this would entail on the witnesses a still further journey in search of him. Moreover, our district officers are already overworked in many places, and could not undertake the heavy additional duty of trying all the cases now in question. The opportunity, however, has been taken by section 17 of the Bill so to modify section 349 of the Criminal Procedure Code as to permit such District Magistrates as have been invested with powers under section 30 or 40 of the Code to sentence up to the limit of their powers on a reference by Subordinate Magistrates. And, following the same principle, it is proposed by section 18 to give the High Court a wider discretion as to the enhancement of sentences which come before them on revision. At present, in a case which has been tried by a Magistrate, even a High Court cannot inflict a heavier punishment than two years' imprisonment, however inadequate such a sentence may be to the gravity of the offence.

"I now come to the last section of the Bill, which is of quite an exceptional character and is only to be put in force in special localities and by a special notification. It is designed for the repression of certain offences against property in cases in which they can be traced to a particular locality, but the offenders cannot be identified owing to a combination of the inhabitants to withhold information which would lead to their detection. In such cases the Magistrate will be empowered, after due inquiry and subject to confirmation by the Commissioner, to assess compensation on the residents of the locality generally, excluding any persons or classes of persons whom he finds to have been innocent of

complicity with the offence. This provision is also taken from the same draft Bill sent up by the Punjab Government. In submiting his proposals the Lieutenant-Governor pleaded earnestly for legislation on these lines to meet the numerous cases of cattle-poisoning and incendiarism in which the offenders could not be traced. After pointing out that the number of cases of serious himself annually reported in the Punjab had risen considerably in late years, he added :—

'This matter engaged the attention of the Commissioner of the Rawalpindi Division so long ago as 1883, in which year he advocated the expediency of enacting that, in the case of persistent want of detection of the crimes of cattle-poisoning, and rick-burning the village or patwari-circle where such undetected crimes had been committed should be ordered to pay the value of the property destroyed. * * * * * Offences of this nature are very rife in certain parts of the Punjab, while the detection of them is most difficult, not only because it is not easy to produce satisfactory evidence in Court of a crime which can be committed by one person on a dark night, but also because although the perpetrator is often known to the villagers, no one dares to come forward and give evidence lest a similar fate befall his own property.'

"The need for such legislation does not seem to be anywhere so strong as in the Punjab; but nevertheless it appears expedient to take power to recover compensation in this manner, and that not only in cases of mischief but also in cases of dacoity and cattle-lifting, which frequently, and specially in border districts, partake of the nature of clan offences. As I have already stated, the section can only be put into force under exceptional circumstances and in particular tracts where the crimes mentioned prevail to a serious extent. There must also be a combination of a clan or other large section of the inhabitants to screen those who commit such crimes. And in no case can the section be applied to any locality without the express previous sanction of the Governor General in Council.

"As precedents for such legislation I may refer to section 37 of Bombay Regulation XII of 1827, and to the provisions of the Police Acts, which sanction the quartering of additional or punitive police at the charge of the inhabitants in disturbed or dangerous localities. I understand too that Statutes providing for the levy of compensation in similar cases have been passed for Ireland, and that their working has been attended with good results."

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS also introduced the Bill.

The Hon'ble SIR PHILIP HUTCHINS 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.

BANKERS' BOOKS EVIDENCE BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to extend the provisions of the Bankers' Books Evidence Act, 1891, to the Books of Post Offices carrying on Savings Bank or Money Order Business. He said :—"When the Bankers' Books Evidence Bill was before the Select Committee in 1891, the Committee were unanimously of opinion that the books of post offices carrying on this business were public documents and that they came under the provisions of the Evidence Act which applies to public documents, and on that ground, and on that ground alone, they were not expressly mentioned in the Bill which has become the Bankers' Books Evidence Act. However, the Director General of the Post Office was not satisfied that the view taken by the Select Committee on that occasion was right, and he referred the question to a gentleman of considerable eminence in the legal profession in this country, who has expressed a direct opinion, without giving any reasons whatever for it, that that view was wrong. I am not inclined to enter into a discussion either with Mr. Fanshawe, or with the eminent counsel who has advised him, and I think that on the whole, without for a moment admitting that the view taken by the Select Committee in 1891 was erroneous, it is better to get rid of the question by introducing a short Bill to include expressly the words which Mr. Fanshawe desires and which he wishes to be embodied in the Act. The object of the Bill which it is now proposed to introduce is to effect that purpose."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER 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.

