

*Thursday,
1st February, 1894*

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

LAWS AND REGULATIONS

Vol. XXXIII

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

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Council Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 1st February, 1894.

PRESENT :

His Excellency the Viceroy and Governor General of India, P.C., LL.D.,
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, K.C.B., G.C.I.E., V.C.

The Hon'ble Sir A. E. Miller, K.T., 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. Westland, C.S.I.

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

The Hon'ble Dr. Rashbehary Ghose.

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 Gangadhar Rao Madhav Chitnavis.

The Hon'ble H. F. Clogstoun, C.S.I.

The Hon'ble W. Lee-Warner, C.S.I.

The Hon'ble P. Playfair.

The Hon'ble Maharájá Partab Narayan Singh of Ajudhiá.

Before the list of business was proceeded with, His Excellency THE PRESIDENT made the following remarks :—

“I understand that it is not the custom of the Council for anything to be said outside the regular course of business, but I cannot take my seat here for the first time without, on my own behalf, asking from you that indulgence which my predecessor bespoke for me last week in words which merit my warmest acknowledgment. I feel conscious that for some time I shall

34 REMARKS BY THE PRESIDENT; QUESTION AND ANSWER;
AMENDMENT OF LAND ACQUISITION ACT, 1870.

[The President; Gangadhar Rao Madhav Chitnavis; Sir Antony MacDonnell; Sir Alexander Miller.]

have to make many calls on your forbearance, and I should like you to remember that, if that is so, it will not be for want of any effort on my part to so manage the affairs of the Council that they may be transacted with all regularity and order and with a due regard to the despatch of business."

QUESTION AND ANSWER.

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS asked :—

Will the Government, in view of the backward state of the Central Provinces, be pleased to draw the attention of the Local Government to the small percentage of its income that is spent on colleges, and point out to it the advisability of giving increased aid to the local colleges to enable them to improve and strengthen the professoriate and extend their sphere of usefulness ?

The Hon'ble SIR ANTONY MACDONNELL replied :—

"The Government of India will forward the Hon'ble Member's question to the Chief Commissioner, Central Provinces, for such remarks as he may wish to offer; and on receipt of them will consider whether any orders are called for in the direction indicated by the latter part of the Hon'ble Member's question."

LAND ACQUISITION ACT, 1870, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Reports of the Select Committee on the Bill to amend the Land Acquisition Act, 1870, be taken into consideration. He said :—

"It will be in the knowledge of Hon'ble Members present—or at least of some of those present—that the question of amending the Land Acquisition Act is one which has been before the Government of India for something over three years. Speaking generally, there were three points on which the law as it stands was considered to be specially unsatisfactory—one, that in the absence of any single claimant the Collector is unable to proceed to make an award, and is obliged, utterly irrespective of whether there is any disputed question to determine or not, to refer the matter to the Court; and I have been told on more than one occasion by experienced District Judges that they had found it necessary to break the law in order to avoid the great hardship of compelling persons, whose rights were of very small value, to appear at an expense out of all propor-

[1ST FEBRUARY, 1894.] [Sir Alexander Miller.]

tion to their interest, or, in the alternative, of inflicting serious loss upon all the others.

"It was also objected—and it was found to be a serious objection—that the principle of assessors, which in the first instance might be supposed to be a most reasonable one when you were determining what the value of land should be, worked extremely badly; that the assessors on both sides, instead of being judges of value, were simply partisans; and that, instead of assisting the Judge in coming to a right conclusion, they were merely an expensive machinery of the Court.

"The other point, and one which was urged with a good deal of force, I think, from Bombay, was that under the Act as it stands there is no provision for anything except making a money payment to the persons whose land is taken, and that there are many cases in which it would be more beneficial for the public taking the land and for the parties whose land is being taken that they should get other land in the place of it; and it was thought desirable to introduce a power, particularly in regard to such cases as temples and other places of worship, to substitute for the land taken other land, instead of handing over a sum of money which was neither so fitting a compensation nor so securely devoted to the purposes of the trust.

"Those were, I think, the three main points on which discussion took place, and after very lengthy discussion and frequent noting a Bill was introduced two years ago, of which the general principle was to enable the Collector to make an award on such materials as were properly before him in the first instance, whether the parties appeared or not, leaving any party who objected to the award to challenge it by an ordinary civil suit. When that was circulated for opinion a great many objections were taken to the procedure by civil suit, and accordingly when the Bill was in Select Committee last year the Hon'ble Mr. Woodburn, in whose charge it then was, proposed to substitute this principle, that the Collector might proceed to make the award unless any one of the claimants objected, but that, if any one of the claimants objected, the matter should be referred to the Court. That was accepted by the Committee, has, I think, met with general acceptance since, and is the basis of the Bill now before the Council. It only came out from Committee about a fortnight before the end of the last Calcutta session, and when it was proposed then to take it into consideration it was objected, on behalf of the Chamber of Commerce, that the Bill had been considerably altered in its

[Sir Alexander Miller; Mr. Lee-Warner.] [1ST FEBRUARY,

course through the Committee, and that it was desirable that there should be more time to consider what the effect of the changes was; and on that account it was postponed until this present session instead of being passed, as it otherwise would have been in the ordinary course, at the end of the last session here. Since then it has been, as the Council is aware, referred back to the Committee in consequence of some papers of some importance which were received quite lately.

"The Committee have gone through the Bill again; the changes now made in the Bill as amended by the Select Committee last year are not very numerous, and I think they will all be found to be in the direction of improvement. The Committee have endeavoured, as far as it possibly could, to give effect to all the serious objections which had been taken to the Bill as it stood, and, although there are a number of amendments of more or less importance of which notice has been given for this meeting, I hope that the Bill will be passed through the Council substantially as it has come from the Committee."

The Motion was put and agreed to.

The Hon'ble MR. LEE-WARNER moved that in section 3 of the Bill, as amended, for clause (f) the following be substituted, namely:—

"(f) the expression 'public purpose' includes the provision of village-sites in cases where the Local Government shall declare by notification in the official Gazette that it is necessary to make such provision: and".

He said:—"I shall endeavour to support the amendment which stands in my name by as brief an explanation as possible. We have here a Bill which would enable the Local Government, as trustee for public interests, to acquire private property in a village for a public purpose—say a village school or dispensary—provided that it was able to declare that the object was public, and gave proof of the public need by contributing funds towards the compensation paid to the lawful owner for his compulsory dispossession. But suppose the village-community needed something far more important to every single member of it than a school or a dispensary, namely, a new village-site. Take the practical case put by the Government of Bombay in January, 1885: 'It has been found necessary in Khandesh to move a village from a dangerous position on the bank of river to a safer locality, but the only land suitable cannot be obtained without recourse to the Act,'—then no relief can be given to the anxious householders, whose women and children are nightly racked with the fear of a watery death, unless Government can certify that in the particular district it is

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[Mr. Lee-Warner.]

customary for the Government to make such provision. I presume that, when the Legislature imposes a condition, a special obligation devolves on the executive to interpret that condition strictly. It might happen that custom could not easily be proved in the district. In the first place, the existing Act precludes the establishment of any custom, since the Bombay Government inform us that they are advised that the law as it stands does not admit of relief. Again, it might be that the contingency had never before arisen. This might be specially the case where new irrigation works have filled a river bed, as I recollect was the case in some land I acquired for Government on the banks of the Nira River in the Poona District, and altered the conditions of the riparian village-sites. Or, again, a new district may have been added to the empire, and no occasion yet arisen for providing an addition to a village-site described by the Deputy Commissioner of Bassein as bounded as follows:—‘In front a river, at one end a kyaung, at the other a graveyard, and paddy fields behind. As the population grows the village becomes more and more crowded, and the surroundings more and more insanitary, especially in the case of erosion, since the only direction for expansion is behind.’ But I need not weary the Council with the difficulties which might arise in practice in the way of a conscientious declaration as to custom.

