Thursday,
9th March, 1893

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXII

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1893

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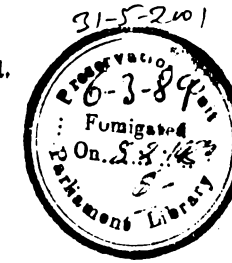

CALCUTTA
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1893

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 Acts of Parliament 24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14.

The Council met at Government House on Thursday, the 9th March, 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.
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 Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble J. L. Mackay, C.I.E.
The Hon'ble Dr. Rashbehary Ghose.
The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble Fazulbhai Vishram.
The Hon'ble C. C. Stevens.
The Hon'ble J. Buckingham, C.I.E.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.
The Hon'ble J. Woodburn, C.S.I.

NEW MEMBERS.

The Hon'ble DR. LETHBRIDGE and the Hon'ble MR. WOODBURN took their seats as Additional Members of Council.

QUESTIONS.

The Hon'ble SIR GRIFFITH EVANS said that he had been requested to read the question proposed by the Hon'ble Mr. Rattigan, who was not present in Council. The question was as follows:—

Whether the attention of the Government has been directed to the conflicting Full Bench Rulings of the Calcutta High Court (reported in I. L. R. 18 Cal. 372) and of the Chief Court of the Punjab (a printed copy of which is placed on the table), respectively, on the subject of the amenability of military officers to be sued for debts under four hundred rupees in amount; and whether in view of this serious conflict of judicial opinion in regard to the true interpretation of the existing law, which it is undesirable should continue,

and of the extreme hardship which merchants in the Punjab will suffer if the construction adopted by the Chief Court of the Punjab—according to which a military officer, who is frequently stationed at a place where no Small Cause Court exists, cannot be sued for a debt under four hundred rupees in amount except in a Small Cause Court having local jurisdiction in the place where he may happen to reside, and which is not open to any revision by way of appeal—is maintained, the Government proposes to take any measures to remove this conflict of opinion and to remedy the hardship referred to.

The Hon'ble LIEUTENANT-GENERAL BRACKENBURY replied:—"Until the notice of the Hon'ble Mr. Rattigan's question was received, the Government of India had not heard of the decision of the Punjab Chief Court referred to by the Hon'ble Member, as it had not up to that time been published in the Punjab Record or any other recognised law report received by the Government. But the Government of India had reason to believe that the same view as that taken by the Punjab Chief Court was acted upon at Bombay, and was aware of the full Bench ruling of the Calcutta High Court reported in I. L. R. 18 Cal. 372, to which the Hon'ble Member has also referred.

"The question is one of the construction of the Army (Annual) Act, which is an Act of the Imperial Legislature. This is a matter entirely for the Courts, and it may be hoped that a future Army (Annual) Act will place the intention of Parliament beyond doubt. The Government of India has already called the attention of the Secretary of State to the doubt which has arisen as to the meaning of the Act, and will now forward to him the decision of the Chief Court of the Punjab, the Hon'ble Mr. Rattigan's question, and this answer."

The Hon'ble MR. CHENTSAL RAO put the following questions:—

I. I observe that within the last twelve years there has been a surplus of Rx. 11,339,000 in eight years, and a deficit of Rx. 5,297,000 in four years, leaving a net surplus of Rx. 6,042,000. Will the Government of India be pleased to explain how the net surplus has been spent and what portion of it is included in the cash balance at the end of 1892-93?

Surplus.	Rx.	
1881-82	2,582,727	
1882-83	706,633	
1883-84	1,387,496	
1886-87	178,427	
1888-89	37,018	
1889-90	2,612,033	
1890-91	3,688,171	
1892-93	146,600	estimate
Total	11,339,105	

Deficit.	Rx.	
1884-85	386,446	
1885-86	2,801,726	
1887-88	2,028,832	
1891-92	80,000	estimate
Total	5,297,004	
Net surplus	6,042,101	

II. Will the Government of India be pleased to lay on the table a statement showing the number of Europeans (excluding Eurasians) employed in each Province and each Department, excepting the Military, distinguishing Covenanted from Uncovenanted officers; giving also the aggregate amount of salaries drawn by them in a year, say, 1891-92; the salaries being arranged, if possible, in the following groups, *i.e.*, number drawing Rs. 200 and less, over Rs. 200 and up to Rs. 400, over Rs. 400 and up to Rs. 600, over Rs. 600 and up to Rs. 800, over Rs. 800 and up to Rs. 1,000, from Rs. 1,000 to Rs. 1,500, from Rs. 1,500 to Rs. 2,000, from Rs. 2,000 to Rs. 3,000, and from Rs. 3,000 upwards?

III. Will the Government of India be pleased to lay on the table a statement showing the extent to which the Land Improvement Loans Act has been availed of during the last five years, and the amount of bad debts, if any, which have had to be written off as irrecoverable, with any explanation that may exist as to why the Act has not been more largely availed of?

The Hon'ble SIR DAVID BARBOUR replied to the first question put by the Hon'ble Mr. Chentsal Rao as follows:—

"1. In addition to the money required to meet ordinary expenditure, the Government of India find funds for the construction of railways and canals and for loans to municipalities, agriculturists and others.

"2. The bulk of the expenditure on the construction of canals and railways and the disbursements on account of loans are not charged against Revenue, and do not affect the surplus or deficit of the year.

"3. Funds for such purposes are ordinarily provided by borrowing, but when there is a surplus of Revenue over Expenditure in any year the cash balance is increased by the amount of that surplus, and the sums that must be borrowed for the public service are correspondingly reduced. Such reductions in the amounts to be borrowed keep down the charge for interest in future years.

"4. Briefly, therefore, the answer to the first portion of the question of the Hon'ble Mr. Chentsal Rao is that the net surplus of the last twelve years has been used in diminution of borrowing by the Government of India.

"5. As the surplus of each year is absorbed in the cash balance, from which funds are drawn as required, it is impossible to say what portion of the net

surplus of the last twelve years will remain in the cash balance at the end of 1892-93, but, if a net surplus had not accrued during the last twelve years, the Government of India must either have borrowed more money than they have done or accepted a corresponding reduction in the cash balance."

The Hon'ble SIR DAVID BARBOUR replied to the Hon'ble Mr. Chentsal Rao's second question as follows :—

"To prepare a table of the nature described by the Hon'ble Mr. Chentsal Rao would be a work involving very considerable delay.

"But it so happens that a similar return was prepared a year ago for presentation to Parliament. I lay on the table the return* presented to Parliament, being 'A statement of the numbers and annual salaries of officers on active service in India on the 31st March, 1890.'

"I also lay on the table two statements† showing the distribution by Provinces of the officers (other than military) included in the return presented to Parliament.

"Although these tables do not draw all the distinctions which the Hon'ble Member desires, and although the classification of salaries is different from that which he suggests, they give substantially the information he asks for, and I hope it will not be considered necessary to undertake the preparation of an entirely new set of tables."

