

*Saturday,
17th February, 1906*

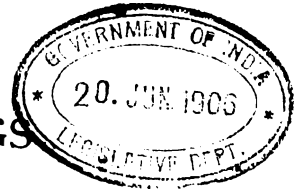
ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XLIV

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ABSTRACT OF PROCEEDINGS



OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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FROM 1905 TO MARCH 1906.

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1906.

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 Government House, Calcutta, on Saturday, the 17th February, 1906.*

PRESENT :

His Excellency the Earl of Minto, P.C., G.C.M.G., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.

His Honour Sir A. H. L. Fraser, K.C.S.I., Lieutenant-Governor of Bengal.

His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., Commander-in-Chief in India.

The Hon'ble Sir A. T. Arundel, K.C.S.I.

The Hon'ble Sir Denzil Ibbetson, K.C.S.I.

The Hon'ble Mr. H. Erle Richards, K.C.

The Hon'ble Mr. E. N. Baker, C.S.I.

The Hon'ble Major-General C. H. Scott, C.B., R.A.

The Hon'ble Sir Rameshwara Singh, K.C.I.E., Maharaja Bahadur of Darbhanga.

The Hon'ble Rai Sri Ram Bahadur, C.I.E.

The Hon'ble Mr. L. A. S. Porter.

The Hon'ble Mr. L. Hare, C.S.I., C.I.E.

The Hon'ble Mr. H. A. Sim, C.I.E.

The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.

The Hon'ble Mr. A. A. Apcar, C.S.I.

The Hon'ble Mr. S. Ismay, C.S.I.

The Hon'ble Mr. W. T. Hall, C.S.I.

The Hon'ble Mr. A. C. Logan.

The Hon'ble Nawab Bahadur Khwaja Salimulla of Dacca, C.S.I.

The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.

SINDH INCUMBERED ESTATES (AMENDMENT) BILL.

The Hon'ble SIR DENZIL IBBETSON moved that the Report of the Select Committee on the Bill to amend the Sindh Incumbered Estates Act, 1896, be taken into consideration.

The motion was put and agreed to.

The Hon'ble RAI SRI RAM BAHADUR moved that the following proviso be inserted after sub-section (2) proposed to be added to section 5 of

* NOTE.—The Meeting of Council which was fixed for the 16th February, 1906, was subsequently postponed to the 17th idem.

[*Rai Sri Ram Bahadur ; Sir Denzil Ebbelton.*] [17TH FEBRUARY, 1906.]

the Sindh Incumbered Estates Act, 1896, by clause 3 of the Bill, as amended by the Select Committee, namely :—

“Provided that nothing contained in sub-section (1) shall affect the liability of sureties in respect of contracts of suretyship entered into by them before the seventeenth day of February, 1906.”

He said :—“The object of this proviso is that retrospective effect should not be given to the provisions of this Bill so far as they affect the position of sureties who have already incurred obligations before the passing of this Bill ; in other words, contracts entered into by sureties before this Bill becomes law should not be touched. It will not be fair for the legislature to step in to afford protection to persons who with their eyes open entered into a contract of suretyship and induced the creditors to advance loans to landholders on the strength of the guarantee given by them.

“Special legislation for affording protection to the landed classes in Sindh has now, in one shape or another, had a place in the provincial Statute-Book for some time past. It cannot, therefore, be said that the persons who have stood security to landholders for money advanced to them, have not been cognizant of the existence of such an important law ; and if with these risks staring in their faces they have incurred the obligations of a surety, they should be the last persons to whom the special protection, which for political reasons is intended to be given to landed classes only, should be extended by retrospective legislation.

“The Bill recognizes the justice of leaving intact the liability of a surety who in the security bond has agreed, in express terms, to discharge the obligations of the principal debtor, even where the latter seeks the protection of the special provisions of the Sindh Incumbered Estates Act ; sub-clause (2) of clause 3 of the Bill clearly excluding the cases of such sureties from its operation. No adequate reason, it appears to me, can be assigned, why the mere absence of such a stipulation in the security bond should deprive the creditor of his legal rights. The omission might have been caused through mere inadvertence or through ignorance or carelessness on the part of the writer of the bond. I therefore submit that the new provisions of this Bill should apply to only those contracts of suretyship which may be entered into after this Bill becomes law. The public will then have sufficient notice that, unless expressly agreed upon in the bond, the sureties will in future have the same protection as the principal debtors, and it will be their look out in future to stand security for Sindh landholders or not.”

The Hon'ble Sir DENZIL IBBETSON said :—“My Lord, I regret that I am unable to accept this amendment on behalf of Government. During the ten

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years for which the Sindh Incumbered Estates Act has been in continuous operation, the Sindh money-lenders have been studying it in order to take advantage of its weak points. And among other things, they have discovered that while it protects the principal debtor against extortionate claims, that protection does not extend to the surety; so that if the creditor insists upon a surety to a bond of however iniquitous a character, his claim against the principal indeed will be cut down by the manager, but he can enforce it in full against the unhappy surety. This we propose to remedy, by extending the same protection to the surety as is already enjoyed by the principal. We also propose that this protection should apply to the sureties to existing bonds; in so far, the provision will have retrospective effect; and it is to this that the Hon'ble mover objects.

"Now it is always possible to make out a case of some degree of plausibility against any legislation which has retrospective effect. But I think the Council will agree with me that such a case is at its weakest, when the object of the legislation is to remedy an oversight in the original law which has been taken advantage of in order to defeat the main object of that law; and that is precisely the present case. The Hindu Sabha, which represents the money-lenders of Sindh, virtually admit, in paragraph 3 of their memorial, that the practice of taking sureties has grown up in Sindh in consequence of the weak point which has been discovered in the Incumbered Estates Act, and with the deliberate intention of evading its object and its provisions; 'otherwise,' as they say, 'there could be little reason of their taking surety-bonds.' We cannot blame the money-lenders for this, but I think that we are justified in defeating their attempt to render the provisions of the law practically inoperative. It must be remembered also that the whole of this remedial legislation with which we are dealing is essentially retrospective in its character, since it applies to claims which existed previous to its enactment. Now, the Act has been renewed three times, so that in making the provision about sureties cover existing surety-bonds, we are only following the principle which has already been four times affirmed by the enactment and re-enactment of the Act, and extending to claims against sureties the principle which has already been four times applied to all other sorts of claims.