“I proceed to consider the objections to the grant of the powers which the Government of Bombay, Sir Dennis Fitzpatrick and the Chief Commissioner of Burma have recommended. They refer, I understand, to the general principle of the policy of limiting the power of the executive to interfere with private property, and to the consideration that the sacred rights of property would be invaded, in the case put, for the benefit of a small community. As to the first, whilst admitting that compulsory acquisition should be limited, I submit that in regard to village-sites the very nature of the case secures exceptionally strong and self-acting restrictions which would protect the grant of the power sought from abuse. In the first place, Government will have to find the money for the acquisition, and a strong conviction of the necessity for it is ensured by that obligation. In the next place, the expense of the exodus will fall upon the villagers, who not without the gravest necessity will uproot their temple, forsake their houses, and move away from associations most sacred to them. When they have incurred this expense, they will probably require a new village-chavdi or village-hall to which they will have to contribute, and one way or another it is certain that the change of a village-site will never take place without much hardship and regret. I submit then that there is no

[*Mr. Lee-Warner ; Sir Alexander Miller.*] [1ST FEBRUARY,

justification for apprehending that the powers, if granted, will be abused. With the other argument I may be briefer. To the simple village folk, who never leave their village except for the day's toil or for the occasional visit to the market town, the highest conception of public purpose which can occur to their minds must be the village-site. Whose interests are to be set against the paramount necessity for change or extension where the very safety of the people and their permanent sanitary welfare are concerned? One of themselves at the best, and more probably an absentee money-lender, who has acquired a property in the village, will be required to receive full value for the surrender of his field. If after the passing of this Act I were to find myself in a Dekkhan village, with the whole community begging me to obtain from Government a new site for them when their own village was falling into the river, I do not know what arguments I could find to justify to their common sense a refusal to take up land for a new village-site. I trust that the Council will save me from ever being placed in such a dilemma, and the Local Governments from the trouble and possible risk of searching for proof of custom.

"In conclusion, I beg to explain that I was unable to press this amendment on the Select Committee, since I joined it after the section had been disposed of. Moreover, the Committee gave such patient attention and large support to other amendments proposed by me that, when I was informed that the section had been drafted as it stands after full consideration and not without a division of opinion, I felt that the time for appeal to the Select Committee was passed, and that it was my duty to submit my amendment to Your Excellency's Council."

The Hon'ble SIR ALEXANDER MILLER said :—"On this point I can really only speak personally for myself. It was not one of the points before the Government of India at the time when the Bill was prepared ; in fact, I do not think it had ever been thought of then, but when it came before the first Select Committee it certainly was considered at very great length by that Committee and argued very minutely ; and the provision which you now find in the Bill was accepted by that Committee as a fair compromise, and as enabling the provision of village-sites, in the only case in which, in the opinion of the Select Committee, it was fair to provide them ; that is to say, it was shown that there were cases in which the Government were in the habit of providing the sites and in which, in fact, the people looked to the Government to provide sites when necessary, and the Committee said that it was reasonable that the Government should in those cases have the power to provide sites compulsorily if

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[Sir Alexander Miller; Mr. Clogstoun.]

they thought fit. The Committee were strongly of opinion that, ordinarily speaking, it is a man's own business to find his own house, and not to take his neighbour's land for the purpose unless his neighbour is willing to sell it. Accordingly the Committee distinctly refused permission to insert the words 'village-sites,' without qualification: the question was raised again before the second Select Committee; it was not discussed at the same length, but Mr. Lee-Warner did raise it; and the Committee, by a majority, I think, of four to one, came to the conclusion that the provision as it stands in the Bill went as far as it was reasonable to go in the direction of taking the land of one man compulsorily for the benefit of another for what cannot possibly be called a public purpose: and, therefore, speaking entirely for myself and in consequence of what has passed in the Select Committees, I must ask the Council to adhere to the words as they stand in clause (f). I may add that I offered personally to support the amendment provided that words were introduced which threw the whole expense of working the provision upon the Government, for the purpose of preventing Government from merely being used as a hand by which the villagers or any of them might manage to get possession of a site which they liked better than their own at the expense of some other individual. Mr. Lee-Warner thought that that would not go far enough to meet his purpose, and therefore that proposal may be treated as non-existent."

The Hon'ble MR. CLOGSTOUN said:—"I beg to second Mr. Lee-Warner's amendment. The question so far has been discussed as relating to rights in which only a few villagers are concerned, but in the Madras Presidency the question has arisen as to how to provide house-sites for the *Pariahs*, who form a very large proportion of the population of Madras. They represent some 6 millions out of a population of 36 millions. The difficulty of providing houses for *Pariahs* in certain districts came up before the Government the other day, and the Government decided that, if necessary, they would take steps to acquire sites for these *Pariahs* under the Land Acquisition Act. The section as it stands now in the Bill would in most districts in the Madras Presidency give the Local Government power to provide village-sites for *Pariahs*, because in the Madras Presidency in most districts it is the practice of the Government to provide village-sites; but the needs of the *Pariahs*, or of any other similar large section of the population, may be equally great in other presidencies as in Madras, and where the Government is not in the habit of providing village-sites the section as it has been drawn would preclude them from doing so in any such places. I think all Governments ought to have the power to give these sites. Most districts in Madras are under the raiyatwari system, and in

[*Mr. Clogstoun ; Dr. Rashbehary Ghose ; Sir Antony MacDonnell ; Mr. Westland.*] [1ST FEBRUARY,

these districts, therefore, the Government would have the power, without this section, to give sites because the waste-land is all their own and there is generally a sufficiently large amount of waste-land from which to give the sites. But there are other districts almost entirely under the zamindari system, and the section as it stands would preclude the Government from granting sites in such districts. For these reasons I am prepared to support Mr. Lee-Warner's amendment."

The Hon'ble DR. RASHBEHARY GHOSE said :—" As one of the members of the Select Committee I am bound to say, as my learned and hon'ble friend Sir Alexander Miller has already pointed out, that the amendment proposed by the Hon'ble Mr. Lee-Warner was solemnly discussed in Committee, and we came to the conclusion, after thorough discussion, that the power of the Local Government to acquire land for village-sites should be limited only to those cases in which it has been usual or customary for the Local Government to provide such sites. In Bengal, the province with which I am most familiar, it is by no means an unusual occurrence for villagers to be obliged, owing to the action of the rivers, to change their village-sites; but the Bengal Government has never asked for any power of the kind proposed by the Hon'ble Mr. Lee-Warner, and I am not aware that any difficulty has been practically experienced by the villagers in acquiring land at a fair price for village-sites when the old sites have been washed away. I regret, therefore, that I cannot accept the amendment proposed by the Hon'ble Member."

The Hon'ble SIR ANTONY MACDONNELL said :—" I would only desire to say, with reference to the remarks which have fallen from my hon'ble friend Dr. Rashbehary Ghose, that the thorough discussion to which he refers occurred in the first Select Committee and before I had the honour of being a member of the Committee. I merely make this remark with the view of explaining that I now claim the liberty to vote upon the question."

The Hon'ble MR. WESTLAND said :—" I wish to submit to the Council a brief remark on this subject, namely, that to lay upon the Government the duty of providing village-sites in places where it is not customary to do so is to lay upon it a new duty which may involve a very serious expenditure in the future.