The Hon'ble SIR PHILIP HUTCHINS replied to the third question put by the Hon'ble Mr. Chentsal Rao as follows :—

"As requested, a statement‡ has been prepared showing the loans granted in the several provinces under the Land Improvement Loans Act, 1883, during the five years ending with 1890-91, and also the extent to which instalments which had become due were remitted in those years. The total advances have risen during these five years from ₹4,68,000 to ₹8,56,000, or by over 80 per cent. The average remissions amount to ₹1,170 per annum, but, in the absence of any information as to the instalments which fell due during each year, I cannot tell what proportion of the debts can be regarded as irrecoverable. It is, however, safe to say that there are very few bad debts.

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* *Vide* Appendix A.
† *Vide* Appendices B and C.
‡ *Vide* Appendix D.

"I am sorry that I am unable at present to give any later figures. The Hon'ble Member's question does not include advances made under the cognate Act of 1884, the Agriculturists' Loans Act; the only statistics as yet available for 1891-92 give the two classes of loans in combination, and it is impossible just now to separate them. Moreover, they cover a period of 17 months, and, as they have been taken from the famine reports, they are confined to those provinces which suffered from drought. They have, however, been added to the statement, as they show generally that the two Acts were employed in 1891-92 to an extent hitherto unknown. To make this clear I have had another statement* prepared showing advances made under the Act of 1884. Taking both Acts together, about 12¾ lakhs represent the average sum advanced per annum, but in 1890-91 the aggregate sum had risen to 20½ lakhs. But during 1891-92 and the first five months of the following year—the period of 17 months already mentioned—no less than 48 lakhs were distributed as loans in seven provinces, Madras alone accounting for about 30 lakhs—principally for the construction of wells. I think I may venture to say that similar large advances are likely to be made available again, if required, in times of famine.

"The Hon'ble Member asks also why the Act has not been more largely availed of. The exact figures given only carry us up to March, 1891, or 7½ years from the date on which the Act came into force. It is true that the Act of 1883 was not an altogether novel measure: it replaced an Act of 1871: but the earlier Act had proved ineffective, and I believe it was condemned by the Famine Commission. After 1883 fresh rules had to be made and promulgated: my hon'ble friend must be well aware that it takes a considerable time for any new set of rules to reach and be understood by illiterate villagers. The extent to which loans can be given is not unlimited: it is bounded by the allotments which our financial position enables us to make to the several provinces. Bearing these facts in mind, the progress made has not been discouraging, and it may reasonably be anticipated that in future every allotment which the Government of India can afford will be fully worked up to. There is reason to believe that some of the original rules were needlessly cumbrous and elaborate, and under them nearly every application had to be referred to some high district official for sanction. Where this was the case, they have undergone amendment, and I think I may venture to claim that they are now in every province as simple and elastic as is consistent with the proper scrutiny of the security tendered and with the safety of the public money for which the Government is responsible to the general tax-payer. The only other explanation which has come to notice of the backwardness of the people to apply for loans under the Act is their preference for the local money-lender, to whose ways they are habituated, who lives

* *Vide* Appendix E.

among them, to whom they must resort for loans not covered by either of the Acts, and whose high rate of interest enables him to be more lenient in exacting punctual repayment of his capital. It has been represented too, and I am afraid only too truly, that the acceptance of a State loan often brings on the cultivator the hostility of the money-lender which he cannot venture to incur. The question of establishing agricultural banks to render the raiyats independent of the money-lender has been carefully considered, but the measure was found fraught with danger to the general tax-payer and to involve the creation of such enormous establishments as to be quite impracticable."

LAND ACQUISITION ACT, 1870, AMENDMENT BILL.

The Hon'ble MR. WOODBURN moved that the Hon'ble Mr. Stevens be added to the Select Committee on the Bill to amend the Land Acquisition Act, 1870.

The Motion was put and agreed to.

PARTITION BILL.

The Hon'ble DR. RASHBEHARY GHOSE moved that the Report of the Select Committee on the Bill to amend the Law of Partition be taken into consideration.

The Motion was put and agreed to.

His Honour the LIEUTENANT-GOVERNOR OF BENGAL moved that the following be added to section 2 of the Bill as amended by the Select Committee, as sub-sections (*2*) to (*4*), namely:—

"(*2*) When the Court has directed a sale under this section, it shall cause a valuation to be made of the property in such manner as it may think fit, and shall after due enquiry pass an order approving or modifying the valuation. An appeal shall lie from an order approving a valuation of the property to the next superior Court.

"(*3*) The cost of such valuation shall be paid out of the proceeds of the property when sold.

"(*4*) When a valuation has been made under this section and a sale of any particular share or shares is afterwards directed under section 3 or section 4, no fresh valuation of such share or shares shall be made under those sections, but the value of such share or shares shall, for the purposes of such sale, be determined with reference to the valuation so already made as aforesaid."

He said:—"This amendment is the last of several suggestions which I have communicated to the Hon'ble Mover of the Bill, some of which have been accepted by him and embodied in the subsequent amendments which he is about to move, and some of which he has shown to me good reasons for considering not to be necessary. I confess that, although holding the view that the Bill as a whole is a valuable one, and one which it is necessary should be passed, I have entertained considerable anxiety as to the manner in which it may be used, especially in outlying mufassal stations, and the effect with which it may be worked by the stronger shareholders as against the weaker shareholders in undivided property. The Bengal Government in its reply on the Bill as first drawn up urged that some compensation should be given to those shareholders who were compelled to see their property sold, on the ground that it was in the nature of a compulsory sale. It is true that the second clause of the Bill prescribes that the Court shall hold that it is for the convenience and advantage of the shareholders that the sale should be carried out; and it is further obvious that it would be extremely difficult to provide a fund out of which compensation should be paid to these shareholders, and therefore we did not think it right to press that suggestion; but at the same time we were strongly impressed by the feeling that, in sales of this kind, conducted as they are in the outlying districts, there is great danger that injustice may be done and that a property may be sold for something considerably below its value. I have lately had before me, under very careful consideration, an extremely important letter from the High Court which was addressed to the Bengal Government on the subject of the proposed amendment of the Certificate Act and the sale law; and, with the permission of the Council, I will read two extracts from that letter as explaining the nature of the views which had influenced me in bringing forward this amendment. This letter, I may explain, is with reference to the amendment of the Certificate Act, under which a certificate has the effect of a decree of a Civil Court, and sales take place in execution of the decree. In paragraph 15 of their letter of the 29th August, 1891, the High Court wrote—

'Whatever system may be adopted, and however carefully that system may be administered, there will occur cases in which properties are sold very much under their real value, and even on the assumption that in such instances nobody has been to blame except the judgment-debtor himself, who, therefore, suffers by reason of his own negligence, still it seems a frightful penalty to impose on a man for his neglect to pay a trifling sum that his estate should be sold for a fraction of its value and he himself reduced to ruin. Extremely hard cases of this nature have occurred under the existing law The Judges recommend that a provision should be introduced, analogous to that contained

in the Bengal Tenancy Act with regard to sales for arrears of rent, by which a debtor whose property has been sold should always be at liberty to come before the Court and pay the amount of the demand, or so much of it as remains unsatisfied, together with a penalty, or, if the whole of the demand has been satisfied, to pay simply the penalty and the amount of the purchase-money with interest, and thereupon to have the sale set aside. This the Judges would allow him to claim as of right without any inquiry into the circumstances. It seems to them that by this provision Government could not possibly be a loser; the purchaser could sustain no serious injury; and extreme hardship would be avoided in individual cases.'

