

*Wednesday,
27th September, 1899*

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

LAWS AND REGULATIONS

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

The Council met at the Viceregal Lodge, Simla, on Wednesday, the 27th September, 1899.

P R E S E N T :

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

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

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

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

The Hon'ble Mr. C. E. Dawkins.

The Hon'ble Mr. T. Raleigh.

The Hon'ble Lieutenant-Colonel R. Gardiner, R.E.

The Hon'ble Rai Bahadur Pandit Suraj Kaul, C.I.E.

The Hon'ble Mr. Gangadhar Rao Madhav Chitnavis, C.I.E.

The Hon'ble Rai Bahadur Protul Chandar Chatterjee.

CHURCH OF SCOTLAND KIRK SESSIONS BILL.

The Hon'ble MR. RALEIGH moved that the Bill to provide for the Incorporation of Kirk Sessions of the Church of Scotland in British India be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. RALEIGH moved that the following sub-clause be added to clause 2 of the Bill, namely :—

“(2) A notification by the Governor General in Council in the Gazette of India that a Kirk Session has been duly constituted in pursuance of an Act of the General Assembly of the Church of Scotland shall be conclusive proof that it has been so constituted.”

He said :—“It is evidently desirable that this Act should provide for the manner in which a Kirk Session may, in case of necessity, prove its corporate character. I was under the impression that the matter was provided for by the general sections of the Indian Evidence Act of 1872, but, on closer examination,

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it appears at least doubtful whether the rules of that Act extend to the present case. I now move an amendment by which a form of proof is provided. A Kirk Session which is constituted in this country is constituted by an Act recorded in the books of the General Assembly. The Kirk Session here is furnished with a copy of that Act, authenticated by the signature of one of the clerks of the Assembly. We propose that that copy should be shown to the Government of India in the Home Department, and that thereupon a notification should issue, saying that the Kirk Session in question is one of the bodies incorporated under the Act."

The motion was put and agreed to.

The Hon'ble MR. RALEIGH moved that in sub-clause (2) of clause 3 of the Bill, after the word "Treasurer" the words "or Session-clerk" be inserted. He said:—"I think no long argument is required in support of this amendment. The Treasurer and Session-clerk are officers of equal importance in the Session, and it seems desirable that the signature of either of them should be accepted under this clause of the Bill."

The motion was put and agreed to.

The Hon'ble MR. RALEIGH moved that the Bill as amended be passed.

The motion was put and agreed to.

CENTRAL PROVINCES COURT OF WARDS BILL.

The Hon'ble MR. RIVAZ presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Court of Wards in the Central Provinces. He said:—"I propose at the next meeting of the Council to move that the Report of the Committee be taken into consideration, and I will defer making any remarks on the alterations which the Committee propose until then."

PUNJAB COURTS BILL.

The Hon'ble MR. RIVAZ presented the Report of the Select Committee on the Bill further to amend the Punjab Courts Act, 1884. He said:—"The criticisms which the Bill has received in the English and Vernacular Press of the Punjab since its introduction and publication have taken for the most part two opposite directions. One set of critics have remonstrated against

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curtailing in any degree the present liberty of appeal to the Chief Court which is possessed by the Punjabi litigant, on the ground that it is a highly prized privilege, any restrictions upon which will cause great dissatisfaction. Well, my answer to this is, that the Chief Court, even with its present strength of four permanent and two additional Judges, a strength which, as I pointed out when introducing the Bill, must be admitted to be in excess of the legitimate requirements of the Province, is unable to cope with the work which comes to it under the existing system. Not only are the arrears, for the disposal of which the two additional Judges were temporarily sanctioned, not being diminished, but they have actually increased during the past year, and I understand that it takes ordinarily about two years before any appeal which has to go to a Bench of two Judges comes on for hearing. The privilege, therefore, which is said to be so highly prized by the Punjabi litigant, of being able to get his case heard by the highest Court of the Province, is one which, under present conditions, takes a pretty long time to attain fruition. If the existing system of appeal were maintained, the Chief Court would have to be strengthened even above its present number of Judges, and this is out of the question. The other set of critics take another line. They admit that the Chief Court is overburdened with the work which at present comes to it, but they attribute this state of things to the faulty system in existence which allows a further appeal on the whole case, including the facts; and they advocate the assimilation of the law of second appeal in the Punjab to that which is prescribed in the Code of Civil Procedure. My answer to this set of critics is two-fold :—First, there is a strong weight of opinion that the time has at all events not yet come for altogether abolishing the present special system in the Punjab of allowing a further appeal on the facts, especially in land-suits, as well as on points of law or custom; and, secondly, the law of second appeal, as at present contained in the Civil Procedure Code, has been declared by many competent authorities to need amendment, and its revision will, in all probability, be shortly taken in hand. This, however, will take time, and meanwhile, as I have shown, the case of the Punjab requires prompt treatment. The Committee have therefore proposed no alterations in the main scheme embodied in the Bill, the details of which I explained when introducing it, except that, for the sake of simplification, we think it unnecessary to make any distinction between small causes and unclassified suits, and would accordingly in both cases allow a further appeal unconditionally when the value of the suit is Rs. 2,500 or upwards.