" If the provision does not exist, there are very many ways in which the villagers can find sites for themselves when their villages have been swept away

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[*Mr. Westland; the Lieutenant-Governor.*]

by erosion. It certainly has, as my hon'ble friend Dr. Rashbehary Ghose has mentioned, been customary in Bengal for villagers to find sites for themselves. It is obvious that, if a provision of the law were now to enable a Local Government to provide sites for these villagers, it would be in their interest to move the Local Government in the direction of providing such sites at the expense of the Government, even in cases in which without such a provision they would have found means, as they have done for centuries, to acquire sites without assistance; but to lay upon the Government what may prove an extremely expensive burden, and certainly is a new one, namely, that of providing village-sites in any case in which the Local Government thinks it desirable, is a measure to which I should have the strongest objection."

His Honour THE LIEUTENANT-GOVERNOR said:—"With reference to what has fallen from my hon'ble friend Dr. Rasbehary Ghose, to the effect that noinconvenience has been felt in Bengal by the absence of any such provision as this, I should like to say that cases have come to my knowledge in which very serious difficulty has been felt from the absence of this provision. Cases have occurred within my experience in which large landholders control the entire land round some particular village or station, which is a growing and increasing one, in which they exercise great, and sometimes undue, authority over the inhabitants by refusing to allow them to buy land for the sites of their houses, and by forcing them to accept leases on terms which the persons concerned think to be unduly severe. It would be convenient in many cases if sites could be provided under this section, for instance, for *amlas*, a class of ministerial officers attached to our Courts in sub-divisions. It has been brought to my knowledge that in some instances these officers have found it impossible to buy places to live in, and have been obliged to accept leases and grants of land framed in a manner which seemed to place them under liabilities and obligations to the landowners, which obligations might be thought to be liable to act in a manner prejudicial to the performance of their public duties. I would further urge upon the Council as a general question whether the language of the section as it now stands is suitable, and whether the phrase that is used giving the Government power to act only where it is customary to do so is one under which action can conveniently and properly be taken. A Local Government decides, under circumstances that are brought to its knowledge, that it is necessary to provide sites for the expansion of a village or town, or for the provision of houses for its own servants. Who is to decide whether it is customary or not? If the Local Government chooses

[*The Lieutenant-Governor; Mr. Lee-Warner.*] [1ST FEBRUARY,

to say it is customary, who is to put it to the Local Government's conscience and say 'Are you stretching your powers or are you acting in accordance with the spirit of the law?' I submit that this is a position in which the Local Government should not be placed, and it ought not to be possible for the Civil Court to interfere, as I conceive it might do, and to say that Government must prove the fact of the custom, or else that it is acting in opposition to the law.

"On these grounds I wish to support the amendment brought forward by my hon'ble friend Mr. Lee-Warner."

The Hon'ble MR. LEE-WARNER said:—"I should like, in conclusion, to make one remark. It is natural that the Hon'ble Member in charge of the Bill and the Hon'ble Mr. Westland should be anxious to avoid the expense to Government involved in the proposal which I have brought forward. I may explain, however, that it was partly with the same motive that I was unable to accept the suggestion made by the Hon'ble Member in charge of the Bill that the words "provided that the cost is wholly met from public funds" should be added; because I felt that, if the villagers came forward and said 'We are in such terror of remaining in this village that we are willing to bear part of the cost of providing a new site,' it would be contrary to public policy to refuse such a contribution for this purpose. All we contend for is to give the Local Government a power which it does not at present possess, and that it does not possess this power the papers before the Council, as, for instance, the report of the Collector of Bijapur, sufficiently show without falling back upon the letter which the Bombay Government wrote in 1885 to the Government of India, in which they pointed out that they were legally advised that under the law they could not take up a village-site. The Government of India then replied that the matter would be looked into and, if possible, provided for when the Act was under amendment. That pledge I now ask the Council to redeem.

"The Hon'ble Member, who seemed to think that no practical difficulty had occurred, must have overlooked what the Collector of Bijapur says:—

'One of the occasions on which the insufficiency of the old Act was most felt was the necessity of providing new village-sites in cases where the existing site has been washed away, and great difficulty has often been experienced.'

"We must bear in mind that all that this amendment now proposes is to remove that objection. The clause would be permissive, not obligatory; it would still rest with the Government to decline to provide money for the

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purpose, and if they declined then there would be no declaration that any village-site was required. Custom may very likely be established in some cases, but my object is to avoid any undue straining of the clause inserted in the Bill, which makes it necessary to declare that it is customary to provide village-sites in the district. The Hon'ble Dr. Rashbehary Ghose has told us that in this part of India, where there are large zamindari tenures, the villagers provide their own village-sites, and that it is not necessary to interfere; but in Bombay, where every single acre of land is taken up, and where a village-community, if it moves at all, must move *en masse*, the Local Government has represented its difficulties, and asked for powers which I trust that the Council will give."

The Motion being put, the Council divided :—

<i>Ayes.</i>	<i>Noes.</i>
The Hon'ble Mahārājā Partab Narayan Singh of Ajudhiā.	The Hon'ble Mr. Playfair.
The Hon'ble Mr. Lee-Warner.	The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble Mr. Clogstoun.	The Hon'ble Mr. Buckingham.
The Hon'ble Dr. Lethbridge.	The Hon'ble Mr. Stevens.
The Hon'ble Sir Antony MacDonnell.	The Hon'ble Fazulbhai Vishram.
The Hon'ble Sir Charles Pritchard.	The Hon'ble Sir Griffith Evans.
The Hon'ble Lieutenant-General Brackenbury.	The Hon'ble Dr. Rashbehary Ghose.
His Excellency the Commander-in-Chief.	The Hon'ble Mr. Westland.
His Honour the Lieutenant-Governor.	The Hon'ble Sir Alexander Miller.
<hr/>	
<i>For the amendment</i> . . . 9	<i>Against the amendment</i> . . . 9

His Excellency THE PRESIDENT gave his vote to the provision of the Bill as appended to the Report of the Select Committee. The amendment was accordingly negatived.

The Hon'ble FAZULBHA I VISHRAM moved that in section 5 of the Bill, as amended, for the words "Collector or other chief revenue-officer of the district, and such decision shall be final," the words "Court as provided in section 18" be substituted. He said:—"In support of this I wish

[*Fazulbhai Vishram*; *Sir Alexander Miller*; *Mr. Stevens*.] [1ST FEBRUARY,

only to observe that the finality of the Collector's award contemplated by section 5 of the Bill will entail great hardship upon the parties interested. It seems to me that for the purposes of acquiring land for public purposes the Collector acts as a mere agent to Government; and to vest such an agent with such absolute powers may lead to failure of justice. For under the present procedure, when a case is referred by the Collector to the Judge, the claimant stands in the position of a plaintiff and the Collector that of the defendant, and to constitute the defendant in a suit as a Judge (as proposed by section 5) will be something like an anomaly. To vest the Collector with absolute power of determining the damage, which may sometimes be as serious a matter as the determination of compensation and apportionment, and to expect a Collector who has absolutely no training in judicial work to perform the functions of a Judge, seems to me to be open to objection."

The Hon'ble SIR ALEXANDER MILLER said :—"I wish to say that this section deals only with the case of certain small amounts for damage consequent upon the entry upon the land; to make it the subject of a regular suit before a Judge seems to be very unnecessary, and we thought that quite sufficient protection was given to the claimants by providing that these claims should go to the chief revenue-officer of the district in person, and not be decided merely by the person acting as Collector. The actual Collector of the district is not to be at liberty to delegate his authority in a case of this sort, and we thought that it was much more reasonable to give a summary procedure before him in such a small matter than to send it to the Judge, who no doubt is the proper authority to determine the value of the land itself, when the Collector's award is objected to."

The Hon'ble MR. STEVENS said :—"I wish to remark that this provision is merely for the rapid disposal of such claims as may be made for damages under section 4, that is, damages incurred in entering upon the land. The Bill goes beyond the existing law. Under the existing law such a matter is decided by the person who is called a Collector, but who in most cases is a Deputy Collector. The Select Committee propose that, instead of the case being decided by him, the ultimate decision should be made by the chief revenue-officer of the district, and therefore the Bill as it now stands gives more security than the present law."