"Moreover, the law as it stands is inconsistent with the principles of equity. It is clearly unjust that the liability of the surety should be greater than that of the principal, and that the equitable relief from an extortionate claim

[*Sir Denzil Ibbetson ; Mr. Logan.*] [17TH FEBRUARY, 1905.]

which is afforded to the latter, who has at any rate received some consideration for his bond, should be denied to the former, who has received none. Finally, the device adopted by the creditors, defeats in practice the main object of the Act; since, however much an extortionate claim may have been reduced as against the landowner, if the full sum is decreed against his surety, the manager feels morally bound to reimburse the surety, and thus the relief against extortion which it is the object of the Act to secure, fails to be attained. The Bill is so devised as to prevent this object being frustrated. But if the present amendment is accepted, the money-lender will be able to go on frustrating it in respect of all claims covered by existing security-bonds.

"For all these reasons, I think we are fully justified in giving our new provision retrospective effect, and I oppose the amendment before the Council."

The Hon'ble MR. LOGAN said :—"My Lord, the Hon'ble Member in charge of the Bill has left me little to say on this question, but I may be allowed to add that the surety in these cases must usually be a relative or close friend of the landholder. The suit against the surety ultimately becomes practically a suit against the estate itself, which thus, as soon as it is released by the efforts of the manager, may be replunged into the same embarrassment as before. Since the argument about the ruthlessness of the manager has been adduced as a reason why the security provision should remain unaffected, I should like to point out that neither the attackers nor the defenders of the Bill have any personal knowledge of the circumstances on the spot, and the allegations of the Sindh Sabha are fully counterbalanced by the statements of the Zamindars' Association. In the absence of any evidence to the contrary, we have no reason to suppose that the ordinary presumption that the British officer will act with perfect equity towards all persons whose claims come under his consideration does not apply to Sindh as well as elsewhere. On looking at the administration reports of past years I see that out of 58 lakhs of claims made against the manager, 25 lakhs have been awarded. Assuming that as a matter of course the money-lender would, in dealing with a European officer, claim about twice as much as he expected to get, it seems to me that the expectations of the money-lenders must have been very fairly satisfied. However that may be, as the Hon'ble Member in charge of the Bill has pointed out, the money-lenders have been living under this Act with a perfect knowledge of the risks they are

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exposed to, and therefore they cannot claim any facilities from Government for defeating or evading the purposes of the Act."

The motion was put and negatived.

The Hon'ble RAI SRI RAM BAHADUR moved that from clause 6 of the Bill as amended by the Select Committee, sub-clause (b) be omitted. He said :—"The object of this amendment is to retain the existing law governing the manager's power to question the validity of leases given by the landholders previous to the commencement of the management of the estates of such landholders by the Government. The present law protects leases dated beyond three years immediately preceding the commencement of the management, from being questioned and cancelled by the manager. The power now sought to be conferred on the manager to cancel leases, no matter how old, and award such compensation as he pleases, and the ousting of the jurisdiction of the Law Courts to question the propriety of his orders in this respect, is open to most serious objections. The Chota Nagpur Incumbered Estates Act appears to have been the earliest legislation in this respect, and in all other subsequent Acts that were passed, section 9 of the first-named Act was reproduced and the power to reopen leases was limited to such as were dated within three years preceding the order making over the estate to a manager for the purposes of the Act. The reason for fixing the time limit is obvious. When a landholder becomes heavily involved, money-lenders may strike with him hard and unconscionable bargains, and when he finds that he cannot get on any longer, he takes protection under the Incumbered Estates Act. The Government taking over charge of such an estate are anxious to save the proprietor, but at the same time are not less anxious that their agents must not attain that object by extinguishing other people's just rights and legal claims. So it is only with regard to recent transactions that the manager is invested with plenary powers to settle them according to his discretion. But respecting leases of long standing which, in many cases may be as good as sales, the jurisdiction of the ordinary Law Courts is left intact. It should also be noted that by the Indian Contract Amendment Act (No. VI of 1899) the law regarding 'undue influence' and 'hard and unconscionable bargains' has been amended in favour of the debtor, and Law Courts have been empowered to reopen all contracts which may appear to press heavily on the debtor owing to any of the above grounds or on the ground of his indebtedness to the money-lender. [See section 16 (1) and illustration (c) to that section.] Thus,

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when under the provisions of the ordinary law, every individual transaction in the shape of a lease or mortgage between the money-lender and the debtor can be reopened by a Court of Justice and equitable relief given to the embarrassed debtor, there seems to be no necessity for investing the manager with those powers, especially as he must be regarded as an interested party in the matter, and at the same time oust the jurisdiction of Law Courts with regard to his decisions respecting cancellation of leases of long standing and adequacy of compensation. In the memorial submitted by the Sindh Hindu Sabha, instances are mentioned where the discretionary power exercised by the manager would have resulted in great injustice, but for the intervention of Law Courts. I believe the Dekhan Agriculturists' Relief Act has also been extended to Sindh. Under that Act also the Law Courts have power to reopen leases and go behind transactions of long standing. In these circumstances, I think, we may trust the Law Courts to grant adequate and proper relief to debtors where such relief is required; the jurisdiction of these Courts should not be ousted except in cases relating to recent transactions."