GOVERNMENT TENANTS (PUNJAB) BILL.

The Hon'ble MR. ELSMIE moved for leave to introduce a Bill to provide for the grant of Special Tenancies in certain Government lands in the Punjab. He said :—"Many thousands of acres of Government land, commanded by the new Chenab Canal, are now being allotted to peasant cultivators gathered from various parts of the Punjab, and in future years, as irrigation schemes are further developed, the work of colonization will, it is hoped, be greatly extended. Hitherto, the grant of waste lands to cultivators has generally been made by written leases often involving formal registration. This system has been found to be inconvenient and unsuitable to the class of men who come in as settlers. The late Colonel Wace, my predecessor in the office of Financial Commissioner in the Punjab, expressed the opinion, some years ago, that the conditions of canal tenancies should be carefully defined, that registers of tenures should be opened, and that settlers should take their holdings by entries in those registers, such entries to be evidence of the nature of the tenancies. The Local Government and the Government of India have adopted Colonel Wace's suggestion, and the object of the present Bill is to give legal effect to it, opportunity being taken at the same time to provide for one or two other matters, such as the conditions under which a tenant may transfer his rights, and the means by which sums due to Government from a tenant in respect of his tenancy may be recovered. Sections 4, 5, 6 and 7 of the Bill contain provisions enabling the Government to lay down the conditions under which it may be willing to grant to settlers lands situated on canal tracts, and prescribing the procedure under which, by certain duly signed entries in registers and without any further formality, a tenancy on those conditions will be created in favour of the settlers. The effect of these sections will be somewhat analogous to that of section 111 of the general Punjab Tenancy Act No. XVI of 1887, which provides that the entry of an agreement by a revenue-officer in a record-of-rights or an annual record shall have the force of a personally executed agreement between landlord and tenant. Section 8 of the present Bill corresponds for the most part to section 56 of the Punjab Tenancy Act. It is intended to prevent the voluntary transfer or compulsory sale of the rights of a tenant without the sanction of his landlord, *i.e.*, the Government; the actual duty of giving or withholding sanction being delegated to the Financial Commissioner. In conclusion I have only to say that, as the proposed law will not affect the rights of Government or private persons without their consent, there seems to be no reason why the wish of the Local Government should not be complied with, *viz.*, that the Bill should be passed at

an early date so as to facilitate the location of tenants on lands which are now ready for cultivation."

The Motion was put and agreed to.

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

The Hon'ble MR. ELSMIE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Punjab Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

IN LAND EMIGRATION ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR PHILIP HUTCHINS moved for leave to introduce a Bill to amend the Inland Emigration Act, 1882. He said:—

"Most of the Hon'ble Members of Council are aware that Act I of 1882 is only the last of a series of laws framed for regulating the system of emigration to Assam, and for the control of labour on the tea-gardens of that province. The first of the series was Bengal Act III of 1863, which dealt only with the conditions under which emigration should be carried on, leaving the relations of employers and labourers to be governed by the ordinary law. This state of things was found unsatisfactory for sanitary and other reasons, and in 1865 it became necessary, in the interests of the labourers as well as of the employers, to pass an Act [VI (B. C.) of 1865] establishing what is substantially the present system of officially controlled labour in Assam. The subsequent Acts [II (B. C.) of 1870 and VII (B. C.) of 1873] combined, with improvements, the provisions of the Acts of 1863 and 1865, and each was a complete labour and emigration law. In 1880 and 1881, proposals for the amendment of the Act of 1873 were carefully considered by the Governmemt of India, in communication with the Bengal Government and the Chief Commissioner of Assam, and, as the resnlt, a Commission was appointed which drew up the Bill subsequently passed as Act I of 1882. As this Bill affected provinces other than Bengal (Assam having itself become a separate province in 1874), it was passed in the Council of the Governor General and not in the Bengal Council.