“As regards, however, one of the subsidiary provisions of the Bill, we have proposed a substantial modification. I explained, when introducing the Bill,

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that one of its clauses abolished the present system of certificate appeal on questions of law or custom, and in its stead enlarged the revisional powers of the Chief Court by extending them to non-appealable cases in which a question of law or custom and of general interest might be involved, on application being made within 30 days. This clause has been a good deal criticised, the grounds taken being that (1) the period allowed for the application is too short, (2) the words "of general interest" are too vague and indefinite, and (3) the revision procedure is too summary for the proper treatment of the cases in question. We have admitted the force of these criticisms, and have accordingly extended the period of application to 90 days, have substituted for "of general interest" words which make it clear that the question of law or custom raised must, in the opinion of the Court, be an important one and requiring further consideration, and have provided that when an application of this nature is admitted, the subsequent procedure shall be that prescribed for an appeal. At the same time, we propose to exclude from the scope of the clause in question small causes under the value of 1,000 rupees, and unclassified suits under the value of 200 rupees, and to restrict the Court, when dealing with these applications, to the particular question of law or custom raised.

"I venture to think that the scheme under consideration, thus modified, may reasonably be regarded as a happy mean between the views of those who wish, on the one hand, to maintain the present system of further appeal in the Punjab in its entirety, and of those who wish, on the other hand, to abolish it altogether and to substitute the law of second appeal of the Code. A further appeal on the whole case will still be allowed in really important suits of all kinds, while in other cases above a certain limit, practically a second appeal will be allowed by permission of a Judge of the Chief Court on any important question of law or custom involved.

"We have also proposed two additions to the Bill, at the instance of my Hon'ble friend Mr. Justice Chatterjee, on points of procedure. These are explained in paragraphs 4 and 5 of our Report.

"I have only to add that I hope at the next meeting of Council to move that our Report be taken into consideration and the Bill be passed."

His Honour THE LIEUTENANT-GOVERNOR said:—"In March, 1897, the Government of India addressed the Local Government on the subject of the evils of protracted litigation: observing that it gives the man with the longer purse an unfair advantage, and that under the existing system the courts of

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first instance tend to become timid and technical, while the High Courts, instead of having the leisure for the deliberate disposal of really important issues, are burdened with a host of petty and often frivolous cases. This subject, among others, was referred to a mixed Conference of Judicial and Executive Officers which met in September, 1897, and unanimously recommended the raising of the money limit for the institution of further appeals as of right, more particularly in cases in which the first Court of Appeal has not varied or reversed, otherwise than as to costs, the decree of the Court below. It was proposed by some members of the Conference that provision should be made for further appeal by permission in certain other cases in which important questions of law or custom were at stake; and in communicating to the Chief Court proposals based upon the Report of the Conference, I accepted the view that opportunity should be given for the disposal of all such questions by the highest Appellate Court in every case in which the Punjab Courts Act, 1884, provided for a further appeal by certificate or permission.

"Under the peculiar conditions of this Province, which is mainly one of small peasant proprietors whose rights are regulated by a body of custom not yet codified nor even fully ascertained by judicial decision, it has been and continues to be inevitable that the volume of litigation should be large, and the power of the Chief Court to enforce uniformity in the application of the law, an extensive one. The measure under discussion is one in a progressive series of compromises between two urgent needs: to reduce delays and secure early finality on the one hand, and to provide adequate means for the uniform interpretation and application of a half developed body of law and custom on the other. Recognizing—what has always been recognized in the Punjab—that the subordinate courts are weak and that circumstances are such as to require special care in the disposal of cases relating to land or custom, I am not prepared to admit that the Province has arrived at that stage at which the Court empowered to deal with further or second appeals can safely be restricted to the consideration of questions of law and custom without power to review findings upon questions of fact; but I do not contest the view that when the sole *raison d'être* of a further appeal is the existence of an important question of law or custom, the Chief Court may properly be required to restrict its action to the decision of that question.

"I understand that the Bill as now amended by the Select Committee maintains the old Punjab law of further appeal *as of right*, with power to the Court to re-open questions of fact as well as questions of law or custom, though it raises the money limit for the institution of such appeals; and that it recognizes

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the need for the authoritative determination of important questions of law or custom in cases in which no further appeal lies as of right, while it deprives the Chief Court of the power of revising the decision otherwise than as regards the question of law or custom in respect to which the application was admitted.