"Then in paragraph 19, turning to the cognate question of the sale law, they wrote —

'On the other hand, the Judges recommend that, while taking away the power of bringing a civil suit, the Legislature should give to the owner of an estate sold for arrears of land-revenue a right similar to that which now exists in the case of an estate sold for rent, and which they have recommended in paragraph 15 of this letter with regard to estates sold for the recovery of public demands other than land-revenue. They would allow the person whose estate has been sold to appear before the Collector within a fixed time, to pay the amount due to Government together with a penalty, and the amount of the purchase-money with interest; and thereupon the Collector should be empowered, and it should be his duty, to set aside the sale, his order having the same effect in this respect as the decree of a Civil Court. This proposal, if adopted, could in no case entail any loss of revenue, or any delay in its realization. It would tend to secure prices at revenue-sales corresponding more nearly than now with the value of the land sold; for, instead of having to face the possibility of costly and complicated litigation on the part of the person whose land is sold, the worst that a purchaser would have to fear would be the return of his purchase-money with interest. And it would provide a remedy against the extreme hardship that occurs from time to time when properties are sold at revenue-sales for a small fraction of their value, and the owners are brought to ruin.'

"Looking to the great experience of the High Court, and to the high authority with which they write, it seemed to me important to bring this utterance of theirs to the notice of the Council, and I had intended to propose an amendment to carry out their views as to giving a power of redemption; but the Hon'ble Mover of the Bill proposes to introduce a separate amendment to the Civil Procedure Code which will meet that particular case and will allow the particular shareholder who is bought out to redeem his property within a limited time. But still we have the fact brought to our notice that, in cases of this kind, extreme hardship does often occur, and I was anxious that in the preparation of this Bill every possible care should be taken to avoid such hardship. One of the simplest and clearest methods of avoiding hardship is that a reserve price should be put upon the estate, and that it should not be allowed to be sold by auction in a way

which is said sometimes to occur under what we may call 'a conspiracy of silence'—in the absence of those most interested in the sale of the property, and when it would not be likely to fetch an adequate price. A proposal to meet this case has been made by the Hon'ble Mover and will be introduced subsequently.

"But no explanation is there given as to how the reserved price is to be decided on, and it is for this, among other things, that my amendment provides. Moroever, in section 3 the case is put where a shareholder who s not one of those who applies for a partition desires to purchase, and in that case a valuation has to be made; and in section 4, where a transferee who is not an original shareholder desires to effect a partition, one of the remaining shareholders has the power to buy on valuation; that is to say, the law has provided for two cases in which a valuation should be made by the Court. It is also going to provide that there shall always be a reserve price put upon the sale. It seemed to me, therefore, that it would simplify the Act and make the procedure plainer if it was laid down in the first place in section 2 that in all cases a valuation should be made under the order of the Court. Then, when the shareholder applies to purchase, the valuation is already made, and it would not be necessary to have a second valuation on his application; and, in the other case, when the transferee desires to have the property sold, one of the original shareholders has the opportunity of using the same valuation: and, thirdly, on that valuation might be based the reserve price, which the Judge need not disclose, but which he would frame in his own mind and communicate to the auctioneer so as to avoid the chance of the estate being sold very much below its value.

"I put this suggestion to the Council as it seems to me to be a simplification of the law as proposed. I admit that the three sections taken together for the most part cover the matters which it seems necessary to cover, but I submit that it will be a more simple and less complicated procedure that the valuation should be made in the first place as a matter of course under the ordinary rules, and that it should be referred to afterwards in the subsequent sections; and that the cost of the valuation should be costs in the case, paid out of the sale of the property, rather than that it should be made specially on the application of the shareholder, and that if the valuation turned out larger than he expected, so that he is unable to buy this property, he should be saddled with the cost of doing what it seems to me the Court should do in all cases for the sake of the whole body of the shareholders."

The Hon'ble SIR ALEXANDER MILLER said:—"I entirely sympathise with the Lieutenant-Governor in his desire to secure that no sale should take place at an under-valuation; but I have had a great deal of experience in the sale of property,—both of property belonging to lunatics and that sold in the ordinary jurisdiction of the Court of Chancery,—and I am satisfied that nothing would tend more to spoil the sale of property than that the official valuation of it should be known before the sale. I can tell you exactly how it works in England, and I think that it would work much the same way in India. Property is set up for sale by auction. A number of men want to buy it cheaply. If they know what the reserve price is, any one of them would bid up to the reserve price but not beyond it. I have seen that over and over again. They bid just enough to show that they are interested, in the hope that the property will be bought in, and then they come running into chambers with an offer, and say 'Now, I will give you the reserve price as nobody else has done it.' I have seen on one occasion myself, when no bid came within £100 of the reserve price, no less than five or six applicants came next morning to offer to give me the minimum price for the property; and greatly to their astonishment, instead of letting them purchase it amongst themselves or giving it to the first applicant, I put it up to a sort of irregular auction then and there and got £400 over and above the price fixed for it. So that I am most desirous that, whatever is done, the valuation of the property should be kept a secret until after the sale is over, and the principal objection I have to His Honour's suggestion is that it provides that an order should be made approving the valuation, which will make it possible for everybody who has access to the records of the Court to know precisely what that valuation is. It is quite true that, where it has been necessary in the interests of shareholders to provide that where the property is not to be sold to any other but a shareholder, a valuation must be made; because there is no other way in which you can give a right of pre-emption, but such valuation will have been asked for by the applicant at his own risk of what it may amount to; and I confess that, if a shareholder chooses to say, 'Value this share, because I want to buy it,' I think he should be unable afterwards to withdraw from the application without paying all the costs thereby incurred, and I should be sorry to give him an opportunity of obtaining any such valuation on speculation. Therefore, although, considering that as the Bill originally stood there was no provision made for a reserve price—I can quite understand the motives which induced His Honour to propose this valuation now—I should very much prefer that the reserve price should be fixed in the ordinary way by a Judge without any order, or without any one