"The labour system then established was based on the fact that the employer incurs heavy expenditure in importing emigrant labourers to Assam, and

in making sanitary, medical and other arrangements on the garden for their health and comfort, while no civil suit would give him an adequate remedy against persons of the classes to which these labourers belong. The Act accordingly laid down a system of contracts under which both the employer and the labourer are bound under criminal penalties to fulfil their respective obligations. On the one hand, certain disciplinary powers are given to the employer, and, on the other, ample powers of inspection and control are retained in the hands of Government. The system, in short, gives to the employer the penal contract as security for his outlay, while it ensures to the labourer complete protection by Government.

"And Act I of 1882 made important changes in the system of emigration no less than in the sytem of labour; it permitted free emigration—a subject to which I shall have to refer at greater length later on; it established local contracts which might be entered into within the labour-districts, either by newly arrived immigrants or by resident coolies; and it raised the maximum period of contract under the special law from three to five years.

"On the Act being reported to the Secretary of State, he took exception to this extension of the maximum period of contract, and, having regard to certain matters, chiefly the reported unhealthiness of parts of the Assam Province, he asked for a special report after three years, with a view to the consideration of the possibility of dispensing with exceptional legislation regarding labour-contracts in the tea-districts. This report was submitted in 1886, and in reply, while laying down the policy that such exceptional legislation was only temporary and must not be maintained longer than is absolutely necessary in the interests of both the classes concerned, the Secretary of State agreed with the Government of India that the time had not yet arrived when penal contracts could safely be abandoned. At the same time he desired that the working of the Act should be narrowly watched, and a further special report submitted after another three years.

"As the time for the preparation of the second special report was approaching, the Bengal Government brought to notice certain serious evils in the system of what is called 'free' emigration; that is to say, emigration conducted outside the Act, where the labourers go up to the labour-districts as 'free labourers,' not yet under any contract. The evils complained of were, first, the prevalence of abuses and malpractices committed by professional recruiters working under the 'free' system without a license. And, secondly, the extremely unsatisfactory conditions as to sanitation under which the emigrants

travelled from their homes in Bengal to the labour-districts. A serious outbreak of cholera occurred along the emigrant routes in 1887-88, and to prevent the recurrence of such evils the Government of India sanctioned the enactment of the Bengal Sanitary Act, I (B. C.) of 1889. This Act empowers the Bengal Government to prescribe routes and halting-places for free emigrants, and to frame rules for their health and comfort, as well as for their medical examination and inspection in transit.

"Thorough enquiry was then made both in Bengal and Assam into the whole subject of coolie emigration, and into the conditions of labour on the tea-plantations. The question has for a long time been under the consideration of the Government of India, in communication with the two Local Governments concerned, and the amendments in the law which have now been formulated are embodied in the Bill which I am about to introduce, and have received the general sanction of the Secretary of State.

"The result of this protracted investigation has been not only to show that the continuance of the labour system established in 1882 is essential for the well-being of the tea industry, which has done so much towards colonizing and opening out the rising Province of Assam, and in the prosperity of which the Government of India and all of us have a great and natural interest, but also to bear out the opinion, expressed again and again by successive Chief Commissioners and other impartial observers, that the condition of the labourers on tea-gardens is far superior to that of the masses in the districts from which they emigrate. It has also been made clear that the time has not yet come when labourers can be left to emigrate of their own accord and at their own charges; that without the security of the present system employers could not risk large expenditure in assisting them to emigrate: and that therefore the continuance of the system established in 1882 is still required as a means towards drawing off the surplus population of the recruiting areas and opening out the sparsely peopled districts of Assam. The system has worked eminently to the advantage of the emigrants and in a manner on the whole creditable to the body of planters; and the Government of India, after prolonged and anxious consideration, have come to the conclusion that there are only two serious evils which have to be remedied. These are, first, abuses and malpractices in recruitment, and, secondly, the high rate of sickness and mortality on the gardens, chiefly among newly arrived emigrants.