"The money limit for further appeals as of right is therefore not a new feature. It is borrowed from the existing Act and, though it may not be logically defensible in the abstract, its justification lies in the fact that the Legislature has to devise a compromise between two needs and that it furnishes a simple and practicable means of shortening the course of a large section of the less important class of the litigation of the Province. To the limits now proposed, there is, I think, no objection, having regard to the facilities which the law continues to furnish in regard to cases where important questions of law or custom are involved.

"Those facilities are furnished in the form of a special ground of revision, enabling the Chief Court to call for the record in any land case and in other important cases of high value in which it is of opinion that there is an important question of law or custom involved and that such question requires further consideration, and to treat the matter of the application as if it were a second appeal. There is no reason to apprehend that important questions will, under these provisions of the Bill, fail to be laid before the Chief Court for determination, while the power of the Court to discourage unreasonable litigation will be largely increased."

PUNJAB ALIENATION OF LAND BILL.

The Hon'ble MR. RIVAZ moved for leave to introduce a Bill to amend the law relating to agricultural land in the Punjab. He said:—"Before asking leave to introduce the Bill for amending the law relating to agricultural land in the Punjab, I am afraid that I must tax the patience of the Council by giving, at some little length, a historical retrospect of the case before us. I will endeavour, however, to be as brief as possible.

"The question of the indebtedness of the agricultural classes in different parts of India has attracted the notice of Government from the early times of British rule, and various schemes have been proposed, from time to time, with the object of protecting land-holders from the effects of debt and the consequent loss of their lands. But, so far as I have been able to ascertain, Mr. Justice West, of the Bombay High Court, was the first, in a pamphlet entitled

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The Land and the Law in India, which he published in 1872, to formulate a plan for imposing some definite limitations on the power to alienate land. The theory he propounded was that, although the British Government had, for the most part, divested itself of that exclusive ownership in land which had been recognized as existing under native rule, still it had retained a right of protective ownership; and that, as experience had proved that the principle of free trade in land, which had been allowed to spring up, was not adapted to the present condition of the agricultural population of India, the Government ought, in the exercise of its protective right, to impose limitations on the further application of this principle, and to pronounce all land to be inalienable except with its assent. His proposed scheme, broadly, was that the power of assent should be delegated to Collectors of districts or other local officers, and that only excess land, above what was necessary for the comfortable maintenance of an agriculturist and his family, should be allowed to be alienated, or be liable to attachment and sale in execution of decrees.

"In 1875, in consequence of agrarian riots in the Bombay Deccan, a Commission was appointed to enquire into the condition of the agricultural population of that part of India. The result of these enquiries was the passing of the Deccan Agriculturists' Relief Act in 1879, by which the ordinary civil law in four of the Bombay Deccan districts was, in many respects, amended in favour of agricultural debtors.

"In 1881, legislation was undertaken for the relief of large land-holders in Sindh and in the Broach and Kaira districts of the Bombay Presidency, and in 1882, for the relief of encumbered estates in the Jhansi division of the North-Western Provinces. A main feature of all these enactments was that, while the estate remained under Government management, the indebted owner was debarred from alienating any portion of it.

"The question of agricultural indebtedness was included by the Famine Commission of 1878 in the scope of their enquiries, and, in their report, they expressed their views on the desirability of protecting agricultural debtors, among other means of relief, by imposing restrictions on land transfers.

"In 1886, Mr. Thorburn, now Financial Commissioner of the Punjab, then a District Officer in that Province, wrote a book on the indebtedness of the Muhammadan land-holders of the Western Punjab, entitled *Mussulmans and money-lenders in the Punjab*, which attracted the notice of the Secretary of State for India, and on which he asked for the views of the Government of India.

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In this book, Mr. Thorburn recommended, among other measures of relief, that it should be made illegal in the west of the Punjab for any person deriving profits from a shop or from money-lending to acquire any interest in land, except (1) in arable or pasture land in the immediate vicinity of a town or large village; or (2) in manured and irrigated land elsewhere. The then Lieutenant-Governor of the Punjab, Sir James Eyall, in expressing his views on Mr. Thorburn's proposals, said, as regards the particular recommendation which I have just mentioned, that he was disposed to think that it would probably be necessary to take steps to check the alienation of lands to money-lending classes in the Punjab, but that the remedy suggested by Mr. Thorburn, namely, to make it illegal for the moneyed classes to acquire lands, other than those of two highly artificial descriptions, seemed to him to be impracticable.

"In 1891, a Commission was appointed to report on the working of the Deccan Agriculturists' Relief Act of 1879 and on the desirability of extending a similar measure to other Provinces. The Government of India, in forwarding this Commission's Report to the Secretary of State in 1894, together with a draft Bill to provide for the relief of the agricultural classes, in which certain changes proposed by the Commission in the Deccan Act had been incorporated, remarked that such legislation would, however, only partially meet the difficulties connected with the general problem of agricultural indebtedness; that remedies of an entirely different kind, including measures for further restricting the right of land transfer seemed indispensable; and that this part of the subject would be separately and carefully considered.