The Hon'ble Sir DENZIL IBBETSON said :—" My Lord, I think that in his remarks about the supersession of the jurisdiction of the Civil Courts, the extension to Sindh of the Dekhan Agriculturists' Relief Act, and so forth, the Hon'ble mover has travelled somewhat wide of the point which is before us. The only question with which we are at this moment dealing is, whether the powers which the manager possesses with respect to inequitable leases, shall or shall not be restricted to leases which are of less than three years' standing.

" However, I am not sorry that he has done so, since it gives me the opportunity of pressing upon the Council a consideration which I think should guide us in dealing with all the four amendments upon the notice paper.

" The Sindh Incumbered Estates Act was first passed, with temporary operation, in 1876; it was temporarily renewed in 1881, and again in 1884; and it was made permanent in 1896. Thus the Act as a whole has been four times before Government and the legislature, and the principles upon which it is based have been four times considered and affirmed.

" Now, the point which I desire to press is, that the Act is not now before us for general revision. Our business today is simply to deal with some small alterations of detail, which the Bómbay Government desire to make in it to remove

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certain difficulties that have been experienced in administering the Act. And I think that, in dealing with them, we are bound to regard the principles of the Act as established and accepted, and simply to consider whether the proposed alterations are necessary or advisable in order to give fuller effect to the scheme upon which the Act proceeds.

"I now turn to the amendment before the Council, which I am afraid I must ask them to reject. I have not been able to discover why the operation of the section which empowers the manager to set aside an inequitable lease and eject the lessee, is restricted to leases of less than three years' standing, while the power to evict a mortgagee is subject to no such restriction. The section itself was copied from the Chutia Nagpur Incumbered Estates Act of 1876, and added to the first Sindh Act, which was passed in the same year. Probably the Hon'ble Member is right in his surmise that it was considered that leases entered into only shortly before the state of his affairs induced a landowner to seek relief under the Act, were more likely to have been given on terms unfair to the lessor, under pressure of his urgent need for money. But I think that the legislature was almost certainly influenced by the further consideration that an agricultural lease commonly differs from a mortgage, in that the latter is most often given to a money-lender as security for old debts enhanced by exorbitant interest; while the former is more generally granted to a *bona fide* agriculturist with a view to the cultivation of the land.

"Neither of these considerations appears to me to possess much force in its application to the present case; the first, because it is hardly applicable to the law as it stands, and the second, because it has ceased to be true. It may be that old leases are less likely to be inequitable than recent ones; though the same may be said with equal truth of usufructuary mortgages. But if they are not inequitable, they cannot be interfered with under the law; while, if a lease of 5 years, or of 15 years, standing is inequitable, I see no reason why its terms should not be as much open to revision as those of a mortgage of similar standing.

"As for the second consideration—that lessees are generally of a different class from mortgagees—the Sindh money-lenders have long ago discovered that, under the provisions of the Act as it stands, the lease possesses distinct advantages over the mortgage, and have taken to making their debtors execute what are virtually mortgages in the form of leases: the result being that the estates under management are involved in costly and protracted litigation in

order to decide whether the instrument is really a lease or a mortgage; while, if it is decided to be a lease, and it is more than three years old, the money-lender escapes the equitable jurisdiction to which it is the object of the Act to subject his claims, since leases as such do not come under the liquidation proceedings. The Bombay Government tell us that leases are now 'almost invariably' of the nature of usufructuary mortgages, and are really the security for old debts and fresh advances; and Mr. Giles, the late Commissioner in Sindh, puts the proportion of leases which are of this character at 'over 95 per cent.'

"Now I should like to show the Council the nature of these leases which the Hon'ble Member desires to protect. When originally proposing the present Bill, the Bombay Government sent us some examples, from among which I have selected three. In the first of them the creditor claimed old debts amounting to Rs. 2,500 which he was unable to prove before the manager. Under the threat of a civil suit, the landowner leased a property for 12 years in satisfaction of this debt. The lease was held to be a mortgage, and was set aside; and the property was actually re-leased at an annual rental of Rs. 1,825. Thus, even supposing the whole amount of Rs. 2,500 to have been equitably due, the money-lender would have obtained in satisfaction of it $12 \times 1,825$ or Rs. 21,900. In the second case, which was of a precisely similar nature, the creditor would have received Rs. 24,700 in satisfaction of an old claim, which could not be proved, amounting to Rs. 4,000; the debtor being at the time in such straits that the terms included Rs. 100 a year (which I have deducted from the above figures) for the maintenance of himself and his family. In the third case the property was leased for 10 years in consideration of Rs. 6,000 paid in advance; and the lessee himself admitted the annual average profits to be Rs. 2,030, or Rs. 20,300 for the whole term of the lease. In this case the lease was really a lease; and as it was more than three years old, it was impossible, owing to the restriction which we desire to remove, and the Hon'ble Member to retain, to interfere with it. I have chosen these cases, not because they are the worst, but because no element of estimate enters into them, the real value of the lease having either been admitted by the lessee himself, or actually obtained in the open market. In the first two cases, the leases were simply securities for old claims of the usual inflated character.

"I do not suggest that all leases are so monstrously inequitable as the three selected specimens. But the specimens suffice to show the sort of thing

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against which we desire to protect the landowner, and why it is necessary to have the same power to revise an inequitable lease as to revise an inequitable mortgage. If it were only that in no other way can ruinous litigation as to the nature of the instrument be avoided, that consideration alone would suffice to justify us in putting both classes of deeds on the same footing; and the Bombay Government, while telling us that there has already been much litigation of this nature, describe the proposal which the Hon'ble Member desires to negative, as being 'the most important of all' their proposals. I therefore oppose the amendment."

The motion was put and negatived.