"I have gone into the history of the matter at this length in order that the objects with which the Government of India are introducing this amending Bill

may be easily apprehended. Our first and foremost object is to provide all practicable safeguards for the detection and prevention of malpractices in recruitment; secondly, we think it necessary to give the Chief Commissioner and his local officers complete powers to enforce proper sanitary measures on tea-estates, and to cancel the obligation of labourers to work or remain on unhealthy gardens. As I stated in some instructions recently issued to the Chief Commissioner of Assam, 'unhealthy gardens require to be urgently dealt with, and employers must clearly understand that failure to preserve their labourers in health will disentitle them to all the benefits of the Act.' In the third place, although we are convinced that the maintenance of present contract system is still essential in the interests of good administration and of all the classes concerned, we think it possible to make some slight advance towards a system of free labour, and to restrict to some extent the operation of the penal contracts. These then are the three main objects which we have in view, and I will now proceed to explain how the Bill deals with them respectively.

"Sections 11, 12, 23, 25 and 27 of the Bill contain provisions directed against abuses in recruitment. It will be in the recollection of the Council that the question of these abuses attracted considerable public attention four or five years ago. There is no doubt that under the name of free emigration things had been allowed to get into a somewhat lax state in the recruiting districts. The class of arkatis—unlicensed professional recruiters—had become rampant, and the executive had failed to fully utilize its legal powers for their control. Frequent complaints were made of labourers, and even large batches of labourers, being enticed away or fraudulently induced to proceed to Assam; and, indeed, it was alleged in some cases that large gangs had been forcibly taken there against their will. I do not doubt that in some cases some slight amount of force had been used in the recruiting districts, but I have been unable to find any well substantiated case, and I cannot bring myself to believe that any case occurred in which any emigrant, and much less any large body of emigrants, had been forced to go against their will as far as Assam. At all events, after full deliberation, we arrived at the conclusion that the abuses in recruitment had been much exaggerated, both as to their character and prevalence; that recruitment by violence could be readily and adequately prevented by the police or punished by the Magistrate under the ordinary law; and that the only forms of abuses requiring anything like special treatment were (1) recruitment by misrepresenting the advantages of emigration to Assam, and (2) the voluntary resort to emigration by women and young people with a view to escape, for some

reason or other, from their family connections. Even these abuses must be inseparable from any system of emigration on a large scale; but, so far as they are aggravated by the evil advice and interference of arkatis, we agreed with the Bengal Government that the strongest measures for their suppression would be justified.

"But the remedies for these evils, proposed by the Bengal Government, were a reversion to the system of officially controlled emigration which was in force under the earlier Labour Acts, the abolition of the present system of placing emigrants under contract at Dhubri, and the restriction of local contracts to emigrants proved to have lived at least two years in Assam. The essential part of this scheme was that every emigrant with whom it was proposed to execute any contract under the Act should be registered by a public officer at some place in the recruiting districts before proceeding to Assam.

"The reasons which led the Government of India to reject this proposal have been fully stated in the published correspondence. Briefly summed up, they are that a system of initial registration would be expensive, vexatious and altogether alien to the principle of free emigration, which for the last twenty years we have sought to encourage; that there would be serious difficulties in discriminating between emigrants who had been two years in Assam and those who had not; and lastly, and to my mind this by itself was sufficiently conclusive, that initial registration would be an ineffective remedy against those abuses which really prevailed, and which alone called for special measures of repression—against those cases in which the labourer, though under the influence of enticement or misrepresentation, is nevertheless a willing emigrant at the time of registration and himself desirous of emigrating.

"The measures by which the Government of India preferred to combat these malpractices were (1) that more energetic executive action should be taken in the recruiting districts; (2) that constant and vigorous precautions should be adopted along the line of march to the labour-districts; (3) that the inspection system in Assam should be strengthened, and more complete remedies applied whenever emigrants were found to have been taken up to Assam wrongfully.