"Accordingly, a Circular was addressed to Local Governments in October, 1895, in which it was said that the Government of India were distinctly of opinion that some action in the direction of restriction upon the alienability of land was generally advisable, and even necessary, though the manner and degrees of the restriction must vary from Province to Province. Each Local Government and Administration was requested to take the subject into its most careful consideration, and to communicate its matured views and definite proposals for action in the direction indicated. Two Notes accompanied the Circular, in which the whole subject of Agricultural Indebtedness in India and the various possible remedies for checking transfers of land were exhaustively explained and discussed.

"On receipt of the replies to this Circular, it was decided to deal first with the Punjab, as being the Province where the question of agricultural indebtedness was of special importance in its political aspect, and where it was probably possible to go further than elsewhere in respect of imposing direct restrictions on land.

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transfers. The reply from the Punjab had been to the following effect :—' The Lieutenant-Governor, Sir Dennis Fitzpatrick, recognized that a point might be reached at which the amount of land alienated, and the number of proprietors reduced to the condition of tenants or labourers, would constitute a political danger of formidable dimensions, and that where this danger point was reached, the only remedy was to attack the evil at the root by imposing direct restrictions on alienation—for instance, by prohibiting land-owners of specified castes or tribes from alienating their ancestral lands, without official sanction, beyond their life-time or for a fixed period to any person not belonging to those castes or tribes.' While this case was under consideration, a special enquiry, the results of which were highly interesting and instructive, had been made by Mr. Thorburn, the Commissioner of the Rawalpindi Division, regarding the indebtedness of the agricultural classes and the amount of land alienations in four assessment circles of that portion of the Punjab; and Sir Dennis Fitzpatrick came to the conclusion that in one at least of these circles a case for legislation had been made out. He was, however, strongly opposed to a law of general application to the whole Province, and did not propose to go further than to take power by law to apply restrictions on transfer to any particular tract in which a full enquiry might show that they were required.

" Both the Financial Commissioners of the Punjab, on the other hand, expressed a decided opinion in favour of restrictive measures of general application, and suggested that all permanent transfers of ancestral land ought to be prohibited unless sanctioned by the Revenue-officers, while temporary transfers ought to be limited to 15 years, the land reverting to the alienor at the end of this period free of all encumbrances. A majority of the Judges of the Chief Court were also in favour of imposing direct restrictions on alienations. My Hon'ble friend Mr. Justice Chatterjee, after discussing the question in an able paper and pointing out that the customary law of the Punjab enables heirs to set aside many alienations, went on to say that he considered that the great recommendation of a measure directly restricting alienations would be that it would exactly define the limits of the land-holders' power of alienation, and would thus have a beneficial effect in checking litigation. He thought that the restriction to life or to 15 years of a land-owner's power of alienating his ancestral lands would be regarded by the bulk of the land-holding class as consistent with the traditions of the Province, and would be agreeable to them. It is not clear, however, whether the Judges advocated a general enactment on these lines, or merely an enabling one, as recommended by Sir Dennis Fitzpatrick.

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" The Government of India, in communicating to the Punjab Government the opinion which they had formed on the evidence and recommendations contained in Sir Dennis Fitzpatrick's minutes and in the reports of the Judicial and Revenue Officers of the Punjab, expressed their belief that partial legislation would fail in its object and would produce more difficulty and jealousy than legislation of a general character. It was said that a strong case seemed to have been made out for prohibiting all permanent alienations of agricultural land, except with the sanction of some duly empowered Revenue-officer, and for restricting temporary alienations to the term of the alienor's life, or with the consent of his heirs to a maximum period of 15 years. In inviting the Punjab Government to consider these proposals, it was suggested that the quickest and easiest way of dealing with them would be to have them discussed by a Committee of selected officers.

" Accordingly, the Lieutenant-Governor, Sir Mackworth Young, circulated to selected officials and non-officials a series of questions framed on the proposals of the Government of India, and followed this up by convening a strong Committee of Revenue-officers, over which His Honour himself presided. The recommendations made by this Committee were that any permanent alienation of agricultural land to a non-agriculturist, if made without the sanction of the Deputy Commissioner of the district, should be void, but that otherwise there should be no restriction on sales or other permanent transfers; that the definition of an 'agriculturist' should be 'any person who either in his own name, or in the name of an agnate ancestor, was recorded as an owner of land or as a hereditary tenant in any estate at the first regular settlement,' and that of 'land' as in the Punjab Tenancy Act, that is, all agricultural and pastoral land, whether ancestral or self-acquired; that the only forms of temporary alienations to be allowed in future should be (1) usufructuary mortgage, with delivery of possession to the mortgagee, for a maximum period of 20 years, and on condition that at the end of the period of mortgage the mortgaged land shall revert to the mortgagor or his successor in interest with the mortgage debt extinguished, (2) simple mortgage which, in certain circumstances, may be converted into a usufructuary mortgage of the nature I have just mentioned, and (3) leases for 20 years, or for the life of the lessor, whichever is less; that the form of mortgage which is conditional sale be declared illegal with retrospective effect; and that the hypothecation of a share of the produce of land should be prohibited for any term exceeding a year. The Committee proposed to make their suggested restrictions on alienations general throughout the Punjab, but to give power to the Local Government to exempt any district or part of a district or any person or class of persons