The Hon'ble Mr. GOKHALE moved that in sub-section (2) proposed to be added to section 22 of the Sindh Incumbered Estates Act, 1896, by clause 6, sub-clause (c), of the Bill, as amended by the Select Committee, for the words "as may appear to the manager to be" the words "as may be" be substituted, and that all the words after the word "circumstances" be omitted. He said:—"My Lord, as I have stated in my minute of dissent, I am in sympathy with the general principles of the Bill, and I should have been glad to give a silent vote in support of the measure, but for the fact that one or two of the provisions of the Bill are open to serious objection and will in my opinion be productive of injustice in practical operation. The Council must have seen by this time that one important change that the Bill proposes to make is where it empowers the manager to disturb even old leases either by revision or cancellation. I say nothing about the policy of re-opening these leases. If it is necessary, in order to secure effectively the objects of the old Act, to disturb these leases, by all means let the manager have that power. But the Legislature should see that in giving this power it does not empower the manager to inflict injustice on an innocent party. It is admitted by the Hon'ble Member in charge of the Bill that some of the lessees who might be dealt with under this provision are likely to be agriculturists. And I would submit to the Council that where a lease has been obtained *bona fide* or where it has been obtained by a man who is not a money-lender, there no case whatsoever has been made out for closing to him the Civil Courts in regard to the compensation to which he may be justly entitled. The Hindu Sabha has given instances where the manager set aside two leases—one obtained for Rs. 21,000 and the other for something like Rs. 60,000. In each case the manager declined to pay compensation for cancelling the lease, but

in each case resort to the Civil Courts resulted in compensation being awarded. This shows the danger of making the manager the sole master of the situation which it is now proposed to do, as the Bill leaves the question of compensation practically entirely to the manager. The object of my amendment is two-fold. First to secure that where an old lease has been set aside by the manager, compensation which is not merely equitable in his opinion, but which is reasonable in the circumstances, shall be paid to the lessee. Secondly, if there is a dispute as to whether reasonable compensation has been offered or not, the Civil Courts shall not be closed to the aggrieved party. My Lord, I submit that this proposal to leave everything to the manager is not justified. It is true that the manager is an officer of Government. All the same he is in the position of an interested party. He is expected to free these estates from incumbrances, and naturally his bias must be against the money-lenders or others who may have claims on the property. I do not say that he would be consciously unfair; but his bias may lead him to take a view of the situation involving serious injustice to a lessee. The only argument that I have heard in favour of the proposed provision is that the Civil Courts take a long time in settling disputes. It is said that if the manager has to wait for their decision before taking effective steps to free an estate from incumbrances, then he would have to wait a very long time indeed. I think this objection will be met by what I have proposed in my two amendments. If it is provided that the manager should offer what he thinks fair compensation, leaving it to the other party, the lessee, to accept or refuse it, and to go to Court if he refused it—if this is done and then the power of eviction is vested in the manager after such compensation is offered, the manager would be able to take the estate into immediate possession and the question of compensation will have to be fought out in the Law Courts. One advantage of leaving the Courts open will be to give a due sense of responsibility to the manager. If he knows that his action is liable to be challenged in a Court of law, that in itself will make him hesitate before he offers compensation which is wholly inadequate. I really do not understand why the Government should show such a want of confidence in their own Civil Courts. It is a general feeling that there has been a tendency of late for the executive to encroach upon the province of the judiciary, and I regret that this provision to which I have taken exception is likely to emphasize this impression. The policy of Government in dealing with agricultural indebtedness by means of legislation is also already regarded with a certain amount of prejudice by the people, and this prejudice

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is likely to be still further aggravated by provisions such as this, which in practice will, without doubt, result in injustice and confiscation."

The Hon'ble Sir DENZIL IBBETSON said :—" My Lord, I cannot advise the Council to accept this amendment, because it conflicts with the whole scheme upon which the Act which we are amending is based, and which, for reasons that I have already explained, I consider that we are bound to maintain; and because it creates a distinction between lessees and all other creditors which I do not think the Hon'ble Mover has succeeded in justifying.

"The law as it stands empowers the manager to set aside at any time a lease the terms of which are inequitable, but makes no provision for compensation. It is obvious that this power might be used so as to work unjustly, since however inadequate the conditions of a lease might be (as in the cases already cited by me) if it were allowed to run its full term, it would still be unfair to cancel it before the lessee had recovered from the profits the amount properly due to him. The Bill before the Council, therefore, introduces an entirely new provision in favour of the lessee, which provides that when the manager sets aside a lease under the Act, he shall at the same time award to the lessee such compensation, if any, as appears to be equitable. But it also provides that the decision of the manager as to the amount of compensation payable, shall, like his decision upon all other claims against the estate, be excluded from the jurisdiction of the Civil Courts. It is this latter provision which the Hon'ble Mover seeks to set aside.

"Now I am told that there is considerable doubt whether, on the true construction of the Act, the Courts have any power at all to award compensation when a lease is cancelled. No such power appears to have ever been assumed by the Bengal Courts under the precisely similar provisions of the Chutia Nagpur Incumbered Estates Act; and although the Sindh Act has been in force intermittently for 30 years, the power was first assumed by the Sindh Courts so recently as 1901, or only 5 years ago. Now, if the Courts have no such power, our proposed amendment simply provides against a possible injustice, and places the lessee in a very much better position than before.

"The Sindh Courts, however, have assumed the power to award compensation; and for the purposes of the present legislation we must take it that they have that power. On that understanding, what we propose to do is to follow the essential feature of the scheme upon which the whole Act is based, and to transfer the adjudication upon the claim of the lessee to compensation from the

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Civil Court to the manager, as the Act has already transferred the adjudication upon all other sorts of claims.

"The object of the Act, in thus substituting the manager for the Courts as the tribunal by which claims against the estate are to be assessed, is two-fold. In the first place, the terrible costliness of litigation and the delays attendant upon it are avoided; and those Hon'ble Members who know how largely litigation has contributed to the ruin of the landowners of India will appreciate the importance of this object. And in the second place, an equitable jurisdiction is created which is in a position to do substantial justice to both parties, unhampered by the legal technicalities of the Courts. This jurisdiction is exercised by the manager of incumbered estates in Sindh, who is a covenanted civilian, drawn from the same class of officers as occupy the judicial benches of the province, and who is no less reasonable, no less sympathetic, no less just than they. His decisions are subject to appeal to and revision by the Commissioner in Sindh, who, as Hon'ble Members are aware, is an officer of higher position and responsibility than an ordinary Revenue Commissioner, and more nearly approaches in status to a Chief Commissioner.