"Some action has already been taken under each of these heads. It will be supplemented by the provisions of this Bill. The first and second heads chiefly concern the Bengal Government. I have already mentioned that in 1859 a Sanitary Act was passed, authorizing the Local Government to make rules for the sanitary regulation of the journey of free emigrants to Assam. By enabling

the Government to prescribe routes and halting-places for free emigrants, and to frame rules for their examination and inspection by medical and executive officers during their journey, this Act has materially fortified the hands of the local authorities in detecting and preventing malpractices in recruitment. Further, a special police-officer was for some years engaged in inquiring into offences of this character, and an attitude of vigilance generally was enjoined on district officers. The result is that such malpractices have now been reduced within very narrow limits. His Honour the Lieutenant-Governor has reported that altogether, during the year 1891, 161 complaints in connection with emigration were made in the Bhagulpore and Chota Nagpore Divisions, which are the principal recruiting grounds; but in 146 of these cases the coolie emigrants themselves were the *accused* persons, the alleged wrong-doers, and it was only in 13 cases that they were the accusers or alleged themselves to have been injured. In view of these facts my hon'ble friend the Lieutenant-Governor has decided that the deputation of a special police-officer is no longer necessary, but he will insist on the present attitude of vigilance being maintained by district officers, and he has under consideration the revision of the rules under the Act, with the special object of facilitating the prevention of abuses.

"Turning now to Assam, emigrants to the districts of the Assam Valley travel from Dhubri as Act-labourers, and very complete and elaborate arrangements are already in force for their supervision in transit. To Sylhet and Cachar labourers travel chiefly as free emigrants. The Bengal Act of 1892 has been extended to those districts, rules have been framed under it and the arrangements for controlling free emigrants in transit are very similar to those made in Bengal. Moreover, the present Bill will supply several defects in the arrangements authorized by the existing law. The system of executing contracts at Dhubri is popular with the emigrants themselves, but it was hardly contemplated by the framers of Act I. It will now be placed on a legal footing. The powers of inspecting officers have been greatly strengthened by the Bill. Power has been given to the Chief Commissioner to cancel contracts in cases where there is reason to believe that a labourer has been illegally or fraudulently recruited, and complete arrangements have been made for repatriating to their native districts at the cost of the employer of any emigrants who may have been wrongfully taken up to Assam. In future the check over malpractices in recruitment will be as complete as it is possible to make it, and I venture to say that there need no longer be any apprehension on the part of the public in this respect. What was wanted primarily was not to revert to the antiquated and vexatious system of twenty years ago, but simply more vigorous

executive action. In so far as the law was wanting, the defects will now be supplied.

"The prevention of malpractices in recruitment being thus provided for, the next point was to devise practicable remedies for the two evils which we found to exist in the labour system in Assam, *viz.*, (1) insufficient inspection, especially sanitary inspection; and (2) the high death-rate on tea-gardens. The first of these defects is one which can be met by executive action, and in a recent letter, which has been already made public, the Chief Commissioner has worked out an excellent and well-considered system of inspection, the principal feature of which is that the bulk of the inspection, and the responsibility for the sanitary condition of tea-gardens, will fall on the Civil Surgeon of the district.

"The provisions of the Act which enable the Administration to bring pressure to bear on the owners of unhealthy gardens, in which the death-rate is high, are contained in sections 128 to 133 of the Act. A special chapter is devoted to unhealthy gardens in the annual labour report, in which the measures taken to enforce sanitary inspection are described at length. The law empowers the authorities, if an estate appears to be unfit for the residence of labourers by reason of its general unhealthiness or of a high mortality, either to convene a committee to hold a sort of inquest on the garden or to make an inquiry through the chief medical officer of the district. In either case, if the estate is found to be really unfit for the residence of labourers, the authorities are empowered to cancel their obligation to labour on it. It must be admitted that the power to cancel the contracts of labourers on unhealthy gardens, or, as it is called, to close the garden to Act-labourers or to any particular class of Act-labourers, had not been exercised to the extent it might, and even, should, have been; we have, however, taken measures to remedy this, and will insist on these provisions being more vigorously worked in future. Sections 15 to 20 of the Bill amend the sections in question by conferring more complete power on the Local Government and district officers to hold the requisite inquiry and to close a garden to Act-labour.