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from the operation of the restrictions in whole or in part. They also proposed to amend the existing law of pre-emption in the Punjab, to revise the present order of priority of pre-emption which is laid down in section 12 of the Punjab Laws Act so as to exclude strangers who have bought into the village, and to transfer the hearing of pre-emption cases, both as regards the fixation of the pre-emption prices and questions of title, from the Civil Courts to Revenue-officers.

“These proposals of the Punjab Committee constitute the foundation of the scheme which is embodied in the Bill which I am introducing. They have, as I shall explain, been modified in some particulars, but such modifications have been made with the sole object of securing more effectually the intentions of the Committee, and do not affect any question of principle. I turn first to the restrictions to be imposed on sales and other permanent transfers. It appeared to us that the proposal made by the Punjab Committee, that alienations between ‘agriculturists’ should continue to be free from all restrictions, was open to objection. In the first place, the definition of ‘agriculturist’ which has been framed by the Committee, or indeed any other practicable definition of the term, must necessarily include numerous classes of persons who, although land-holders since the early years of British rule or even prior thereto, are in reality primarily traders and money-lenders by nature and profession, and not true agriculturists in any proper sense of the term. Moreover, since even the *bond fide* agriculturist is not infrequently also a money-lender, we think it desirable to retain power to prevent such men from buying up land in a village where they would come in as outsiders and constitute a foreign element in the village community. We recognize, however, that we must guard against unduly narrowing the market for free sales, and we propose to attain this object by the following means. On the analogy of section 45 of the Central Provinces Tenancy Act of last year, we are providing that all permanent transfers must receive the previous sanction of a Revenue-officer, but that sanction shall be given, as a matter of right, in cases in which the Revenue-officer is satisfied that the intending transferor is a person who is not a member of an agricultural tribe, or, in cases where the intending transferor is a member of an agricultural tribe, that the transfer is either to an agriculturist (as defined by the Punjab Committee) holding land as a proprietor or occupancy tenant in the village in which the land sold or otherwise permanently alienated is situated, or to another member of the same agricultural tribe residing in the same district. Our scheme is thus based in this respect on the feeling in favour of the prior rights of the village community and on the recognition of the principle of tribal organization which are well known

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powerful factors in the social economy of the agricultural classes of the Punjab. To prevent difficulties or inequalities in the application of this portion of our scheme, power is being given to the Local Government to specify by notification what are the agricultural tribes in each district, and to extend the definition of 'district' in any particular case beyond the ordinary limits of the revenue district.

"Next, as regards temporary alienations, while we accept the conclusions of the Punjab Committee that only the two forms of mortgage proposed shall in future be allowed, that existing mortgages by way of conditional sale shall be void, and that leases shall be limited to a fixed term, we have reduced the maximum period of temporary alienation from 20 years as proposed by the Punjab Committee to 15 years. We are providing that any person who has made a permissible mortgage or lease shall be debarred from making any further alienation of his land during the currency of such mortgage or lease, but, after careful consideration, we have decided not to impose any further restrictions on temporary transfers, whether by prescribing an interval between two successive mortgages or leases, or by making the alienor retain a right of cultivation in the alienated land, his rent being fixed by authority, or by prohibiting the mortgage or lease of more than a certain portion of a holding. We are also providing that any permanent alienation made without the required sanction shall take effect as a usufructuary mortgage on the conditions prescribed for such mortgages, and that existing conditional sales and future unauthorized mortgages shall be treated in like manner.

"We have accepted the proposal of the Punjab Committee in regard to prohibiting hypothecations of produce.

"We are supplementing our proposed restrictions on voluntary alienations by abolishing the sale of all agricultural or pastoral land in execution of any decree or order. Under the present practice, sale of such land in the Punjab in execution of a decree requires, in the case of ancestral land, the sanction of the Financial Commissioner, and, in the case of other land, the sanction of the Commissioner of the Division. Such sanction is very seldom given; still, as the allowance or disallowance of sales depends on the individual judgment of the Financial Commissioner or the Divisional Commissioner, as the case may be, an undesirable element of uncertainty is thus introduced which it is advisable to remove. Moreover, under our proposed restrictions on mortgages, land could in future only be sold in execution of decrees for unsecured debts, and not for debts secured by a usufructuary mortgage. We, therefore, consider that sales of agricultural or pastoral

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land in execution of decrees of the Civil Courts should in future be absolutely prohibited in the Punjab.