The amendment was put and negatived.

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[*Sir Alexander Miller; Mr. Playfair.*]

The Hon'ble SIR ALEXANDER MILLER moved that in section 6, proviso, of the Bill, as amended, the words "out of" where they occur the second time (in line 5) be omitted. He said:—"The amendment is a purely formal one and arises in this way. The Bill as it originally came out of Select Committee provided that—

'no such declaration' [of intended acquisition] 'shall be made unless the compensation to be awarded for such property is to be paid out of public revenues, out of some fund controlled or managed by a local authority, or by a Company.'

"Then, in deference to a representation from Bombay, the words 'wholly or partly' were put in before the words 'out of public revenues.' But the words following, 'out of some fund,' read grammatically, would imply that 'wholly or partly' should be confined to 'public revenues,' whereas they were intended to apply also to 'some fund controlled or managed by a local authority.' In order to make that clear I propose the amendment in question."

The amendment was put and agreed to.

The Hon'ble MR. PLAYFAIR moved that in section 9, sub-section (4), of the Bill, as amended, after the words "in a letter addressed to him" the words "at his residence or place of business" be inserted. He said:—"The amendment I have the honour to propose is intended to facilitate the working of the Act by securing convenience to persons whose property is situated at a distance from their ordinary place of residence, and who might not receive early notice of the intention of Government to acquire such property for public purposes. It not infrequently happens in India that the post office receives letters for delivery with no fuller directions than the town, sometimes only the district, in addition to the name of the person, and there must always be a certain amount of risk in the expeditious as well as in the safe delivery of such letters. Without the insertion of the amendment I have the honour to propose it would be possible for the office of the Collector to carelessly issue notices under this Act without taking the trouble to ascertain and direct them to a correct address, and I have the honour to submit that such a contingency should, as far as possible, be guarded against."

The Hon'ble SIR ALEXANDER MILLER said:—"The only difficulty about that is that it is quite possible that the man's private address would not be where the notice ought to be given. He might have directed that the notice should be sent to him at some other place, say, at his solicitor's office, and it would be

[*Sir Alexander Miller ; Gangadhar Rao Madhav Chitnavis ;* [1ST FEBRUARY,
Dr. Rashbehary Ghose.]

necessary, I think, to enlarge the description so as to cover such cases. But is it not the fact that a letter sent to him by post must necessarily, under the Code of Civil Procedure, be addressed to some place where he ought to be found? I would propose that the amendment be put in this way, that for the words 'at his residence or place of business' the words 'at his last known residence, address or place of business' should be substituted."

The amendment, with the further amendment suggested by the Hon'ble Sir Alexander Miller, was put and agreed to.

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS moved that in section 10, sub-section (1), of the Bill, as amended, for the words "for the year next preceding the date of the statement" the words "for three years next preceding the date of the statement" be substituted. He said:—"The amendment proposed by me is with a view to enable the Collector to come to a better and more accurate determination of the award. A statement giving the rents and profits derived from the land for one year preceding would, I respectfully submit, be a very unsafe guide in such matters. The year preceding may be one exceptionally good or one exceptionally bad, and to make a calculation for the sake of award on the strength of a statement of profits received during such a year may at all events happen to be inaccurate and unfair to either side. It is thus, I believe, essentially necessary, in order to remove misunderstandings in future, to require the parties to furnish a statement with profits and rents received or receivable during the preceding three years. I have thus ventured to place this amendment before you, and I hope it will meet with the approval of Your Lordship and the Hon'ble Members of the Council."

The Hon'ble DR. RASHBEHARY GHOSE said:—"I venture to think that the Hon'ble Member who has proposed this amendment is labouring under a slight misapprehension as to the true scope of section 10 of the Bill. All that that section says is that the Collector may call upon the claimant for a statement of the rents and profits received or receivable on account of the land for the year next preceding the date of the statement, and sub-section (2) says—

'Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

1894.] [*Dr. Rashbehary Ghose; Lieutenant-General Brackenbury; Sir Alexander Miller.*]

“ There is no objection to a claimant, if he chooses to do so, making a statement of the rents and profits not only for three years but for any number of years, and I should think that the Collector would be only too glad to have such a statement before him. If, however, the amendment is carried, the Collector would be entitled to call upon the claimant to furnish a statement for a longer period, a requisition which he might in some cases not be in a position to comply with, and he would then lay himself open to very serious penalties. I venture to think, therefore, that the proposed amendment is not likely to serve any useful purpose; on the contrary, it would impose upon the claimant an obligation which he might find it difficult in some cases to discharge to the satisfaction of the Collector.”

The Hon'ble **LIEUTENANT-GENERAL BRACKENBURY** said:—“ I support this amendment. The object, as I take it, of section 10, sub-section (1), is to enable the Collector to have an estimate of the rents and profits ordinarily received or receivable from the property in question, in order that he may be able fairly to assess a claim for compensation. I do not think that it would be possible to assess that claim for compensation on the rents and profits received for one year only. Three years is the period taken in Government estimates; we consider that that is a fair amount of time upon which to base an estimate of any real value, and I think that three years ought to be taken in this case.”

The amendment was put and agreed to.

The Hon'ble **SIR ALEXANDER MILLER** moved that in section 18, sub-section (1), of the Bill, as amended, after the word “ compensation ” where it first occurs, the words “ the persons to whom it is payable ” be inserted. He said:—“ It was agreed by the Select Committee that the words ‘ the persons to whom it is payable ’ should be introduced into this sub-section in order to bring it into conformity with section 30, and we have actually mentioned in the Report of the Select Committee, paragraph 10, that—

‘ the object of the slight addition made by us to section 18 (1) is to make the provisions of that section as to disputes concerning apportionment the same as those of section 30 on that subject.’

“ It was quite by an accident that that addition has not been made, and I now move to insert it.”

The amendment was put and agreed to.

[Dr. Rashbehary Ghose.]

[1ST FEBRUARY,

The Hon'ble DR. RASHBEHARY GHOSE moved that in the first clause of section 23 of the Bill, as amended, for the words "market-value" the word "value" be substituted. He said:—"I would ask permission to slightly modify the language of the amendment, because I find that the words 'market-value' occur in more places than one in section 23, and the amendment ought therefore to run as follows :—

that in section 23 of the Bill, as amended, for the words 'market-value', wherever they occur, the word 'value' be substituted.

"The ground on which I ask that the word 'value' should be substituted for 'market-value' is that the section as it now stands assumes that everything which may be acquired under the Statute for public purposes has got an ascertainable definite market-value; but there are things of which you cannot say that they have got any market-value: a church, for instance, or a temple. I am not putting merely a hypothetical case, for an instance actually occurred recently in the Presidency of Madras in which the question arose as to whether or not the owner of two very ancient temples was entitled to any compensation under section 24 of the present Act.

"The case came before the High Court, and a Division Bench of the High Court decided that the owner was not entitled to anything because, as Mr. Justice Shephard said, the temples did not possess any market-value. That decision was confirmed on appeal to the Privy Council, and their Lordships in delivering judgment said :—

'The case was heard by Mr. Justice Wilkinson and Mr. Justice Shephard. As regards the temples and carvings, they both agreed with the District Judge that they have no market-value. It is highly improbable that they should have any. No evidence was offered to shew that there is any; and Mr. Justice Wilkinson adds that the claimant's counsel did not assist the Court by suggesting any price which might be offered as a fancy price. Their Lordships find themselves in a like position with the High Court, and all they can do is to express agreement with the Courts below on this point.'—*Law Reports, Indian Appeals, Vol. 20, p. 87.*

"I suppose no evidence could have been offered to show that there is any market-value for temples, either in Madras or in any other part of India. The result, therefore, was that the owner of the temples was expropriated, and it was held that he was not entitled to *any* compensation. In the English Land Clauses Act the term used is not 'market-value' or market-price, but

1894.] [Dr. Rashbehary Ghose; Sir Alexander Miller.]