"It is often urged that the high death-rate on tea-estates, which without doubt is, as a matter of fact, almost entirely confined to newly arrived immigrants who have been less than two years in the Assam Province, is due to the fact that coolies of inferior physique, or as they are called 'bad batches,' unfit to stand the Assam climate and garden-work, are sent up by contractors and agents. As the law at present stands, a medical examination to test a labourer's

fitness to reside and labour in Assam is not enforced, and in the case of coolies recruited by contractors not even recognised. In the case of sirdari coolies the Act provides that, if an employer requires such a certificate, the registering-officer shall not permit the labourer to execute his contract until the certificate has been produced. Section 9 of the Bill makes a similar provision in the case of contractors' coolies. It will thus, in future, be open to an employer to satisfy himself as to the physical condition of a coolie before he finally contracts with him, and to exclude 'bad batches' and labourers of inferior physique; but, whether he avails himself of this provision or not, he will be held responsible for the results, and the coercive provisions of the Act will be put in force rigorously against him.

"The late Mr. Quinton recommended that medical examination with a view to ascertain a labourer's fitness to labour in the labour-districts should be made compulsory in the case of contractors' coolies; but we have not been able to accept this suggestion. Under the earlier Acts the system of compulsory medical examination was in force, but in 1882 it was found necessary to place the responsibility for the physical fitness of the labourer absolutely on the employers. The system of Government responsibility was abandoned, partly as impossible under a system of free emigration, but chiefly because even under a system of officially controlled emigration it had been found to be unworkable. Even under that system, complaints as to new labourers being physically unfit were by no means uncommon, and there were difficulties as regards the identification of the coolies—excuses as to their being changed *en route*, or having left in sound health and fallen ill in Assam, being generally made with the result that reference to the emigration authorities in Bengal were almost always inconclusive in showing where the fault lay. Moreover, as free emigration has now become firmly established, it is impossible any longer for the Government to undertake responsibility for the medical examination of the coolies; for there would be no means of preventing a medically rejected coolie, if he so wished and if the employer agreed, from going up to the garden as a free labourer and entering into a local contract there. Indeed, this often happens in the case of persons who, though themselves unfit to labour on a tea-garden, accompany their friends and relations to the labour-districts.

"I come now to the third group of amendments, those undertaken with a view to restrict the penal contract system, as far as this can safely be done consistently with the encouragement of emigration and the well-being of the tea industry. It must be clearly understood that in proposing these changes no reflec-

tion is cast on persons connected with the tea industry. We are simply carrying out our declared and consistent policy of gradually restricting the scope of Government control over the emigration and labour system. The Government of India gladly acknowledge the just and considerate treatment which, as reported by successive Chief Commissioners, the labourers have, with rare exceptions, received from planters as a body; but we have always held that exceptional legislation in respect of labour-contracts on tea-gardens can only have a temporary application, and opportunity must be taken from time to time to prepare the way for its abandonment. In accordance with this policy the decision of the Government of India on the entire labour question has proceeded on two principles: (1) that a labour system based on contracts on the lines sanctioned by Act I of 1882, though necessary under existing circumstances in Assam, as well as in other parts of Her Majesty's dominions outside India, where the conditions of labour are similar, such as the Straits, Ceylon and other colonies, is not one which should be permanently maintained; (2) that its abandonment should be effected, not by any premature or sudden dislocation of existing arrangements, but by facilitating and encouraging the use of such methods as will lead to, or prepare the way for, the gradual withdrawal of Government interference in contracts between employers and labourers. The Legislature has recognised since 1873 that the development of free emigration is the method best calculated to lead to the desired result, and for this reason we have always been anxious to encourage emigration conducted outside the legal trammels of the Act. A system of free or non-Act recruitment was for the first time sanctioned by the Bengal Act of that year in the hope that it would gradually lead to a system of free or non-Act labour, but owing to certain defects in the Act it failed to give the desired stimulus to free emigration. These defects were more or less remedied by the Act of 1882. Since then *pari passu* with, and in consequence of, the development of free recruitment there has been a gradual tendency towards the abandonment, through natural disuse, of those parts of the labour system which it is desired gradually to abolish. Considerable progress in the direction of the establishment of free labour has already been made in the Surma Valley. In the Assam Valley Districts the progress has been less and only the earlier stages of the development have been reached in the expansion of privately assisted emigration under the system of Dhubri contracts. In accordance with the principles which I have just stated we have determined to maintain (with improvements of detail) the present system of Dhubri contracts, as necessary for the Assam Valley in this intermediate stage of development; but all our other amendments of Act I are directed to facilitat-