"The Hon'ble Mover describes the manager as an interested person, and in his minute of dissent he stated that, under our proposals, the lessee was at his mercy. But he is no more at the manager's mercy than are all the other creditors. And the manager is as much 'interested' to do justice to the one party as he is to do it to the other; for no estate is taken under management unless inquiry shows that it is possible to do full justice to the equitable claims of all the creditors, and at the same time to preserve the estate, or a portion of it, to the family which owns it. If this is found to be impossible, management is either refused or relinquished. If it is found to be possible, the manager's duty is to hold the scales evenly between creditor and debtor; and I am wholly unable to accept the Hon'ble Member's suggestion that an officer of his standing will be less likely to do what he believes to be just and right if he knows that his decision cannot be called in question by a Civil Court, than if he knew that it can be so revised. As a fact, the greater part of the Hon'ble Member's arguments are directed against the whole principle upon which the Act is based; and, as I have already pointed out, these principles are not before us today.

"The Hon'ble Member cites from the memorial of the Hindu Sabha, instances in which the manager has refused, while the Courts have awarded,

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compensation to a lessee whose lease has been cancelled. But it by no means follows that the refusal of the manager was unjust. It may well have been more truly equitable than the decision of the Courts; for it is a matter of common knowledge how extremely limited are the equitable powers of Indian subordinate Courts, and how exceedingly timid they are in exercising even such powers as they possess. In the first two cases which I cited just now to the Council, it is probable that, had the lease not been held to be a mortgage, the Courts would have awarded compensation to the dispossessed lessee for the rescission of his contract, notwithstanding the extortionate character of that contract.

"In short, so long as the claims of every description of claimant, including those of mortgagees, are excluded from the jurisdiction of the Civil Courts, I can see no reason for making an exception in favour of the holder of an inequitable lease, and of him alone; and I think that to do so would be unfair to the other creditors, and opposed to the whole principle upon which the Act is based. I therefore oppose the amendment."

The Hon'ble MR. LOGAN said:—"My Lord, the Hon'ble Mr. Gokhale, following the Sindh Sabha, has tried to induce the Council to suppose that the manager invariably loses suits in the Civil Courts, which are continually reversing his decisions and doing justice to his victims. But this is not actually the case. On looking at the statistics of last year I find that out of ten suits against the manager which were disposed of, he lost only three, and that out of five appeals he lost only one. Therefore, in the majority of cases, he wins his suit. Further, I have had the advantage of seeing the judgment in the case of the Rs. 60,000 which was quoted as a monstrous injustice on the part of the manager, and I find that the manager, after investigation of the case, came to the conclusion that the lessee had made between Rs. 1,32,000 and Rs. 1,50,000; and consequently, if any injustice was done in refusing compensation, it could not have been such a serious injustice as we are asked to suppose. If it is answered that since the Courts as a rule side with the manager why not let the situation remain as it is, then I wish to urge that the manager is wrapt in a perpetual cloud of litigation and the situation demands relief. In the past year no less than 44 suits were instituted against him or his estates. I take it, my Lord, that the operations of the money-lender in lending to estates which are likely to come under the Act are very largely of a gambling

nature. From the figures quoted by the Hon'ble Member in charge of the Bill, it works out that the percentages of profits range from 338 to 876 per cent., which seems to show that these are speculative transactions. The money-lender considers how many times he will be likely to turn over his capital before the landlord applies for the protection of the law and the manager comes in and cuts him off with a rupee. That disappointed and half-satisfied gamblers should, after taking all risks in playing their stakes, be allowed further to harass the manager with suits, seems to be altogether inadmissible; and this I urge as a principal reason why the Council should not accept the amendment and leave these cases open to the jurisdiction of the Civil Courts, supposing that the Courts' jurisdiction hitherto has been legal."

The Hon'ble MR. GOKHALE said:—"My Lord, I wish to say a word or two by way of reply. The Hon'ble Sir Denzil Ibbetson seems to claim for the manager and for executive officers generally a degree of perfection with which we are not familiar in ordinary human beings. The manager, in dealing with these estates, is undoubtedly in the position of an interested party. The Government has appointed him to free certain encumbered estates. He has to submit annual returns to satisfy the Government that has appointed him that he has done so much work and freed so many estates. Naturally his bias would be against lessees, as his object would be to free estates as soon as possible. No one wants to say that the manager would be unfair deliberately, but what I wish to urge is that in spite of a desire to be just and fair he might take steps, or he might arrive at conclusions, which would involve grave injustice to innocent parties. My contention is that even if in one case injustice is perpetuated by the manager with the authority of the law, the legislature is not justified in putting such power into the hands of the manager. The Hon'ble Mr. Logan has told the Council that I have followed the Hindu Sabha in saying that suits brought against the manager by money-lenders are invariably won by the latter. Now I never made any such statement, and I don't know what is his authority for attributing it to me. My contention throughout has been that in the majority of cases the action of the manager may perhaps be correct, but that does not justify his being entrusted with powers which practically make him the master of the situation.

"As regards the percentage of profits and the turn over of capital regarding which Mr. Logan has made some remarks, I really am not in a position to say anything, but it strikes me that the cases which he spoke of must be absolutely

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exceptional, where a profit of 300 to 800 per cent. is made. Cases of that kind must be absolutely exceptional or the zamindars of Sindh must be more imbecile than children. I think that on the strength of such exceptional cases the legislature is not justified in putting such absolute powers into the hands of the manager."

The motion was put and negatived.