knowing what it is, or even what it is like. If a property is to be sold, there should be no contest over the valuation, no previous hearing in Court, no possibility of appeal as to the amount before any order for sale is actually made, all of which would no doubt add to the cost of litigation and tend, I am afraid, to impair the excellent amendment of the law which is proposed by this Bill. I would myself have proposed some such clause as the Hon'ble Mover has now proposed with regard to reserve price, if I had not taken it for granted that the Court would do that of its own motion, as the Courts in England do; but, as I understand that, under the existing practice in execution sales, this would not be done, I quite agree that it is necessary to provide for the case; but I think that a reserve price will be sufficient to prevent any risk of sale at undervalue; and moreover it is to be remembered that for properties through the country generally this Bill will probably have very little operation. If you have property to be divided through the country generally, it will consist mainly of land, and there is seldom any difficulty in making a partition in specie, while the parties to whom the property belongs generally prefer a partition in specie to a sale and partition in money. It is only when you come to a town, where there are small bits of property divided into perhaps ten or fifteen different shares, and which would be incapable of being enjoyed separately, that the value of a sale instead of a partition comes to be recognised; or when you have a dwelling-house, such that if divided into separate tenements none of them could be beneficially enjoyed, it is evident that his share of the purchase-money would be much better for each shareholder than his share of the house. But, under any circumstances, I think the owners would be sufficiently protected, and the Court would have more power over the sale, by taking the ordinary course of a sale by auction with a sale reserve price below which the auctioneer is instructed not to go, than by having a valuation fixed by order beforehand which everybody knows and as to which everybody is quite determined that, whatever else he may bid, it will not be so high as that."

The Hon'ble DR. RASHBEHARY GHOSE said:—"I regret I am unable to see my way to accept the amendment of His Honour the Lieutenant-Governor. His Honour admits that the amendments which stand in my name cover the same ground, or very nearly the same ground, as the amendment proposed by him. But His Honour claims for his amendment the merit of simplicity. I am sorry I cannot agree with His Honour. I have objections to the substance as well as to the form of the proposed amendment, but as these objections run

into one another I do not think they can be usefully kept distinct. I propose, therefore, to deal with my objections to His Honour's proposal in the order which suggests itself to me as the most convenient. The first clause of the amendment runs thus :—

'When the Court has directed a sale under this section, it shall cause a valuation to be made of the property in such manner as it may think fit, and shall after due enquiry pass an order approving or modifying the valuation. An appeal shall lie from an order approving a valuation of the property to the next superior Court.'

"Now this clause, while emphasising perhaps somewhat unnecessarily the duty of the Court to make due inquiry, not only leaves the Court no discretion in any case whatever to make the valuation itself, but compels it either to approve or modify the valuation when it has been made through some other agency ; but why should not the Court have the power in a proper case to cancel the valuation altogether and direct a fresh valuation? The last part of the clause again gives a right of appeal to the parties from an order approving a valuation but not from an order modifying a valuation. It then goes on to say that the appeal shall lie to the next superior Court. Now, although the expression 'superior Court' has a technical meaning in England, it has no such meaning in this country. Assuming, however, as the use of the word 'next' before the words 'superior Court' would seem to show, that the words mean the Court immediately superior in grade to the primary Court, my objection is that the provision would have the effect of altering the whole law in this country as regards the forum of appeal. Take, for instance, a suit in the Court of the Subordinate Judge in which the amount at stake exceeds Rs. 5,000. The appeal in a suit like this would lie to the High Court. But, if you take the classification of the different Courts as you find it in our Statute-book, the Court of the District Judge is the next superior Court to that of the Subordinate Judge. Then, again, the clause does not tell us whether there is to be only one appeal or two appeals—one in the nature of a first appeal and the other what is known as a second appeal. I come now to the next clause, which runs thus :—

'The cost of such valuation shall be paid out of the proceeds of the property when sold.'

"The first question that occurs to me with reference to this clause is what is to happen if the property—by which I suppose the whole property is meant—is not ultimately sold. Under the proposed law it might not be at all necessary in a great many cases to sell the whole property, as some of

the shares might be bought up in the manner provided in sections 3 and 4 of the Bill. How would the costs be paid in such a case? But there is another and perhaps a stronger objection which would readily occur to those who have any experience in such matters. A provision like the one under notice would encourage the temptation to indulge in the practice of what is known as 'making costs.' Only declare that the costs shall in all cases be payable out of the estate, and the parties would find themselves under a strong inducement to make frivolous opposition. The general rule is to leave all questions of costs to the discretion of the Court, except in rare cases, such, for instance, as those contained in section 3 of the Bill. It has been said by the Hon'ble Mover of the proposed amendment that, as in a great number of cases the Court would be obliged to value some of the shares in the property, you would not put the parties to any unnecessary expense by insisting upon a valuation of the whole. It would be simply a question of arithmetic. You would have only to multiply by so many times the value of an undivided share. But we must remember that a particular share might be subject to an encumbrance while the other shares might be unencumbered, and the Court under the proposed amendment would be bound to take an account of such encumbrances in every case, although in the end the account might be absolutely useless to the parties. Then, again, it has been said that the valuation would be useful for the purpose of settling the reserve price in those cases in which the shares are not bought up under sections 3 and 4. But is it really necessary to provide such an elaborate machinery with preliminary rights of appeal or appeals merely for the purpose of fixing a reserve bidding? Give the parties a right of appeal or of excepting to the valuation, and they would be sure to avail themselves of it to the utmost extent, however fruitless in the end the result might be. I venture, therefore, to think that the proposed amendment, instead of having the merit of simplicity as compared with the amendment which I am going to move, would give rise to a great many difficulties, causing unnecessary expense and delay to the parties."

The Hon'ble MR. CHENTSAL RAO said that while the Lieutenant-Governor's amendment was much to be commended, the objections to phraseology of it which had been pointed out by the Hon'ble Dr. Rashbehary Ghose possessed considerable weight.

As the point was one which had not been fully considered by the Select Committee, if it was open to him to do so, he would beg leave to suggest that the Bill be referred back to the Committee for the purpose of reconsidering the question and submitting a further report.

The Hon'ble SIR GRIFFITH EVANS said that he had not intended to speak, but, as the Hon'ble Mr. Chentsal Rao had spoken out of his turn, he could only plead his irregularity as an excuse for—with His Excellency the President's permission—committing another.

He felt that, apart entirely from questions of phraseology, which, as the Hon'ble Mr. Chentsal Rao said, were matters which could be easily set right—if there was any difficulty about phraseology—by a reference to the Select Committee, the question really was whether it was desirable to have those valuations made in every instance where there was an order for sale, or to leave them to be made in the particular instances where a shareholder wished to buy at a valuation.