"As regards amending the law of pre-emption in the Punjab, we agree with the Punjab Committee that an amendment of the present law on the lines they mention is desirable, and will be a useful adjunct to our scheme for restricting land alienations. We propose to deal with this matter separately—after further consulting the Punjab Government—either by revising the present pre-emption sections of the Punjab Laws Act, or by cancelling those sections and framing a new enactment.

"On the all-important question whether the proposed Act shall be an enabling Act or a measure of general application, the Government of India adhere most decidedly to the opinion which they expressed, as I have mentioned, in addressing the Punjab Government, in favour of an enactment of general application. It seems to us self-evident that, if any restrictive scheme is to be worked in the partial manner which was so strongly advocated by Sir Dennis Fitzpatrick, it is inevitably doomed to failure. In the first place, the remedy would not be tried till the disease was very largely beyond cure; and in the second place, if the restrictive measures were confined to scattered tracts throughout the Province, the agricultural population in those tracts would be placed at a very serious disadvantage. Their credit would be injuriously impaired, for the money-lenders, while able to look to the land for their security everywhere outside these special areas, would naturally avoid lending to men who were prohibited from giving such security. The agriculturists in these areas would thus stand apart as a proscribed class, and would naturally resent their position. If, on the other hand, the restrictive scheme be made of general application, there is no reason to suppose that the credit of the general agricultural community will be materially impaired—not more so, at any rate, than is desirable in their own interests. Take, for instance, the case of the occupancy tenants of Upper India. Alike in the Punjab, the North-Western Provinces, Oudh and the Central Provinces, the occupancy tenant is very materially restricted in his powers of alienation, still it is a well known fact that this class of agriculturists, as a body, is prosperous, and can obtain accommodation from money-lenders on much the same terms as small proprietors. The fact is that the money-lender must continue to exercise his profession, and the agricultural community must, under the rural conditions of this country, continue to constitute his principal clientele. The money-lender plays a most useful, and even necessary, part in the social economy of village life, and no one wishes to eliminate him or to place unreasonable restrictions upon his

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transactions. If our proposed scheme is made of general application, he will have to adapt himself to the new conditions, and will be easily able to do so. If, on the other hand, the scheme is applied only to selected and scattered areas, the money-lender will clearly be master of the situation as regards such localities.

"Such is the plan which the Government of India put forward with the object of checking the transfer of land from the agricultural classes in the Punjab. It certainly goes further in imposing direct restrictions on alienations than has hitherto been attempted in other parts of India, but the circumstances of the Province with which we are dealing are quite special, and I trust that I have shown, although I fear at tedious length, that our scheme is the outcome of very careful investigation and deliberation.

"After all, it must be borne in mind that we are aiming at reverting to some extent to a state of things which prevailed in the Punjab before it came under British rule. It is an arguable question whether the right of free transfer of land was recognized under Native rule, or whether it is what has been called the 'fatal gift' of the British Government, but, in any case, the question is for practical purposes one of mere academic interest, for it is an undisputed fact that in former times the exercise of the right of transfer, at all events in favour of money-lenders or other out-siders, even allowing that such right did exist in theory, was for several reasons exceedingly rare, and we know that even in these days in most Native States alienations of land are either absolutely prohibited or largely restricted. We know, too, that in the Punjab the custom of transferring land did not gain a footing for several years after the annexation of the Province, but that, as land has increased in value and become more attractive as a profitable investment, the number of transfers has increased correspondingly and is still increasing. In a letter addressed by the Punjab Government to the Government of India in 1888, during the Lieutenant-Governorship of Sir James Lyall, it was said that 'after allowing for the greater accuracy of the statistics of later years, Sir James Lyall considers that the statements of sales and mortgages from 1866 to 1886 show a large gradual increase in the area sold and mortgaged in the Punjab,' and that, 'in both the east and west of the Province there are districts where the transfers to money-lenders are serious and appear to be increasing, and where the fact requires Government to consider if a remedy cannot be found and applied.' In the following year, His Honour the present Lieutenant-Governor, then Financial Commissioner, recorded his opinion that 'the only safe conclusion is that there is year by year a gradually increasing amount of land being sold and mortgaged.' These opinions have been confirmed as districts have come under

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[*Mr. Rivaz; The Lieutenant-Governor.*]

settlement during the past ten years, and the question of transfers has been specially investigated by the Settlement Officers, while the enquiries made by Mr. Thorburn in 1895, to which I have already alluded, showed that in one out of the four circles with which he dealt, the amount of the cultivated area which had been purchased or was held in usufructuary mortgage by money-lenders was as much as 28 per cent., while in another circle it was 20 per cent. These facts speak for themselves. The Punjab is pre-eminently a land of yeoman and peasant proprietors, and the expropriation by the money-lending classes of these sturdy land-holders—men who furnish the flower of the Native Army of India, and who look forward, amid all the hardships and glories of a military career, to spend their declining years on their ancestral acres—has, under the influence of conditions which have sprung up under British rule, been progressing, as I have shown, in different degrees of rapidity in all parts of the Province. The sole and entire object of the measure which I have been explaining is, while affording ample facilities and a sufficient market for unobjectionable transfers, to arrest the further progress of this mischief and to check, by remedial action, an ever increasing political danger; and I venture to express a confident hope that our scheme will be received in this spirit by those in whose interests it has been devised."