'value,' and the law on this point in England is summed up in a well known text-book on the subject. At page 114 of *Cripps on Compensation* it is said:—

'The value to the owner can be ascertained either by a valuation of the lands taken with the addition of compensation for incidental injury, or by what is known as the reinstatement principle. In either case, the test of compensation is value to the owner. The difference arises in the method to be adopted in ascertaining this value. In a majority of cases, the value to the owner may be fixed by the value of the property taken, with the addition of compensation for incidental injury; but in some cases the value so ascertained would not be the value to the owner, and then the principle of reinstatement should be applied. This principle is that the owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises or lands taken by premises or lands which would be to him of the same value. It is not possible to give an exhaustive catalogue of all cases to which the principle of reinstatement is applicable. But we may instance churches, hospitals, houses of an exceptional character, and business premises in which the business can only be carried on under special conditions, or by means of special licenses.'

"In order to obviate any possible misconception I propose to add the following proviso in the shape of an explanation to the amendment in the paper:—

"'Value' shall mean market-value when the property has a market-value, but in cases where the property has no market-value the value shall be deemed to be such a sum as will enable the owner to replace the premises or lands taken by premises or lands which would be to him of the same value.'

"The Madras case illustrates the necessity for amending the language of the law as it now stands. A somewhat similar difficulty would arise in dealing with mansion houses in the country under the Act. There is no market for such houses, however expensive and costly in the interior of the country. I submit, therefore, that there can be no harm in adopting the word 'value,' qualified as it is by the explanation which I am going to add to it, for the words 'market-value' which are now to be found in the Bill."

The Hon'ble SIR ALEXANDER MILLER said:—"I should not object to the amendment on the paper at all myself. I think that, wherever an article is marketable, the market-value is the proper test of its value. But it is true that there may be cases—in fact, there has been one in which the

[*Sir Alexander Miller ; Mr. Lee-Warner.*] [1ST FEBRUARY,

article had a very considerable value in which was decided that it had no market-value. No particular harm was done in that case, because the temple concerned was merely taken for the purpose of preserving it, and it was just as valuable to the people after it was taken as it was before. But, suppose it had been taken for the purposes of a railway, it would, I think, be rather a hard thing to say that it had no value, and therefore that it was not to be paid for because it had no market-value and was not a source of income to the owner, and, therefore, quite irrespective of the contention of the Hon'ble Member, I think the word 'value' is a better word to use in this Bill than the words 'market-value'.

"I should object, however, to the proposed explanation, because I see great objections to any attempt to define 'value' or 'market-value.'"

The Hon'ble MR. LEE-WARNER said:—"I think that although this amendment has the support of the Hon'ble Member in charge of the Bill, yet it is one of such widespread importance, and affects so much the whole principle of this Bill, that it is rather dangerous at the last moment to touch this very debateable phrase 'market-value,' merely because in a particular instance the application of market-value to the acquisition of a particular temple proved difficult. If the Council have read the various discussions and reports of the Select Committees, it will be remembered that on no subject has there been greater difference of opinion than on this of market-value. It was at first attempted to define it, and then, in deference to strong representations for and against that course either side, the phrase 'market-value' was not defined. We have got the word in the present Act as it stands. During the many occasions that Act has been applied, certain ideas and rulings of the Courts have collected round the expression 'market-value.' At any rate it is a more precise explanation of what is required than the vaguer word 'value.' I am not sure that, if we had no other property to take up for a public purpose except temples, it would be necessary to change the phrase. I remember a particular case in which a temple was required not for preservation but for submersion in a large reservoir. The villagers declined to sell it, not because it was of no value, but because it was impossible for them to assess the value, and they would be no parties to the sale of so sacred an edifice. It devolved upon me to settle the case, and I simply ascertained by inquiry what the cost of erecting the temple had been. I also was able to assess with perfect ease the value of the land on which the temple stood, and, having addressed the Government on the subject, I was permitted to place in deposit at the treasury, to be paid on the call

1894.] [*Mr. Lee-Warner; Sir Griffith Evans; Sir Antony MacDonnell.*]

of the village-headmen, the sum of money which I had awarded. In due course of time they purchased another site, the temple was removed and a new temple set up where it was required. The case, however, is so very rare that it seems to me that it would be dangerous at this stage to go and uproot a phrase which has been deliberately adopted throughout the Bill, and to unsettle the whole question of 'value' and 'market-value' which it was hoped was at last laid at rest by the manner in which this Bill was drawn up. For this reason I should be sorry to support the alteration of a phrase in reference to a matter in which there has been so much discussion."

The Hon'ble SIR GRIFFITH EVANS said that, in the case referred to by the Hon'ble Mr. Lee-Warner, he had not committed the injustice of taking the temple for nothing, as he might have done, but had made a representation to the Local Government and settled the question of compensation to the owner. It was not, however, everybody who would be so tender-hearted. This went to show there was need of amendment in the law. He, however, quite agreed with the Hon'ble Member that it would be unsafe to alter important words with regard to which there had been so much discussion, and so many decisions, at this late stage. If new words were adopted, he feared that there might be a great deal of litigation over again. He would not be inclined therefore at this stage of the Bill to alter the words, unless the proviso which his hon'ble friend Dr. Rashbehary Ghose had suggested, limiting the change to cases where there was no market-value, were adopted. If such an explanation were adopted, it would remove any objection of the kind the Hon'ble Mr. Lee-Warner had put forward. It would leave the law exactly as it was with regard to every case save the exceptional cases where there was no market-value.

The Hon'ble SIR ANTONY MACDONNELL said :—"I agree with my hon'ble friend Sir Griffith Evans that it is very undesirable at this stage to introduce into the Bill so far-reaching a change as that suggested. If the Council will refer to paragraph 14 of the Further Report of the first Select Committee, they will find it there stated that—

'we have again considered the question of a definition of the term 'market-value,' but we adhere to the opinion of our Preliminary Report that it is preferable to leave the term undefined. No material difficulty has arisen in the interpretation of it; the decisions of the several High Courts are at one in giving it the reasonable meaning of the price a willing buyer would give to a willing seller; but the introduction of a specific definition would sow the field for a fresh harvest of decisions; and no definition could lay down for universal guidance in the widely divergent conditions of India any further rule by which that price should be ascertained'

[*Sir Antony MacDonnell; Sir Charles Pritchard; the* [1ST FEBRUARY,
Lieutenant-Governor; Dr. Rashbehary Ghose.]

"I think it would be unwise to introduce the change now proposed at this stage. My disposition is to agree with the substance of the Hon'ble Dr. Rashbehary Ghose's proviso, but I cannot say how far that proviso would meet the case, and at this stage of the Bill I think it would be difficult to speak with certainty on the subject."

The Hon'ble SIR CHARLES PRITCHARD said:—"The question of the phrasing of this sub-section of the Bill received very careful attention at the hands of the Select Committee which considered the Bill on two separate occasions last year. That Committee, of which my hon'ble friends Sir Alexander Miller and Dr. Rashbehary Ghose, as well as myself, were members, reported unanimously in favour of the retention of the words, 'market-value,' as used in the existing Act, for reasons that are stated in paragraph 7 of its original report dated the 1st February, 1893, and are more fully explained in paragraph 14 of its second report dated the 22nd March, 1893. The new Select Committee which has recently again considered the Bill has also reported in favour of their retention. The Hon'ble Mover of the amendment does not contend that, even in the extreme case which he has cited, the use of those words has led to any material injustice or inconvenience; the interpretation to be placed upon them has now been settled, after much litigation, by decisions of the Courts, and I would deprecate any alteration of them which would only sow the field for a harvest of further litigation and fresh decisions."