He could not help feeling that the views expressed by Dr. Rashbehary Ghose upon this point seemed to be sound. If, whenever an order to sell was made, the Court was obliged to cause a valuation to be made, that would entail a commission for local investigation. The result would be that the parties would plunge into litigation; a report would be made, exceptions would be put in which would be argued before the Judge, and finally there would be a right of appeal to another Court. One could not help feeling that all this expense and delay was to be avoided if possible. The proposal made by Dr. Rashbehary Ghose, that the valuation should only take place when necessary, and that in every other case there should be an upset price fixed by the Judge, would seem to be a very much cheaper, more expeditious and more desirable method of dealing with the question.

He thought himself that the Court could be fairly trusted to fix some reasonable upset price, and would be supplied by the parties with ample materials.

With reference to what had been said about secresy, he feared that, with regard to the upset price and valuation, there was no possibility of anything of that kind. The nature of the proceedings was such as to render secresy out of the question.

The Hon'ble SIR PHILIP HUTCHINS said:—"The substantial difference between the two amendments on the paper seems to be that His Honour desires to have a formal appraisement in every case, while the hon'ble and learned Member in charge of the Bill, admitting the desirability of commencing with an upset price, would leave the Court to fix such initial bid as it pleases, and not require a formal valuation unless it is proposed to sell a share only and to exclude public competition.

"In my judgment Dr. Rashbehary Ghose's amendment will sufficiently answer the real purpose which His Honour has in view, and I am prepared to vote for it. I do not think these are cases in which the property is at all likely to be knocked down at a price much below its real value. I agree with Sir Griffith Evans that it is more likely that, owing to the anxiety of each shareholder to retain the family house in which he has been accustomed to live, it will fetch a fancy value.

"His Honour's amendment is not quite consistent with the sections which follow, but I will not go into the question of phraseology, as any defects can easily be cured by re-committing the Bill to the Select Committee.

"It seems to me that the determination of an upset price does not at all require an accurate appraisement of the property, and that any one, be he a shareholder or not, who hinders the ordinary procedure of a sale by public auction and causes the expense of such an appraisement, may well be required to pay the costs if after all he refuses to pay the full estimated value."

The Hon'ble SIR ALEXANDER MILLER said that before the vote was put he wished, with the permission of the Council, to say one word as to the objection which had been taken to the phraseology of the amendments. Although on the point of substance he had already given his opinion, he wished to explain that the phraseology was his. His Honour the Lieutenant-Governor had explained to him what he wanted done, and he had put it into the language in which he thought it would best carry out the intention. If in any respect, therefore, the language was open to criticism, that criticism should fall upon him and not upon his hon'ble friend the Lieutenant-Governor.

His Honour THE LIEUTENANT-GOVERNOR said:—"I should like to make one or two remarks before the votes are taken. With regard to the objections which have been taken to the wording of the amendment, it seems to me that the amendment is only open to those objections because it has attempted to go into questions which the sections of the Bill as they now stand have slurred over. The valuation must be made under sections 3 and 4, and although my hon'ble friend Sir Philip Hutchins has said that an absolute formal valuation

need not be made if a reserve price is fixed, yet I would ask you to remember the manner in which practically this business will be conducted in the mufassal stations. Take, for instance, a case of a large pucka house standing in the country, far from the head-quarter station, and belonging to several shareholders at bitter feud with each other. The Munsif has never seen it, and the only possible way in which he can put on a reserve price is by sending the Civil Court amin to value it. Now the Civil Court amin is not, as a rule, a trustworthy officer, and the High Court have declared their desire that some measure should be taken to improve the condition and status of the Civil Court amins and the manner in which their work is carried out; and that question is still under the consideration of the Bengal Government. It was because I felt great distrust of the mode in which the valuation might be made, and of the manner in which the reserve price might be put upon an estate by a Court which had no personal knowledge of its value, and under circumstances in which there was every possible probability of temptations being offered to commit a fraud, that it seemed to me desirable that the valuation should be carried out in a formal and definite manner, and that provision should be made for contesting that valuation if it is an improper one. In fact, whether the law expressly makes provision for such proceedings or not, they will have to be carried out, and the Hon'ble Mover's Bill will not be improved by ignoring them.

"Again, with regard to Sir Griffith Evans' opinion that such property would always sell at a high value, I would only ask you to remember what the High Court has said in the letter I have just read, as to the frequency of sales much below the real value of the property. Now, if there was any property which it might be supposed would have fetched a high value, it is a permanently-settled estate in the province of Bengal; and yet I understand that hardly any appeal against a sale comes to the Board of Revenue in which the plea has not been put forward that the estate has been sold for a tenth of its value; and the High Court have asserted in this letter, which I have read, that occasionally there is truth in these allegations, and that property is sold below its value. And, if it is granted that property of this kind is often sold under value, surely there is still greater probability that property in the nature of house-property, for which in a country village there would be no competition, would be sold for an extremely nominal value. It is for this reason that I am anxious that all care should be taken in effecting the valuation and securing the rights of the weaker shareholders, whose position, I fear, may be somewhat imperilled by the passing of this Bill."

The question being put, the Council divided—

Ayes.	*Noes.*
The Hon'ble Mr. Woodburn.	The Hon'ble Dr. Lethbridge.
The Hon'ble Mr. Buckingham.	The Hon'ble Mr. Stevens.
The Hon'ble Fazulbhai Vishram.	The Hon'ble Sir Griffith Evans.
The Hon'ble Mr. Chentsal Rao.	The Hon'ble Dr. Rashbehary Ghose.
His Honour the Lieutenant-Governor.	The Hon'ble Mr. Mackay.
	The Hon'ble Sir Charles Pritchard.
	The Hon'ble General Brackenbury.
	The Hon'ble Sir Alexander Miller.
	The Hon'ble Sir David Barbour.
	The Hon'ble Sir Philip Hutchins.
	His Excellency the Commander-in-Chief.

So the amendment was lost.

The Hon'ble DR. RASHBEHARY GHOSE moved that the following amendments be made in the Bill as amended by the Select Committee, namely :—

1. That for section 4 the following be substituted, namely :—

"4. (*1*) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder and may give all necessary and proper directions in that behalf.

Partition suit by transferee of share in dwelling-house.

"(*2*) If, in any case described in sub-section (*1*), two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (*2*) of the last foregoing section."

2. That in section 5, for the words "or an undertaking to buy given" the words "or an undertaking, or application for leave to buy, may be given or made" be substituted; and that after the word "undertaking", in line 8, the words "or application" be inserted.

3. That the following be inserted in section 6 as sub-section (*1*), namely :—

"(*1*) Every sale under section 2 shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the Court in such manner as it may think fit and may be varied from time to time.

4. That the present sub-sections (*1*) and (*2*) of the same section be re-numbered (*2*) and (*3*); and that in sub-section (*2*) as so re-numbered for the words "On any sale under this Act" the words "On any such sale" be substituted.