His Honour THE LIEUTENANT-GOVERNOR said:—"It is unnecessary for me to allude to the history of this important and much pondered measure, as this has been fully detailed by my Hon'ble friend Mr. Rivaz. I shall confine myself to indicating briefly, what I believe to be the principal object of Government in prosecuting, through infinite varieties of opinion and shades of controversy, the course which has at last landed us in our present position, and to an expression of opinion as to the suitability of the lines on which, as explained by the Hon'ble Member, the Bill has been framed.

"The object, in which all are agreed, is to provide a corrective for the results of our own acts, to mitigate the almost revolutionary effects of British rule as applied to land tenures in the Punjab. In conferring or confirming an almost unlimited proprietary right in land, in separating the judicial machinery from the executive, in encouraging free resort to the Courts, we have for five decades been pouring new wine into old bottles; some of the flasks are cracking, some have already burst. The State must needs be prepared to undertake some risk in this process, which has been accompanied with many extraordinary and beneficial developments, but if it is too rapid, there is something worse than danger to be faced, and that is positive unfairness. If the processes of law which are

[*The Lieutenant-Governor.*]

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incidental to land cases are beyond the comprehension of the average land-holder ; if they are too drastic to permit of the continuance of methods which though halting and imperfect are sanctioned by ingrained habit and long established custom ; if they place the more astute money-lending class in a more advantageous position than the unsophisticated rustic : then the unfairness becomes marked, and interference becomes necessary. There is now a consensus that this is the case, and the Legislature is being invoked to remedy the evil. As to the limits of such interference there are, as I have already said, infinite varieties of opinion. There are also various methods of interposing: one has passed the stage of discussion and has taken shape in the amendment of the Contract Act, with the express purpose of placing the money-lender and the agriculturist on a level in the Courts ; one has been dealt with in the discussions on the present measure, but has been dis severed from it, owing to its complexity, and will probably form the subject of legislation hereafter—I allude to a proposal to amend the law of pre-emption. Except as regards matters of procedure, the Bill which is now about to be introduced comprises, in all probability, all the remaining methods which are applicable or in any way advisable. The main features have been sketched by the Hon'ble mover, and consist of the restriction of the power of alienation of land by sale or perpetual lease, and of the prohibition of all usufructuary mortgages, except what I may call the automatic repayment mortgage, where after the expiry of the term of mortgage, which is limited to a maximum of 15 years, the land reverts to the mortgagor, with the mortgage debt extinguished. The second of these provisions has my unhesitating concurrence. It is, in a way, the sheet anchor of the measure, as preserving the credit of the agriculturist. In regard to the restriction of sales, it would be tedious, as well as unnecessary, for me to explain my personal attitude. The measure as now proposed is a compromise, arrived at, after the fullest consideration, between two sets of opinions, and, like most compromises, deliberately and thoughtfully adopted, probably represents the best counsels. In the first place, there is nothing absolute about the restrictive provisions. The person who lies under the greatest disability under the proposed Bill, can obtain a dispensation from its provisions, if due cause be shown. Then the market for sale of land will be fairly open under a system which permits transfers to any agriculturist of the village or any member of the same agricultural tribe in the same district, it being understood that the word tribe is used in its widest signification, and that the district may be wider than the Revenue District if reason exists. And I concur with the Hon'ble mover that in these provisions there lies, to some extent, a reversion to a state of ideas which was prevalent in the early days of Punjab Administration, and is still widely recognized in Native States.

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[*The Lieutenant-Governor ; The President.*]

"Therefore, with due reserve as to details, I support the Bill which is now before the Council, believing it to be in many respects one fraught with great benefit to the Province, while those provisions regarding which there is most room for difference of opinion embody the result of one of the most laborious and protracted investigations ever conducted by the Government, and I feel it to be my duty to accept them."

His Excellency THE PRESIDENT said :—"The historical retrospect with which Mr. Rivaz commenced his interesting speech appeared to me to be of value in its general as well as in its particular application. He showed that the question of agricultural indebtedness in many parts of India had attracted the attention of Government, and had elicited the opinions of expert authorities at intervals throughout the present century, but that during the past 25 years it has become genuinely pressing and acute. Minutes have been written, resolutions have been circulated, and laws have been passed, for the mitigation of the abuse. But all of these have dealt, so to speak, merely with the fringe of the subject ; and only to-day are we engaged, for the first time, in introducing a measure of first class legislative importance to check this great and growing evil.