The Hon'ble Mr. GOKHALE moved that in sub-section (4) proposed to be added to section 22 of the Sindh Incumbered Estates Act, 1896, by clause 6, sub-clause (c), of the Bill, as amended by the Select Committee, between the word "cancelled" and the word "refuses" the words "and to whom any compensation awarded has been paid or offered" be inserted. He said :—"The object of this amendment is this. The manager sets aside an old lease and he awards a certain compensation to the lessee. The compensation is not actually paid, but the manager merely enters the amount in the list which he keeps in his office; and on the mere strength of his having set down this amount against the money-lender or lessee, he proceeds to evict the lessee and take possession of the estate, which up to that time was in the possession of the lessee. Now this is very hard on the lessee. I recognize that the Select Committee have to a certain extent modified the provisions of the Bill, as originally drafted, in this respect, and as far as it goes the modification is an improvement. As the Bill was originally drafted, there was no provision as to when this compensation may be paid. The Select Committee have given this compensation precedence over all liabilities except the liabilities due to Government. To that extent I think the Select Committee have improved the original Bill. But this does not go far enough. The Hindu Sabha has pointed out that there have been numerous cases where claims have been awarded, but not paid. The amount has been fixed, but though it is several years, it has not been paid and no interest is allowed. We are also told that the manager often finds it difficult to raise loans. I may point out that when the amount of compensation has been settled, it is to the advantage of the estate that the payment of this amount should be postponed as long as possible. If the manager had to pay interest he would pay the amount as soon as possible, because otherwise interest charges would accrue. But since he is not bound to pay interest, it is to the advantage of the estate that the payment to be made should be postponed as far as possible. Now this is most unjust. A lessee may have invested his all in securing a lease. Such cases may be very few, but that does

not affect my argument. He may have enjoyed the lease, or his children may have done so, for a number of years. Suddenly the manager comes in, sets aside the lease and puts down a certain sum in his list as due by way of compensation, and proceeds to evict. What are these people to do? On what are they to live since they have invested their all in securing the lease? Cases of this kind are likely to occur, and it does not seem to me to be right that the legislature should arm the manager with powers to inflict such injustice. My object, moreover, in moving this amendment is larger than this. I want to raise the question of the policy of Government in regard to this matter. The question of agricultural indebtedness has been hitherto sought to be dealt with by the Government by a mere turn of the legislative screw only. The Government in the past have carefully shrunk from accepting any money responsibility. I think this is not the proper way of proceeding to deal with the question. Local Governments have repeatedly urged upon the Government of India the necessity of their advancing money in order that liquidation schemes may be taken in hand and pushed on. If you leave managers to raise money in the open market for the purpose, then it is merely a choice of exchanging one set of creditors for another set of creditors. I have looked up the proceedings of this Council when the Act of 1896 was passed and when the financial policy of the Government of India on this subject was enunciated by Sir James Westland. It must, however, be remembered that the finances of the Government were not in such a prosperous condition in those days, and therefore any enunciation of the policy of the Government made in those days need not hold good today. Sir James Westland remarked that it was quite true that the Government could borrow at $3\frac{1}{2}$ per cent. and advance at 5 per cent., and this would be not only to the interest of the estate which could not borrow at 5 per cent. in the open market, but it would also be to the interest of the Government, because the Government would be making a profit. But he said that the Government would in that case be entering the money-market in competition with private money-lenders, and thereby inflicting unjustifiable injury on the latter. It would thus seem that a tender solicitude for the interests of the money-lender, who otherwise has always been treated as if he was beyond the pale of civilized society, is at the bottom of the policy of Government. But if the money-lender does not deserve sympathy, what does it matter to the Government whether he has a prosperous business in any particular locality or not? I do not see why his interests should stand in the way of a proposal which in every respect is admitted to be a beneficial one. It must be remembered that the

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Local Governments—notably the Government of Bombay—have always been in favour of the policy I am urging. If the Government revises its present policy and loans are raised by the Government specially for the purpose of freeing incumbered estates, then all these difficulties will disappear. A compensation that is thought fair may at once then be offered and paid to the lessee, and then there would be no grievance so far as his eviction is concerned.

“I understand that the Finance Department has always strenuously resisted the adoption of such a policy, and it may be urged by the Finance Minister that the borrowing powers of Government are limited, and whatever loans can be raised are required for railways and other public works. Now, in the first place, there is nothing to prevent the Government of India from approaching the authorities in England for increased borrowing powers; and, secondly, the surpluses which the Government may have as in recent years might be ear-marked for the relief of agricultural indebtedness. During the last seven years the surpluses have amounted to over thirty millions, and these surpluses have been almost exclusively devoted to the extension of railways. If a considerable portion of this money had been set aside for the relief of agricultural indebtedness, a great deal of good work might have been done. However, there is no use in talking about the past, but there is nothing to prevent the Government in ear-marking such amounts in future. The Finance Department, it may be remarked, need not after all be the whole Government of India, and if the Government will adopt a liberal and courageous policy, the Finance Department will have to carry out that policy.”

The Hon'ble Sir DENZIL IBBETSON said :—“My Lord, this is not a debate upon the Budget, and I do not propose to follow the Hon'ble Mover in his discussion of the financial policy of the Government of India. But I cannot pass without notice one of his assertions. He tells us that the Hindu Sabha, in their memorial, mention numerous cases in which compensation, though awarded, is not paid, because a loan cannot be raised. I do not think he is correct in saying this. So far as I recollect, the Sabha mention no cases; they only make assertions. The Bombay Government do the same; and they tell us that it is the ‘usual method’ to raise a loan and pay off the creditors, though in some cases this is not done; and that no difficulty is ordinarily experienced in raising money on the security of the estate at the very moderate rate of 6 per cent. interest.

“I now turn to the amendment before us, which I am afraid that I must oppose. Its object is to provide that the holder of an inequitable lease

(to whom alone the provisions under consideration apply) shall not be put out of possession till after he has been paid any compensation that may be found due to him.