5. That the words "Save as hereinbefore provided" be inserted at the beginning of section 7.

He said that, with the exception of two of the amendments, the rest were all purely verbal, and he did not think it necessary to trouble the Council with merely verbal amendments. One of these two comparatively important amendments was contained in section 4, in which it was proposed to add the words "being a shareholder" after the words "any member of the family". He was indebted for the suggestion to His Honour the Lieutenant-Governor of Bengal. Under the section, as it originally stood, it might have been argued that the privilege was not confined to those members only of the family who still retained an interest in the family dwelling-house, but might be claimed even by a person who, although he might continue to be a member of the family, had ceased to have anything whatever to do with the family house. The section now made it quite clear that the privilege could only be exercised by a member of the family who still owned a share in the property.

The next amendment of any importance was the addition which it was proposed to make to section 6. That addition had been already discussed, and it was unnecessary for him to say anything about it, as it seemed to be generally acceptable to Hon'ble Members. But he ought to explain why nothing of this kind found a place in the Bill as it was submitted by the Select Committee. Section 6 of the Bill provides that, in the case of property sold under a decree in Bombay, Madras or Bengal, the Court should observe the procedure governing Registrars' sales in the High Courts, and they all knew that in the case of a sale by a Registrar of the High Court there must be a reserve price in the conditions of sale. As regards the mufassal, rules must be made by the High Court, and it was taken for granted that the High Court, under the authority conferred upon it by this section, would make rules on the lines of those regulating Registrars' sales.

He had, however, no objection to insert a section in the Bill expressly giving the right to the parties to claim a sale only at a reserved price.

The Motion was put and agreed to.

The Hon'ble DR. RASHBEHARY GHOSE moved that the Bill, as now amended, be passed. He said:—"In introducing the measure last year I pointed out the defective state of the present law relating to partition, and explained the manner in which it might be improved by giving the Court, in some exceptional cases, and under proper safeguards, a right to sell the property and to distribute the proceeds. It is unnecessary to repeat what I said on that occasion, and I propose now to deal only with some criticisms which have been levelled against the Bill, as, notwithstanding the favourable reception it has generally met with, the measure has not altogether escaped adverse comment. Nobody, I am glad to say, has seriously suggested that the present law is not susceptible of improvement, and the hostile criticisms directed against the Bill, which may be roughly divided into two categories, in a great measure neutralise one another. It has been said, on the one hand, that the numerous restrictions imposed on the Court are useless, if not mischievous, and that, where a partition cannot be properly made without injury to the property, the action of the Court ought to be left perfectly unfettered and not made dependent on the consent of any of the parties. On the other hand, it has been said that the power of sale is not adequately hedged round, and a suggestion has been made that compensation ought to be paid to the coparceners who are unwilling to part with their shares. To those critics who oppose some of the restrictions as altogether unnecessary, I should say that for obvious reasons sweeping innovations in matters of so much delicacy are always to be deprecated, and that we cannot proceed too cautiously. To those who object to the Bill as not sufficiently safeguarding the interests of the weaker shareholders, I would beg to point out, even at the risk of repetition, that it would be impossible for a powerful member under colour of this law to oppress the weaker shareholders, as the Court would never be able to direct a sale simply at the request of some of the parties, however large their interests might be. It must be satisfied that no partition by metes and bounds can be reasonably made, and also that a sale would be more beneficial not for one or even the larger number of the parties but for all the shareholders. It must also be remembered that, even when all the conditions essential to the exercise of the power exist, the Court would still have a discretion to direct or to refuse a sale—a discretion to be exercised, like all judicial discretion, on a consideration of the whole of the circumstances of the case. A request for sale made out of spite or from vexatious or other indirect motives would, I am sure, never be listened to by any Court of Justice, while the provision with regard to fixing a reserve price just introduced into the Bill would prevent the property from being sold at an inadequate price.

"I will now deal with the question of compensation which has been raised in the course of the discussion on the Bill, and it is the more necessary that I should do so as I find that some of my remarks in presenting the Report of the Select Committee have been misunderstood. I am reported to have said on that occasion—and no doubt correctly reported—that there can be no compulsory sales under this law. Now, I was then dealing with the recommendation of the Local Government, which I understood was based on the suggestion of the British Indian Association, that an additional 20 per cent. should be paid to the shareholder who is compelled to part with his share for the valuation price under section 3 of the Bill. That section, however, deals with the sale of the shares only of those who request a sale in favour of the other shareholders. The proposal of the Association therefore seemed to me to be based upon a misconception, and in saying that the Bill does not authorize a compulsory sale I evidently meant a forced sale by one shareholder to another. Indeed, if I might be permitted to say so, it never occurred to me that any question of compensation for disturbance, to use a familiar expression of the present day, could possibly arise in the case of a sale under section 2, which can only be directed when it is for the benefit of all the parties.

"I have now dealt at some length with the various criticisms which have been directed against the measure—criticisms for which I cannot say I was altogether unprepared. Whenever any change is proposed, whether in the sphere of legislation or in other spheres, there is sure to be some opposition. Some warning voice is sure to be raised when one ventures into untrodden paths, and we are invariably thankful for it, although sometimes compelled to disregard the warning. I am, however, glad to be able in the present instance in some measure to re-assure those who are always 'perplexed by fear of change.' Although the experience of the working of a particular law gained in other countries might sometimes be a very misleading guide, there is in the present case no reason to fear that the cautious innovation we are now making would be attended with any mischievous results, for we are not happily without some experience of the operation of a somewhat similar but far more trenchant law in this very country. In Chandernagore, and I believe also in the other French possessions in India, the far more drastic provision of the Code Napoleon has been long in force; and I am not aware, notwithstanding my enquiries on the subject. that the Hindu and Muhammadan citizens of the Republic have ever complained of its working. It has certainly not disintegrated joint families. It has not enabled the opulent members of a family to oppress their poorer relations. But it certainly has had the effect of preserving much property from ruin and of considerably reducing

legal expenses. I do not wish to be understood as promising any very wide-reaching benefits from the operation of the present measure. Indeed, it would be rash, if not unbecoming, on my part to do so. But of one thing I am confident, and that is that, if the law is properly worked, as I have not the least doubt it will be worked, my countrymen will not find their patrimony converted into lawyers' bills and the estate divided not among those who are entitled to it, but among those who are called on to assist them in its division.

"In conclusion, I have a word to say to those who seem to fear that the measure under discussion might possibly lead to the disintegration of the joint family, of which idyllic pictures have been sometimes drawn. I have nothing but the most fervent sympathy with those who cherish the institution, and will not therefore pause to enquire whether the portraits have net been occasionally painted without the shadows. I would only remind these gentlemen that suits for partition are by no means uncommon among coparceners, and that such suits are often fought with a bitterness which has become proverbial, ending not seldom in the ruin of the family. Those who think that any reasonable facilities given to coparceners for severing their interests would tend to the dissolution of the joint family system forget that a great lawsuit is a great evil, and that a protracted partition action is 'protracted woe.' Such men also greatly overrate the operation of positive law on society and betray a very imperfect appreciation of the strength and delicacy of the fibres and the play and interaction of the subtle forces which hold together the different members of that remarkable organization known as the joint Hindu family."