"Does not this fact illustrate in a striking manner the method and deliberation with which we proceed ? I am one of those, as may be known, who find that the machine of Government is apt to move somewhat slowly in this country, and to be a little ponderous and rusty in the revolution of its wheels. But for caution and slowness, in a matter affecting vast areas of territory, relating to the concrete rights of property, and touching the livelihood of hundreds of thousands, if not of millions, of the population, I have nothing but praise. Our studies and investigations can scarcely be too protracted ; our action must, on no account, be flustered or precipitate ; if our proposals are to be successful, full opportunity must be afforded to public opinion to digest and to accept them, provided, that is, that they are deserving of acceptance. It is very important that the mills of the Sirkar should grind slowly, because in the long run they are apt to grind exceeding small.

"Let me apply these observations to the present case. Mr. Rivaz has just asked leave to introduce this Bill, which has, I may almost say, been for years in course of incubation. It represents the unanimous views of the Government of India. It has been accepted by the Secretary of State. It is supported, in the brief but powerful argument to which we have just listened, by the Lieutenant-Governor of the Province to which it is proposed to be

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applied. Yet so conscious are we of the importance of the precedent that we are setting, and of the far-reaching consequence of the solution that we propose, that we have resolved to give the amplest opportunity for the expression of the opinions, and even of the criticism, of those whose interests will be affected by this measure. In my opinion, legislation in this Council, which is invested with the law-making prerogatives of the Government of India, should be deliberate in proportion to its facility. Laws that are made in haste are apt to be repented at leisure. For these reasons, we now introduce this Bill, which public and expert opinion will have an ample opportunity of discussing during the next six months; and fortified, as we hope, by this outside assistance, we shall then take up the measure when we re-assemble at Simla next year.

"As regards the merits of the Bill itself, I would make these observations. The issues at stake are, in my judgment, as momentous as any that can attract the attention of the Government of India. There is no country in the world that is so dependent upon the prosperity of the agricultural classes as India. There is no Government in the world that is so personally interested in agriculture as the Indian Government. We are, in the strictest sense of the term, the largest landlords in creation. Our land revenues are the staple of our income; upon the contentment and solvency of the millions who live upon the soil is based the security of our rule. In the present case we have all the greater responsibility, from the fact that in the Province of the Punjab, with which we are now about to deal, we originated the present land-system which has had the unfortunate consequences that it is proposed to rectify, as well as the legal system which has given the usurer his opportunity. A double responsibility, therefore, rests upon our shoulders. We cannot afford to see the yeoman farmers of the Punjab—the flower of the population and the backbone of our Native army—dwindle and become impoverished before our eyes. Neither can we acquiesce in the consummation of a social revolution which is in contradiction both of the traditions of Indian society and of the cardinal precepts of British rule.

"If it be asked why we have selected the Punjab as the field of this experiment, the answer is that there the problem is most serious, there the evil has reached, or is reaching, the most dangerous dimensions, and there it possesses a political and social as well as a purely agrarian complexion. But our vision is not centred upon the Punjab alone. This canker of agricultural indebtedness, which is eating into the vitals of India, and which is one of the 12 questions that, as I have remarked on a previous occasion, I have set before myself the humble intention to examine, and if it may be, to attempt to solve, is not one of narrow or contracted application, though in particular parts it may be more grave in its

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incidence than in others. We shall, doubtless, require to handle it in different ways in different areas. We began some years ago after a tentative fashion in the Deccan. We are now proceeding with a bolder venture in the Punjab. Should we be successful in this enterprise, we shall be encouraged to proceed, and thus, stone by stone, and layer by layer, to build up the fabric of economic and social stability for our rural population.

"I do not shut my eyes to the fact that many objections can be, and probably will be, raised to this legislation. It will be said that we are taking away a right which we ourselves too generously conferred; that we are depreciating the values of land, which, in my opinion, have been unduly inflated; or that we are affecting the credit of a section of the population, to whom a mistaken system has given the opportunity of borrowing up to the edge of their own ruin. I have, in these few sentences, indicated what would be the nature of my reply in each case. But I may add that even were these minor drawbacks to be realized—and I do not think that they will be to any appreciable extent—they must be weighed in the balance against the vastly superior advantages to the land-owning and agricultural community that we have in view; and they must be measured by the scale of the disaster which, unless some drastic measures be taken, will assuredly before long overwhelm the smaller Zemindar classes of our population. I trust that in the public scrutiny to which we now commit this proposal, these considerations of statesmanship may be borne in view, and that it may be remembered that great and salutary ends are not apt to be secured by timid and temporizing means."

The motion was put and agreed to.

The Hon'ble MR. RIVAZ introduced the Bill.

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

The motion was put and agreed to.

The Council adjourned to Friday, the 13th October, 1899.

SIMLA;	}	J. M. MACPHERSON, <i>Secretary to the Government of India, Legislative Department.</i>
<i>The 28th September, 1899.</i>		