His Honour THE LIEUTENANT-GOVERNOR said:—"I quite agree with what has fallen from the two Hon'ble Members who have last spoken and also from my hon'ble friend Sir Griffith Evans on this subject. I think it would be extremely inadvisable to alter the law so suddenly and to make an alteration which even the Hon'ble Mover of the amendment had not foreseen the full effect of when he put his amendment on the paper, inasmuch as he has been obliged to suggest a further addition to it which I have only heard now for the first time. It would, in my opinion, be a very serious matter for this Council to accept an important and serious change in the law in such a light-hearted way, and if the amendment should be carried I should feel it my duty to move that the consideration of the Bill should be postponed, and that it should not be passed into law until the matter was further considered."

The Hon'ble DR. RASHBEHARY GHOSE said:—"It is said that it is impossible to foresee the full force and meaning of the proposed amendment; but the word 'value' is, I submit, not new in its application to land required for public purposes. It is to be found in the English Land Clauses

1894.] [Dr. Rashbehary Ghose; the President; Sir Antony MacDonnell.]

Act, from which our own Act has been copied with variations which have not always been improvements. The word 'value' has received a definite meaning, certainly of a less flexible character in England than the words in the Indian Act, and the passage which I read to Hon'ble Members from *Cripps on Compensation* shows what construction has been put on that word by English Judges in the English Courts. The principle adopted by the English Courts is the very same principle which the Hon'ble Mr. Lee-Warner followed when he acquired a Hindu temple for public purposes. It is known as the principle of reinstatement. It has been said that it would be dangerous to accept the amendment now proposed at this moment. It is true the particular case in the reports was not present to my mind when the Select Committee sat on the last occasion; but I venture to think that we should not be doing our duty if we left a question like this unsettled;—unsettled perhaps is not the proper expression to use. We should leave all persons who might happen to have property of this valuable character liable to be expropriated, no doubt for the most benevolent purposes, without any compensation at all; because the law as laid down by the Privy Council must be binding on every Court in this country from the highest to the lowest. We shall have to wait—I do not know for how many years—for an amendment of the law, and, even if this amendment could be carried only at the cost of another reference to the Select Committee, I do not think that ought to be a sufficient ground for the rejection of my proposal. I propose, therefore, as there seems to be less objection to the amendment with the proviso, to take the amendment as a whole, and to add what I have just read as a rider to the amendment which stands in my name. It is perfectly true—and I am sorry to admit it—that I was not able to give notice of this amendment until yesterday afternoon; but the amendment I propose does not involve questions of a novel or of a very abstruse character, and I submit, for the reasons already stated, that it is one which ought to be adopted, as great injustice and hardship might otherwise arise in the case of property which has either no market-value, or the market-value of which cannot be ascertained in any of the ordinary modes now followed by our Courts."

His Excellency THE PRESIDENT said :—"I should like to say that, as I understand the Rules of Business, even if this proviso were approved, it should be put as a separate amendment, and not taken as part of the amendment before the Council. The amendment must be put, I take it, in the form in which it appears on the paper, and if any Member of Council takes objection to the proviso it cannot be put."

The Hon'ble SIR ANTONY MACDONNELL said that he did not like the

[*Sir Antony MacDonnell; the President; Mr. Playfair; [1ST FEBRUARY, Sir Alexander Miller.]*]

proviso and would vote for the Bill as it stood, but, if the Hon'ble Member wished to have the proviso, he might perhaps, with the permission of the Council, suggest another form of amendment which might meet the case.

His Excellency THE PRESIDENT thought that the proper course would be to put the amendment as it stood upon the notice-paper.

The amendment was put and negatived.

The Hon'ble MR. PLAYFAIR moved that in section 23, clause *fifthly*, of the Bill, as amended, after the words "the reasonable expenses" the words "and loss" be inserted. He said:—"I do not find that a definition has been given to the meaning of the word 'expenses' which appears in this section of the Act. The ordinarily accepted meaning of the word implies outlay, but for the present purpose this might prove to be a restricted meaning, and might be limited to the cost of removal of goods and effects from one place of residence, or place of business, to another. I have the honour to submit that the compulsory change of residence, and especially the compulsory change of a place of business, may result in a serious loss to the persons concerned, and I therefore beg leave to suggest that the Court should be empowered to take into consideration compensation for loss through disturbance, incidental to a compulsory change of residence, and more especially a change affecting a person's business. Locality often possesses an element of convenience, which has an important value in connection with business; and, if a person enjoys such special advantage through having established himself in a particular site, it may be for a long period, it seems to be reasonable that he should be entitled to compensation when he is disturbed for the benefit of the general public. I have the honour to submit that in cases such as this Government should err, if anything, on the side of liberality to those from whom it acquires land, for the benefit of the community, which, as a site, has acquired a business value. On the other hand, an applicant for loss sustained through compulsory change of place of business could not succeed if he makes an extravagant demand, as the context of this section provides that he shall receive nothing more than compensation for reasonable expense and loss (if any) incidental to such change. And, if the applicant and the Collector disagree, the Court of appeal would finally determine the reasonable loss."

The Hon'ble SIR ALEXANDER MILLER said:—"I think that, if the Hon'ble Member had read the paragraph which immediately precedes the one which he

1894.] [Sir Alexander Miller; Dr. Rashbehary Ghose; Mr. Lee-Warner.]

proposes to amend, he would see that the point is immediately covered by it. Amongst the things which the Collector is to take into account are damages to the moveable and immoveable property of the claimant "or his earnings"; consequently, if he loses anything in his business, or in the shape of having to transport his furniture, or move his property, that would be taken into account under the fourth head, and I do not think it is necessary to add it over again under the fifth head."

The Hon'ble DR. RASHBEHARY GHOSE said :—"I am unable to accept the proposed amendment to add 'and loss' in the fifth head in section 23, and for the reason which has been given by my hon'ble friend Sir Alexander Miller. In this country, although the law is different in England, compensation may be given for the loss of moveable property and also for the loss of earnings. Any loss, therefore, which would presumably be compensated for under the Hon'ble Mr. Playfair's amendment would be compensated for under the fourth clause, because it would be either loss as regards the person's earnings or loss as regards moveable property, in the case, for instance, of any injury to a tradesman's stock in trade."

The amendment was put and negatived.

The Hon'ble MR. LEE-WARNER moved that for the last clause of section 24 of the Bill, as amended, the following be substituted, namely :—

"seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the declaration under section 6."

He said :—"This amendment was already suggested to me by some papers which were laid before the Select Committee, but on the whole I thought it inadvisable to make any proposal then. After, however, the Select Committee had performed its duties, the Government received a letter from the Indian Association, dated January the 26th, which proposed one part of the amendment which I now wish to move. I then looked over the papers again, and finding that a somewhat similar proposal had received the support of my lamented friend the late Hon'ble Mr. Justice Telang, and had also been supported by the Punjab Government, as well as by the Government of Bombay, it seemed to me that it would be advisable to take this last opportunity for considering the proposal of the Indian Association, which ran in the following terms :—

'Suppose a claimant has begun to erect an additional room to his house for his convenience, or to repair the same before the publication of the declaration. The Association

is of opinion he should either be permitted to complete the same or else compensated for his inconvenience. The Association does not see why, in order to enable Government to make the acquisition at less cost, he should deny to himself the comforts and safety which he might otherwise have had between the date of publication and the date of taking possession, unless it should appear clear that the only object he had in view was to add to the value of the compensation.'