The Hon'ble SIR ALEXANDER MILLER said:—"I should not wish to intervene again in this matter, but I want to take this opportunity of counteracting, if I can, what seems to be a very widely-spread misapprehension as to the object and effect of this Bill. I will take the liberty of reading two paragraphs, both very short, from a well-known newspaper which has taken a great interest in this matter. They are as follows:—

'The case against the Partition Bill now pending before the Vicecoy's Legislative Council admits of being very briefly put. The right to claim partition is valuable, and the Bill takes it away, without sufficient reason, from a body of men who deserve special care and are of peculiar use to Governmcnt. That is all that we have to say against the revenue-officers.

"Then after some argument on the point it says:—

'The whole policy of the present landlord and tenant law in Bengal may be said to be to raise ordinary cultivators to the position of landowners, in the hope of extending

the economical and moral advantages which it has secured to those who occupy it; * * * * and it may fairly be asked whether one of the most important rights of a class so valuable is to be taken away, in order that the Courts may be relieved of occasional embarrassment. Fairly viewed, we think that the security of tenure of the smaller landlords in these and other provinces may be found to be more important than the case of a few revenue-officers.

"Now, I should be very sorry that the idea should get about, first, that this Bill in any way takes away the right of claiming a partition. It does nothing of the kind. Every owner of an undivided share has always had a right to claim a partition, and he has still that right. All the Bill says is this, that where the persons interested think that a partition would be more beneficially made by selling the property and dividing the money than by dividing the property in specie, and where the Court agrees with them, then the partition will take place in that particular form. And as for the statement that this is a Bill to contribute to the ease of the revenue-officers, the revenue-officers have nothing whatever to say to it, and, so far as the collection of revenue is concerned, it would require a completely different proceeding, and one which is very well known, to effect any change in connection with revenue. I am told that the paper has itself corrected this mistake. I can only say thay I have not seen the correction in the *Statesman;* but I wish it particularly to be understood that we in no way propose to limit the right to partition of any one who asks for it, nor do we in any way limit the power of the Court to grant it."

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 Report of the Select Committee on 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 taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the following section be added to the Bill as amended by the Select Committee, namely:—

"3. The tribunals mentioned in the proviso to section 19 of the Prisoners Act, 1871, shall be deemed to be British Courts for the purposes of this Act:

Certain tribunals to be deemed British Courts under Act.

"Provided that every warrant issued under this Act by any such Court shall be signed by that one of the presiding Judges thereof who is the 'officer of Government' mentioned in such proviso."

He said:—"When this Bill was before the Select Committee there were a good many proposals for amending the Prisoners Act of 1871 in connection with it, but the Select Committee came to the conclusion, and I think rightly, that this was a separate matter of its own and that the desired amendments in the Prisoners Act should be made, if at all, separately; but it has since been pointed out by the Foreign Department that we are legislating for the execution of sentences of certain British Courts, and that there are certain courts which might or might not be considered to be British Courts. These are courts which sit under the authority either of the Governor General in Council or of the Native Chiefs, one of the presiding Judges of which is an officer of Government, and it is obvious that there may very probably be some of these courts acting under the particular circumstances for which this Bill was introduced—that is to say, that such a court may very well sit in a State where there is no proper or convenient arrangement for carrying out a sentence of death: the Foreign Department has asked that we should definitely provide for these cases in this Bill, not that we should alter the Prisoners Act in any respect, but that we should say that, for the purposes of this Act, these courts should be treated as British Courts. That seems to me to be reasonable, and therefore I have consented to the proposal that the section which I have just now read to the Council should be added to the Bill."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill, as now amended, be passed.

The Motion was put and agreed to.

PETIT BARONETCY BILL.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill for settling the Endowment of the Baronetcy conferred upon Sir Dinshaw Manockjee Petit, of "Petit Hall", in the Island of Bombay, be taken into further consideration. He said:—"It will be in the memory of the Council that this Bill was taken into consideration some three weeks or a month ago, and that it was postponed at the instance of my hon'ble friend Sir Griffith Evans in order that certain objections which had been taken to sections 11 and 12 of the Bill as they then stood should be referred back to the Government of Bombay. They have been so referred back, and proposals have been made by Sir Dinshaw Petit and accepted by the Government of Bombay which I hope will also be accepted by this Council as a sufficient solution of the difficulty, and I now ask that the Bill be taken into consideration in order that those amendments may be laid before the Council."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER then moved that the following amendments be made in the Bill, namely:—

1. That the following proviso be added to section 11, namely:—

> "Provided always that the total amount of the stocks, funds and securities for the time being subject to the trusts of this Act shall at no time exceed fifty lakhs of rupees."

2. That section 12 be omitted and the following sections re-numbered accordingly, and that the reference to section 17 at the end of section 12 as so re-numbered be altered to section 16.

3. That in section 14, for the words "or any of them", in line 7, the words "concerning the said Mansion-house and premises" be substituted.

He said:—"I will take these amendments not exactly in the order in which I have read them, and will begin with the second of them, namely, that 'section 12 be omitted and the following sections re-numbered accordingly'. Section 12 of the Bill was the one which enabled further lands to be brought into settlement with the consent of the Local Government, and the main opposition was taken to that section. It was the section which my hon'ble friend Dr. Rashbehary Ghose moved should be omitted on a former occasion. Sir Dinshaw Petit is willing that it should be omitted, and I now, with the consent of everybody, propose that it should be excluded altogether from the Bill.

"The third amendment is 'that in section 14, for the words "or any of them" in line 7, the words "concerning the said Mansion-house and premises" be substituted', and is simply consequential upon that omission of section 12 which I have just moved. The reference to "any" of the trusts of this Act was necessary at a time when it was possible that there might be trusts of the Act applying to real estates brought in subsequently which that section was intended to cover. Now that it is clear that real estates are not intended to be brought in subsequently, it is necessary to show that section 14 will apply only to the Mansion-house and premises which are expressly settled by the Bill and not to any other real estate.

"As to section 11, which related to stocks, funds and securities, a compromise has been effected which I hope will be accepted. I myself could never understand the grounds on which the rule against perpetuities (which it will be remembered is merely a Judge-made rule, and not statutory law) was extended to personal estate. It was very properly made to avoid the possible effect of the Statute of Uses on settled estates, and the rule was so framed as to leave the maximum limitations of land under the Statute the same as they had been before the Statute was passed. Why that was extended to money I never could make out. But the rule has been in existence too long, and has been too persistently acted upon, to be shaken now, and it must be taken to be settled law in England, followed in India, and clearly without legislative authority it is no more possible to settle money in perpetuity than it is land. It is now proposed that, instead of giving Sir Dinshaw Petit and his successors the power of adding as much money to this perpetual settlement as they please, a limit should be put whereby the total amount shall not exceed 50 lakhs; that is, something less than double the amount which is immediately to be settled, and I do not think that if there is to be a limit to be put at all that this is an extravagantly high limit, and I hope that the Council will be satisfied that the limit is a sufficient one. You will remember that the odd 21 lakhs or so cannot be settled without the consent of the Local Government."