"Now I am not sure that the Hon'ble Mover realises the condition which many of these incumbered estates have reached before they come under the Act. The landowner generally postpones his application until the last moment; and when the manager assumes control, he often finds no tenants on the land, no money in the treasury, and urgent claims on all sides pressing to be satisfied. If he is to save the property and at the same time to meet the just claims of the creditors, it is essential that he should recover possession, at the earliest possible moment, of any portion of the property (usually a picked portion) which, owing to its being held under a lease granted on inadequate terms, fails to contribute what it should do to the revenues of the estate. Meanwhile the owner and his family have to be kept alive, new tenants have to be started on the land, and every penny of available cash is urgently required.

"The Hon'ble Member draws a moving picture of the lessee who has invested his all in a lease, and is evicted before he has obtained his compensation, and in his minute of dissent he heightened the effect by introducing a starving family. I confess that the picture does not affect me, for I regard it as wholly imaginary. The man who will starve with his family for want of compensation, is not the sort of man who succeeds in inducing a big Sindh zamindar to lease him land on inequitable terms. It takes time to arrange a loan; and if the lessee is allowed to remain in possession until money can be found to buy him out, it may well be that by the time he comes to be evicted, instead of compensation being due to him, he will have received far more under the terms of his lease than the amount to which he was equitably entitled.

"The amendment, moreover, would place the holder of an unfair lease in a position far superior to that of all other creditors, including mortgagees; since a mortgagee in possession, on however reasonable terms he may be holding, may be dispossessed at once, and yet have to wait for his money. If indeed it were the fact that lessees in these cases were ordinarily genuine agriculturists, there might be some reason for the proposed distinction. But I have already shown how largely this has ceased to be the case.

* "At the same time, it is undoubtedly true, even in Sindh, that a lease, more often than a mortgage, is a *bona fide* transaction, based upon the passing of

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consideration, and intended to provide for the cultivation of the land, even though the terms of the lease may be unduly favourable to the lessee; and, now that we are placing lessees more upon an equality with mortgagees, this will tend to become more commonly the case than at present, since the temptation to put what is really a mortgage into the shape of a lease will be removed. In consideration of these facts, the Select Committee have, as the Hon'ble Member has told us, introduced a new provision into the Bill, which ranks compensation to a lessee before all other private claims upon the estate. The Bombay Government, whom I have consulted in the matter, take no exception to this concession. But they think that it is as much as should be conceded, and that the Hon'ble mover's proposal goes too far, and would establish a distinction in favour of the lessee which would be unfair to the main body of creditors. In this opinion I concur, and I therefore oppose the amendment."

The Hon'ble MR. LOGAN said:—"I wish to correct in the first instance a misapprehension of the Hon'ble Mr. Gokhale as to what I meant about the percentage of profits made by the money-lenders. I did not mean that these percentages were annual ones, but what I meant to represent was the total number of times the capital was to be turned over before the lease came to an end. The 876 per cent. for instance as a matter of fact was to accrue in about twelve years and the percentage works out to something like 76 per cent. per annum, which I think does not alter the character of the case. As regards this particular amendment, I am bound to say that I think the lessee deserves some consideration when he has been evicted from an estate without compensation being paid to him then and there. There is a certain hardship in keeping him waiting. If compensation is due, the lease cannot be altogether an inequitable one; at any rate, if the payment of compensation is considered equitable, the lessee should not be kept out of his compensation without something to counter-balance the loss. Obviously, however, the proper remedy is that he should get interest at a reasonable rate on the unpaid instalments. No legal provision is required for this: all that is necessary is a rule under section 33 of the Act; and if such a rule were passed by the Commissioner and sanctioned by the Bombay Government, it seems to me that the objections of the Hon'ble Member would be met."

The Hon'ble MR. BAKER said:—"I do not propose to follow the Hon'ble Member who moved the amendment in his onslaught on what he imagines to be the policy of the Finance Department. As the Hon'ble Sir Denzil Ibbetson

has said, this is not a discussion upon the Budget; it is a discussion upon an isolated amendment of a local Bill. But the Hon'ble Member made one or two remarks with reference to the financial policy of the Government which I do not think it would be right for me as representing the Finance Department to pass over in silence. He quoted a certain dictum which he says was laid down by Sir James Westland in 1896, when the Sindh Incumbered Estates Act was last before the Council. He said that it was apparently due to his solicitude for the money-lender that Sir James Westland refused to allow the credit of the Government to be used on behalf of these estates. I should not have expressed it myself in that way. I have not seen Sir James Westland's remarks, but it seems to me that it is a very serious question whether the credit of the Government as a whole should be placed unreservedly at the disposal of private parties for private objects.

"Then the Hon'ble Member said that there were two ways in which it was possible for the Government of India to procure funds for this purpose first, by applying to the Secretary of State to obtain higher borrowing powers; and, secondly, that we might ear-mark the surpluses. As regards the first of these suggestions, it is not a question of obtaining higher borrowing power. Our borrowing power is not determined by the orders or dicta of the Secretary of State, but upon the amount of money which the market will give, and this is not affected by the particular requirements of incumbered estates or by any orders or sanction that we may obtain from home. As regards ear-marking the surplus or ear-marking any particular portion of the Government balances, I venture to say that this is an elementary stage of finance beyond which the Government of India has long since passed. The idea of forming separate purses or pockets into which particular portions of revenue should be placed and reserved for special purposes is one which, so far as I am aware, is seldom followed by civilized Governments. We do lend money. When we lend money to Local Governments or Native States or landholders from our balances, we do so from our balances as a whole, and it would be wrong and would only lead to confusion if we attempted to set apart some portions of these balances for particular purposes.