"It will be observed that I propose to meet this difficulty by the second part of my amendment—the words 'without the sanction of the Collector'; because what I propose is that any outlay or improvements sanctioned by the Collector may be allowed for. In the same way the District Judge of Lahore referred to the same difficulty in these terms :—

'Suppose the owner has half sunk his well or dug a length of half or more of his canal cut, or suppose the works are nearing completion. Is he to stop all further work because of the declaration in the Gazette? If the works were completed, the owner might derive considerable profit between the completion and the time of making of award by the Collector.'

"I myself recollect a case in which Government took up a very large tract to form the bed of a storage supply for water. Of course, as the embankment or bund rose, the area covered by the water extended, but it took three years to complete the embankment. The result was that the villagers on its extreme margin were able to go on cultivating for three years after the Government had not only given their declaration but had taken possession. In such cases it seems to me that if a man has partially sunk a well, and all but finished his work, it is only right that the Collector should say to him 'Well, you may finish your outlay of capital, and I will give you the compensation.' I would observe in passing that it is satisfactory to find that the Indian Association admit that the amended Bill is a great improvement on the Bill as originally introduced and also on the existing Act, and that the several suggestions made by them have all more or less been considered by the Select Committee, or at least placed before it in the recommendations of the various Local Governments. I am anxious now to take the opportunity offered by this further recommendation from the Association to go back to the reports from which I have quoted, and provide an authority which will enable the Collector to sanction the completion of certain improvements and so award compensation for them. Turning then to the rest of my amendment, I would also ask permission to add the words proposed by the Bombay Government 'or disposal of'. It seems to me that this might possibly meet the objections which the Hon'ble Dr. Rashbehary Ghose brought to the words 'market-value,' because (I may be wrong, but)

1894.] [*Mr. Lee-Warner; Sir Alexander Miller; the Lieutenant-Governor.*]

it appears to me that in the case of acquiring a site for any public purpose on which a temple was built, if the Collector were to say to the owner 'Well, I see that the Act is likely to cause difficulty in assessing the "market-value" of your temple. You may therefore make a fictitious sale and sell it to a religious body for a reasonable sum of money,' we should then get over the difficulty of there being no 'market-value.' Possibly the guardians of a temple, who object to sell the sacred object to Government, might be willing to sell it to a Brahman priest, and the price of that transaction, if approved of by the Collector, would guide him as to the price of acquisition and the determination of 'market-value.' Passing, however, away from this exceptional application of the proposed amendment, and dealing with the case put by the Government of Bombay, the Council will observe that the Collector of Bombay reports that fictitious sales are not uncommon. I am aware that if these sales are really fictitious the answer will be given that they are really no sales at all; but there may be sales which it might be difficult to prove to be fictitious, and at any rate you can stop them by forbidding any disposal of the land acquired which will be the result of this part of my amendment. I would, therefore, move that this section should run as it is set down in the amendment."

The Hon'ble SIR ALEXANDER MILLER said that he had no objection to the amendment; it seemed to him to be an improvement.

His Honour THE LIEUTENANT-GOVERNOR said:—"I listened carefully to the Hon'ble Mover's speech, but failed to catch completely the object of the amendment proposed. He puts the case of a tract of country which is being slowly submerged, and in which a raiyat goes to the Collector and says 'I spent five hundred rupees on this well. I shall get five hundred rupees compensation; will you allow me to spend one hundred rupees more to finish the well, and to use the water from it before the land is wanted.' Then I presume the Collector will say 'If you think the use of the water for two or three years will compensate you for spending the additional hundred rupees, you may use it, but do not expect that you will get a profit out of the land and also get your one hundred rupees back from the Government.' I cannot understand the exact case which the Hon'ble Member intended to provide for, and perhaps he would be good enough to explain the circumstances under which compensation should be given for an improvement which has been carried out after the first declaration has been issued, and in which it would be likely that the Collector would sanction such an improvement knowing that the Government would have to pay for it in the course of a very short time."

[*Mr. Lee-Warner; the Commander-in-Chief; [1ST FEBRUARY, Fazulbhai Vishram.]*]

The Hon'ble MR. LEE-WARNER said:—"I desire to be more liberal to the man whose land is compulsorily required than His Honour the Lieutenant-Governor seems to think necessary. His Honour says that the owner would get a profit out of the land; but the three years, which would elapse in the extreme limit of the case I put, after the declaration, and before the land is submerged, would be a very short period for the man to get a return for his capital sunk in the well, even if he got paid back what he had spent in sinking it before the declaration. It seems to me that nothing should be done to discourage thrift and the application of capital to the land, and I have always regretted that the present law does not allow you to compensate a man for completing an improvement which very often he had no reason whatever for supposing that he would not reap the full benefit of. It frequently happens that in irrigation schemes at the last moment some further outlying bit of land will be submerged which was never contemplated in the original plans, and the man in perfect good faith may have begun to sink his well without a thought that his field would be required, losing not merely the cost of the material and labour but also interest on his outlay and the money-lenders' charges. All I desire is to place him in the best position possible and allow him, when the Collector permits him to complete his work, to receive compensation for the whole of it."

HIS EXCELLENCY THE COMMANDER-IN-CHIEF remarked that it appeared to him a very arbitrary proceeding that power should be taken to make a sale of property, effected under conditions that would often interfere with the original intention of the owner, outside consideration for compensation on the opinion of the Collector.

The amendment was put and agreed to.

The Hon'ble FAZULBHAJI VISHRAM moved that in sub-section (2) of section 27 of the Bill, as amended, the words from "unless the Court" to the end of the sub-section be omitted. He said:—"With regard to this amendment I find that in section 27, sub-section (2), some change is proposed to be made about the costs. I am of opinion that, when the party interested succeeds in upsetting the Collector's award, it is nothing but equitable and just that he should get his costs, and to make him pay any portion of the Collector's costs is indeed a hardship. The reasons given in the Committee's report are that, if the party makes an extravagant claim or suppresses evidence before the Collector, he should be mulcted in

1894.] [*Fazulbhai Vishram; Sir Alexander Miller; Sir Griffith Evans.*]

costs. I think that these reasons are not very cogent, for they only apply to cases of exceptional nature and not generally, and, therefore, if the public generally are to be punished in the manner suggested, then they will be deterred even from putting forward their just claims for fear of being mulcted in costs. For it makes no difference with the Collector as to the amount of costs, which he must under any circumstances incur in supporting his award; and if the contention of the Committee be correct, then it will be equally equitable and just, if the Collector's award be ridiculously small, that he too should be mulcted in additional costs."

The Hon'ble SIR ALEXANDER MILLER said:—"I hope the Council will not accept this amendment. No doubt the law as it stands is that if the award of the Collector is not upheld, even if only a single rupee extra be given, the Collector must pay all the costs; and the result is that there is no check whatever on the most extravagant demands. A man may make any demand he pleases knowing that if he gains even a single rupee he would gain all his costs as well. It was proposed, on the other hand, to make the costs of the reference follow the result of the issue in the same way in the costs of ordinary proceedings. It was thought that that would be unjust to the other side, that inasmuch as the Government were taking up this land for public purposes they ought *primâ facie* to pay all the expenses incident to it, but that it was reasonable to give the Court a discretion in the case of very extravagant claims or claims very badly conducted, where possibly the reference would never have been necessary if the parties had acted reasonably; that in such cases the Court might well be given a discretion to deprive the claimant of costs or even to make him pay costs. This arrangement is, I venture to think, a very reasonable one, and one that ought to commend itself to the judgment of the Council."