The Hon'ble SIR GRIFFITH EVANS said that he did not propose to trouble the Council with the question whether it would be desirable to alter the existing law so as to enable the enormous fortunes sometimes accumulated in money and stocks to be tied up for ever. He thought that the general feeling of most people was that it was far better that the fetter of the dead hand should not be allowed to paralyse the living in their dealings with the commercial capital of the world. The question before them really was simply this. There

were certain exceptional circumstances in which it had been the practice to tie up property for the purpose of the maintenance of certain dignities, and that class of exception was one which he need not say he in common with others approved of when it was acted upon, as in this case, under proper safeguards; but it had been usual hitherto that the sum should be fixed and should be ascertained and forthcoming at the time when it was settled. Of course, so long as the limit was fixed by legislative power he did not see that there was any insuperable objection to allowing further money to be brought into the settlement, but he wished merely to say that the other had been the usual rule, and that no case had been shown by Sir Dinshaw Petit why an exception should be made in his case and why further money should be put in; but at the same time, so long as a limit was fixed by legislative authority, he could not see that there was any great objection to it if they choose to do it, the only consideration being that it was not easy to see why an exceptional course should be pursued in this particular instance.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill, as now amended, be passed.

The Motion was put and agreed to.

CODE OF CIVIL PROCEDURE AND INDIAN LIMITATION ACT, 1877, AMENDMENT BILL.

The Hon'ble DR. RASHBEHARY GHOSE moved for leave to introduce a Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877. He said:—"As mentioned in the Statement of Objects and Reasons, land when sold in execution of decree seldom realises in this country anything like a fair price. Various explanations have been given to account for this evil, the wide existence of which cannot be disputed by any one familiar with the practical administration of the execution sections in the law. The uncertainty of the title, which there is generally no proper means of examining, the non-service or irregular service of the notices prescribed by the law, the absence of any reserve price in the conditions of sale, the difficulties frequently thrown in the way of the purchaser when he seeks to obtain possession, the litigation which generally follows the sale, have been variously assigned as creating a state of things hurtful alike to the interests of the debtor and his creditor and furnishing endless

opportunities for unlawful gain to speculative purchasers—a class who thrive at the expense both of the honest creditor who is only anxious to recover his debt, and the debtor whose property is frequently sold at an enormous sacrifice, and which it must be confessed he sometimes tries to get back by means which are neither honest nor well-advised. It is true we are sometimes told that the difficulties of a creditor, according to a famous saying of Sir Barnes Peacock, only begin after he has recovered his judgment. But I need hardly say that all judgment-debtors are not dishonest, and that some of them at least are more sinned against than sinning. Improvidence, it is true, is the badge of all their tribe, but there is a general impression, not perhaps wholly unfounded, that they are not seldom made to pay too dearly for their want of foresight and business habits. I need hardly add that the compulsory sale of land for the payment of debts is not generally regarded with much favour by the people, and the way in which it is frequently carried out is certainly not likely to reconcile them to such sales. The moment the hammer falls and the property is knocked down to the highest bidder, the gates—I will not say of justice, but of mercy—are shut on the unfortunate owner. He may nor redeem the land at any price, although he can apply to set the sale aside under a provision in the Code which is to him what the straw in the proverb is to the drowning man and is about equally useful. As a partial remedy for this grave evil, the framers of the Bengal Tenancy Act for the first time introduced a provision enabling a tenant to redeem his property by paying into Court within a certain period the amount of the judgment-debt, and in addition a sum equal to five per cent. of the purchase-money to be paid as a bonus to the purchaser. This provision seems to me to be a very equitable one, as the creditor gets his money and the purchaser a bonus of five per cent. on his purchase-money. The Select Committee on the Tenancy Act observe in their report:—

'Applications under section 311 of the Code of Civil Procedure to set aside sales cause expense and annoyance to the decree-holder and auction-purchaser. It is believed that they are often instituted merely with a view to recovering the tenure or holding which had been sold, and it is anticipated that, if a judgment-debtor is allowed to recover his property by depositing after the sale the amount decreed against him, the number of these applications will be considerably diminished.'

"Experience has amply justified the anticipations of the Select Committee by whom the provision was introduced into the Bengal Tenancy Act, and landlords have been enabled by it to recover their rents and tenants to redeem

their holdings when they have been sold at an under-value, and I do not believe that it has had the effect of deterring intending purchasers in any case. It is now proposed to extend this boon to all judgment-debtors, and I do not think I should be wrong in saying also to all execution-creditors, by adding a similar section to the Code of Civil Procedure. This has been done by section 2 of the Bill. Section 3 is only supplementary to the addition made by section 2, and the slight amendment of the Indian Limitation Act in section 4 has been rendered necessary for the purpose of prescribing the period within which the money must be paid in order to entitle the debtor to redeem his property.

"In conclusion I am bound to say that it is a great and unexpected satisfaction to me to find that the learned Judges of the High Court approve of the proposal to extend the provisions of section 174 of the Tenancy Act to other compulsory sales, as appears from the communication read to us by His Honour the Lieutenant-Governor of Bengal."

The Hon'ble SIR PHILIP HUTCHINS said:—"As I understand, the effect of the proposed Bill will be to give a *locus pœnitentiæ* to a person whose immoveable property has been sold in execution of a decree, and enable him to redeem it within a month by paying off the decree and compensating the purchaser with a bonus of what may be regarded as a year's interest on the purchase-money. I think the Government of India will welcome any measure which has for its object the mitigation of the rigidity of the law of sale for debt and may tend to prevent the dispossession of an indebted agriculturist. The Council are aware that a Commission sat last year to enquire into the working of the Dekkhan Agriculturists' Relief Act, and the Government of India are only waiting for the Bombay Government's views on the Commissioners' report to again take up the whole subject. So far as the remedies to be applied have been formulated, they are quite consistent with the proposals now made by Dr. Rashbehary Ghose. Meanwhile it will be a great advantage to us that these proposals should be considered by Local Governments and the public, and that we should be made aware how far they are generally accepted."

The Motion was put and agreed to.

The Hon'ble DR. RASHBEHARY GHOSE also introduced the Bill.

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The Hon'ble DR. RASHBEHARY GHOSE 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 Thursday, the 16th March, 1893.

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

CALCUTTA;
The 17th March, 1893.

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