"Finally, the Hon'ble Member appears to be unaware that we do as a matter of fact advance money when a good case is made out for the relief of landholders in precisely similar cases such as that which we are dealing with now. I remember the case of Deo in the district of Gya in Bengal. The old

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Raja of Deo was considered to have had strong claims on the Government, and when his estate was brought under a special Act,—I think it was called the Deo Incumbered Estate Act,—and when it was discovered that there was no possibility of clearing off the debts and restoring it to the descendants except by direct assistance from the Government, the Local Government, with the sanction and I think the assistance of the Government of India, advanced funds necessary in order to liquidate it from its debts. Whether the same thing has ever been done in Sindh I do not know, but I know that similar proposals have come up in connection with other estates in Chota Nagpur.”

The Hon'ble MR. GOKHALE said :—“ The Hon'ble Sir Denzil Ibbetson deprecates my reference to the financial policy of the Government on the score that this is not a discussion on the Budget. I should have thought that, considering how this same question was raised and discussed at some length—discussed by the members of the Government itself—in 1896, when the Act which we are now amending was last before the Council, this should have been about the last objection which any one, especially a member of Government, should have raised to my remarks. However, as the Hon'ble Mr. Baker has made a statement on the subject, I will not say anything more about the Hon'ble Sir Denzil Ibbetson's objection. I will only content myself with the remark that if Sir Denzil Ibbetson wishes me to postpone my remarks till the Budget is before us, I am quite prepared to do so, and I only hope he will then deal with the question fully. As regards what he has said about not paying the lessee at once, the whole argument is, I fear, based on an assumption which is not justified. He used the word 'inequitable' over and over again. What right has he to assume that a lease that is set aside is necessarily inequitable? The power of the manager to set aside a lease is not confined to inequitable leases. I do not think any one is justified in assuming that because in the interests of an estate the manager thinks fit to set aside a lease, therefore the lease is bad and the lessee is not entitled to the protection of the Law Courts or whatever other protection he is at present able to seek.

“ As regards the financial policy of Government, the statement which the Hon'ble Mr. Baker has made is to a certain extent satisfactory, in that it shows that the door is not absolutely closed to the adoption of a policy such as I have suggested. In 1896, when Sir James Westland dealt with this question (I looked at the proceedings only this morning and so I speak with my memory refreshed), he dealt with it on the lines which I have indicated, and put it as a question of not entering into competition with the money-lenders and thereby injuring

[*Mr. Gokhale ; Sir Denzil Ibbetson.*] [17TH FEBRUARY, 1906.]

their legitimate business. He went so far as to say that even if a manager could raise loans in the market at a rate of 6, 7 or 8 per cent. interest from the money-lenders, that would be a much fairer course to pursue than that the Government should come in and advance money at 5 per cent. and thereby disturb the business of the money-lenders.

"As regards the borrowing powers of the Government, I have always understood that there was a limit imposed upon the annual borrowing powers of the Government of India. I remember having read the report of a Parliamentary Committee appointed more than twenty years ago, of which, if I remember right, Lord George Hamilton was Chairman. That Committee made some recommendations, and the restrictions then imposed, I thought, held good today. If there is no limit, there need be no difficulty in borrowing more than the usual loan for public works, because the credit of the Government of India is as good as that of any Government in the world.

"The question is this: is the question of dealing with agricultural indebtedness as important as the necessity of extending railways or dealing with frontier difficulties, and similar questions? The Government freely borrows for these latter purposes. To my mind borrowing for the relief of agricultural indebtedness is a necessity as great as any of these. The whole policy of the Government in this matter has got to be revised and placed on a larger basis. I quite admit that it would not be possible to discuss such a policy in all its bearings when a small Bill like this dealing with a particular province is under discussion. I have only thrown out a suggestion, and notwithstanding the remarks of the Hon'ble Mr. Baker, I venture to hope that it will engage the attention of Government at an early date."

The Hon'ble Sir DENZIL IBBETSON said:—"My Lord, I would ask to be allowed to say a word in explanation. I wish to explain what I meant when I said that the provisions which we are discussing affect only leases which are inequitable. The law restricts their operation to cases in which the consideration upon which the lease is granted is found, upon enquiry into its sufficiency, to be inadequate; and that was what I meant when I described such leases as 'inequitable.'"

The motion was put and negatived.

The Hon'ble SIR DENZIL IBBETSON moved that the Bill, as amended, be passed.

The motion was put and agreed to.

[17TH FEBRUARY, 1906.] [*Mr. Baker; Mr. Richards.*]

INDIAN COINAGE BILL.

The Hon'ble MR. BAKER presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Coinage and the Mint.

PRESIDENCY SMALL CAUSE COURTS BILL.

The Hon'ble MR. RICHARDS moved that the Bill further to amend the Presidency Small Cause Courts Act, 1882, be referred to a Select Committee consisting of the Hon'ble Sir Arundel Arundel, the Hon'ble Rai Sri Ram Bahadur, the Hon'ble Mr. Apcar, the Hon'ble Mr. Logan and the mover, with instructions to report within a fortnight.

The motion was put and agreed to.

INDIAN STAMP (AMENDMENT) BILL.

The Hon'ble MR. BAKER moved that the Bill further to amend the Indian Stamp Act, 1899, be referred to a Select Committee consisting of the Hon'ble Mr. Richards, the Hon'ble Mr. Apcar, the Hon'ble Mr. Ismay, the Hon'ble Nawab Saiyid Muhammad Sahib Bahadur and the mover, with instructions to report within a fortnight.

The motion was put and agreed to.

INDIAN MERCHANT SHIPPING (AMENDMENT) BILL.

The Hon'ble MR. RICHARDS, on behalf of the Hon'ble MR. HEWETT, moved that the Bill further to amend the law relating to merchant seamen be referred to a Select Committee consisting of the Hon'ble Mr. Richards, the Hon'ble Mr. Apcar, the Hon'ble Mr. Logan, the Hon'ble Nawab Saiyid Muhammad Sahib Bahadur and the mover, with instructions to report within a fortnight.

The motion was put and agreed to.

The Council adjourned to Friday, the 2nd March, 1906.

CALCUTTA; }
The 20th February, 1906. }

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