ing the disuse or abolition of the system of penal contracts on which it rests. I have already referred to free emigration in connection with the Bengal Government's proposal for compulsory initial registration, and, as no change is proposed in this respect, all I need say here is that we think it most important that free emigration should be maintained, subject to the provision of proper safeguards for the prevention of abuse in recruitment and for the sanitary control of the journeys of free emigrants. But with respect to the labour system the time seems to have come when some curtailment of penal contracts may safely be made; with this view we proposed to the Chief Commissioner that the maximum term of first agreements should be reduced from five to three years, and that local contracts with persons other than newly imported emigrants should be restricted to one year.

"The first of these changes will affect the Assam Valley alone, for in Sylhet and Cachar contracts are rarely entered into for terms exceeding three years. The Government of India regret to find that this proposal has not been favourably received by employers of labour, but they still consider that a three years' initial contract is sufficient for popular and well-managed gardens, and that, therefore, penal agreements for a longer term should no longer be permitted. In 1882 the period of contract was raised to five years, on the ground that a three years' term was insufficient to enable the planter to recoup the cost of importing the labourer and maintaining him during the period of acclimatisation, when he is most liable to sickness and inefficient as a worker. This ground, no doubt, still holds good to some extent, but there is abundant evidence in the special report submitted by the late Mr. Quinton that emigrants, when well treated, do not ordinarily leave their gardens on the expiration of the term of their initial engagements, but renew their contracts from time to time till they are in a position to return to their homes, or, as more frequently happens, to engage in trade or cultivation in the labour-districts independently of the garden. It is further important to bear in mind that the five years' contract has chiefly taken root among labourers recruited under the arkati system and placed under agreement at Dhubri; it thus gives an undesirable advantage to arkatis and professional recruiters. The Bill accordingly provides for reducing the maximum period of first engagement to three years.

"As to the restriction of contracts entered into with local and time-expired coolies to one year, I have always felt very great doubt. There would certainly be great difficulty in working the restriction owing to the difficulty of distinguishing between new emigrants and those who have been for some time in the province, and it would be impossible to hold a minute inquiry in each case as to

whether a person offering himself for engagement is really a new emigrant or not. The Chief Commissioner reports that this difficulty, though not insuperable, would be very great, and would cause much annoyance and harassment to the parties concerned. It also appears that employers of labour are strongly opposed to the absolute restriction of such contracts to one year. It is accordingly proposed to limit the contract to one year only when it is entered into under section 111 between employer and labourer without the intervention of a public officer, but to allow the full maximum of three years in the case of contracts under section 112 executed before a Magistrate or Inspector. Section 11 of the Bill gives effect to this conclusion. It seems reasonable and will, I hope, prove acceptable to the planting community.

"The Government of India are not prepared to go further at present in the direction of imposing new restrictions on the labour contract system. But, when railway communication has been completed, it may be found practicable to remove the Sylhet District (and possibly also Cachar, or some parts of it) from the operation of the special law, and even to revise the arrangements in force in the Assam Valley.

"I have now explained the chief amendments contained in the Bill and the reasons for them. There are several other minor improvements of detail provided for, but I do not think it necessary to trouble the Council at present with any further discussion of the innumerable points connected with this intricate subject. The minor details may be left to be considered by a Select Committee as soon as the opinions of the persons most interested have been elicited."

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS also introduced the Bill.

The Hon'ble SIR PHILIP HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Calcutta Gazette, the North-Western Provinces and Oudh Government Gazette, the Central Provinces Gazette and the Assam Gazette in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 19th January 1893.

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

CALCUTTA;
The 13th January, 1893.