The Hon'ble SIR GRIFFITH EVANS said:—"There is no doubt that it is desirable to make the costs ordinarily fall upon the Collector in cases where the award is upset, but it is in the knowledge of those who have had experience in land acquisition cases that exceedingly large and baseless claims are often put forward—claims sometimes amounting to lakhs of rupees; and they are put forward with a feeling of immunity—a feeling that, if they get even one hundred rupees beyond the sum claimed, they will be able to have, upon this small addition, all their costs paid. They are consequently encouraged in many cases to engage in heavy litigation in support of extravagant claims. I do not think that it is unreasonable that the Civil Court should have some discretion in the matter of costs and that it should be able to exercise that discretion. They have it in ordinary civil suits and the High Court has the power to mulct

[*Sir Griffith Evans*; *Dr. Rashbehary Ghose*; *Mr. Playfair*; [1ST FEBRUARY,
Sir Alexander Miller.]

plaintiff in costs or to refuse them costs in cases where they have obtained a decree, and I do not see any objection to giving some power of discouraging extravagant claims in land acquisition cases."

The Hon'ble DR. RASHBEHARY GHOSE said:—"I quite agree with my hon'ble friend Sir Griffith Evans. My experience too as regards land acquisition cases and the extravagance of the claims occasionally put forward points in the same direction. I would only point out, in addition to what has been already said, that, even if the amendment of my hon'ble friend the mover is carried, some discretion must be left to the Court, because he would strike out only the words in section 27, sub-section (2), from 'unless the Court,' etc., down to the end of the clause. The sub-section would then stand thus:—

'When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector.'

"This would undoubtedly give a certain amount of discretion to the Court. The words to which the Hon'ble Member takes exception, instead of widening the discretion, in reality limits its exercise only to cases of a very exceptional character."

The amendment was put and negatived.

The Hon'ble MR. PLAYFAIR moved that in section 30 of the Bill, as amended, for the word "may," in line 7, the word "shall" be substituted. He said:—"I have the honour to submit that under section 30 the Collector should be required to refer to the decision of the Court disputes as to the apportionment of the amount of compensation when the Collector finds he is unable to reconcile the views of those interested in this compensation. If a person contests the Collector's apportionment and presses his contention, it will doubtless be more satisfactory that he should have a reference made to Court for a final decision. I venture to say that such a procedure would be more satisfactory than if the reference were left to the discretion of the Collector."

The Hon'ble SIR ALEXANDER MILLER said:—"I think it will be seen that anyone who objects to the Collector's award has an absolute right, under section 18, to have the matter referred to the Court, and that what this section intends to do merely is to enable the Collector himself in certain very difficult cases to refer the question to the Court of his own motion; but nothing will

1894.] [Sir Alexander Miller ; Mr. Lee-Warner ; Mr. Stevens.]

prevent any of the parties, who choose to go to the Court, from doing so; and the only effect of the change now proposed would be to compel the Collector to go to the Court although all the parties might be prepared to accept his decision."

The Hon'ble MR. LEE-WARNER said :—"I think it would be very unkind to the parties if this amendment were carried. Some officials would probably be glad of the change, and I have no doubt that many Collectors will find good reason for declining to undertake adjudication as to the apportionment of compensation. At the same time the discretion that the Collector has now conferred upon him by section 30 might have a conciliatory effect. He may settle the apportionment, and both the parties may be disposed at first to quarrel when they hear what the Collector's decision is. They will then on reflection probably say 'Well, it is better to accept this decision than to fight, and on the whole this apportionment seems fair.' I believe then that it will often save the parties litigation if the Collector is allowed to undertake the work of apportionment amongst them. In effect the section as it stands is an attempt to reconcile the objection of some Collectors to have a difficult task thrown upon their shoulders, with the principle that people should not be forced into a reference to the Civil Courts without absolute necessity or their own free choice. The section allows the Collector to decide if he can, whilst it gives him an opportunity of shifting the decision to the Court, and also leaves the parties themselves free to go into Court if they are dissatisfied with the Collector's apportionment. I believe myself that, if the Collectors use the power they are permitted to use under this section, it will very often save the parties expense and a good deal of hot feeling. I should therefore be sorry to see the change introduced."

The Hon'ble MR. STEVENS said :—"I entirely agree with my hon'ble friend Mr. Lee-Warner. If I understood my hon'ble friend Mr. Playfair rightly, he said that, if the Collector is unable to reconcile the views of the parties regarding the matter in dispute, he should be obliged to refer the dispute for decision to the Court. But the words of the Bill as it stands are 'if any dispute arises,' the Collector may refer the dispute to the Court. If the amendment be carried, the effect will be that if any dispute arises the Collector must refer. Having no jurisdiction to consider the dispute, he would have no opportunity of reconciling the parties. Should the Bill become law as it is, he would have this

[*Mr. Stevens; Sir Alexander Miller.*] [1ST FEBRUARY,

opportunity, and doubtless his decisions would generally be accepted as final in minor cases. It seems to me advisable that he should go into petty disputes and reconcile the parties."

The amendment was put and negatived.

The Hon'ble SIR ALEXANDER MILLER said :—" Before I move the amendment which stands in the paper in my name I have to ask the permission of Your Excellency and the Council to move a previous one, which is of a merely clerical nature. If Hon'ble Members will look at the last words of section 31 (1), they will find that they direct the Collector to tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and direct that he 'shall pay it to them if they shall consent to receive it.'

" Then section 31 (2) goes on :—

'If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted.'

" Of course the two clauses are not perfectly consistent, and therefore I propose to leave out the words 'if they shall consent to receive it' and to insert the words 'unless prevented by some one or more of the contingencies mentioned in the next sub-section.' The two sub-sections ought to cover the same contingencies, and the insertion of the words only makes the matter grammatically correct."

The amendment was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER said :—" In the next sub-section as it runs at present it goes on to say :—

'Provided that any person interested may receive such payment under protest as to the sufficiency of the amount,'

the object being of course to get rid of the question of interest by allowing any one who is entitled to the money to take it without preventing him from saying that he ought to get something more ; but as the sub-section stands

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Narayan Singh of Ajudhiā.*]

it might enable a man whose interest was disputed to take the money, and it might afterwards turn out that he was not the right person to take it and that the money had been given to the wrong person. I therefore propose to insert the words 'admitted to be' after the word 'person'; that is to say, that no man whose title is under dispute is to be entitled to take payment until that question is settled.

"I must apologise to the Council for having to propose these amendments. I ought to have settled the matter in Select Committee, but it quite escaped my notice at the time."

The amendment was put and agreed to.

The Hon'ble MR. PLAYFAIR moved that in section 45, sub-section (3), proviso, after the words "person named therein" in line 3, the words "at his last known residence, address or place of business" be inserted. He said:—"The amendment I have the honour to propose follows that proposed by me under section 9, and with the remarks I then made I leave this to the Council."

The amendment was put and agreed to.

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

The Hon'ble MAHARAJA PARTAB NARAYAN SINGH of Ajudhiā said:—

"The Bill which is about to become law contains some radical alterations in the provisions of the former legislation on the subject, namely, Act X of 1870 and its subsequent amendments.

"Among some of the most important of its changes may be noticed the substitution of a new procedure in case of objections to the Collector's awards as to the compensation, and the discontinuance of the system of assessors to assist the Court in determining the amount.

"These are the points on which I would individually have liked to say something for the consideration of Your Excellency and Hon'ble Members, but as the Bill has been long before the public and has reached the final stage towards its passing into law, and a consensus of opinion has been obtained on these matters, I do not think now to be the proper time for re-opening them.

[*Mahārājā Partab Narayan Singh of Ajudhiā.*] [1ST FEBRUARY, 1894.]

"As to the main features of the Bill, I must say that in many respects it is a decided improvement upon the old law, and I therefore give my vote that it may be passed."

The Motion was put and agreed to.

The Council adjourned to Thursday, the 8th February, 1894.

CALCUTTA; }
The 9th February, 1894. }

S. HARVEY JAMES,
Secy. to the Govt. of India,
Legislative Department.