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Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled
for the purpose of making Laws and Regulations.

PUNJAB GOVERNMENT.

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LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE LIEUTENANT-GOVERNOR OF THE
PUNJAB, ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND
REGULATIONS UNDER THE PROVISIONS OF THE INDIAN
COUNCILS ACTS, 1861 AND 1892 (24 & 25 VICT., CAP. 67,
AND 55 & 56 VICT., CAP. 14).

REPORT OF PROCEEDINGS

(*vide Rule 37 of the Rules for the Conduct of Business at Meetings*).

✓ THE Punjab Legislative Council met, in accordance with the Notification of the Lieutenant-Governor of the Punjab in the Home (Judicial) Department, No. 1063, dated the 12th October 1897, and the summons convening the meeting, at Government House, Lahore, on Monday, the 1st day of November 1897.

PRESENT:

His Honour Sir William Mackworth Young, K.C.S.I., Councillor of the Empress, Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Báwa Khem Singh, Bedi, C. I. E.

✓ The Hon'ble S. S. Thorburn.

✓ The Hon'ble Nawáb Fateh Ali Khán, Kazilbásh.

The Hon'ble Louis W. Dane.

The Hon'ble Khán Bahádúr Khalífa Sayid Muhammad Husain,
Mushir-ul-dowla Mumtáz-ul-Mulk.

The Hon'ble J. S. Beresford, M.E., M.I.C.E.

The Hon'ble Rái Bahádúr Madan Gopál, M.A., Barrister-at-Law.

INAUGURAL ADDRESS.

The Hon'ble the PRESIDENT, in opening the proceedings, addressed the Council as follows:—

"Gentlemen,—The establishment of a local legislature in the Punjab was distinctly contemplated in the Indian Councils Act, 1861; and Section 44 of the Act as well as the despatch of Sir Charles Wood, Her Majesty's Secretary of



State for India, with which a copy of the Act was transmitted, left it to the Governor-General in Council to determine at what time effect should be given to this intention. Since that time thirty-six years have elapsed. The older Provinces received the privilege at once, though it was only in 1886 that a legislature was constituted in the North-Western Provinces. Now, eleven years after, the Punjab, the Frontier Province of the North-West of India, has been admitted to the privilege, together with the other great Frontier Province on the east of the Indian Empire, Burma, in a portion of which British rule was first established upwards of 70 years ago, though, as a Province, we are justified in calling her a younger sister.

"In expressing my gratification at being permitted to initiate a measure which confers new dignity on the Province, and, I may add, also on its inhabitants, I cannot help regretting that this important change was not introduced under the auspices of my predecessor, Sir Dennis Fitzpatrick, whose forensic attainments, and whose long experience of the working of the Indian Legislature, so peculiarly qualified him to preside over the early stages of development through which this Council must pass before it can possess the confidence of the people, or indeed contemplate its own existence with any great satisfaction. It is commonly believed that Sir Dennis Fitzpatrick was not in favour of its appointment, as he considered the Province not yet ripe for such a development, but the Punjab has had no ruler who would have been more competent, or, had it fallen to his lot, more careful to foster its early progress.

"Sir Charles Aitchison and Sir James Lyall were both in favour of the measure, and it is mainly no doubt due to the strong opinion to that effect recorded by the latter in 1891 that His Excellency the Viceroy decided to carry it into effect. The reasons given by Sir James Lyall for his recommendation were (1) that there was a general feeling among the educated classes in favour of a Legislative Council; (2) that a free discussion of the measures of Government, especially in regard to financial matters, would be politic and useful; and (3) that Provincial legislation, of which there was considerable need, would be promoted. I shall say a few words about each of these heads.

"You are no doubt aware that the Indian Councils Act of 1892 introduced several important changes into the existing law. The wording of Section 42 of the Act of 1861 prevented the local Councils from repealing or amending any existing Laws or Regulations made, after the passing of that Act by the Governor-General in Council. Had this provision remained in force, the field of action of the newly-constituted Provincial Council in the Punjab would have been extremely limited, owing to the fact that the Acts of local and general operation passed by the Governor-General's Council since 1861, cover the ground occupied by many departments of law. This limitation was removed by Section 5 of the Councils Act of 1892, which permits the exercise of the power referred to, subject to the sanction of the Governor-General in Council. The field opened for the action of the Provincial Council since 1892 is thus greatly widened.

"Another important change introduced by the Act of 1892 consisted in the power conferred by Section 2 of the Act upon the Governor-General in Council, and, subject to his sanction, upon the Governors and Lieutenant-Governors of Provinces, to make rules for authorising the discussion of the Annual Financial Statement of the Government concerned, and for asking questions, under certain conditions and restrictions, at any meeting of its Legislative Council. In addition to this provision was one enabling the Governor-General in Council, with the approval of the Secretary of State in Council, to make regulations as to the conditions under which members might be nominated to the various Councils, within fixed limits as to numbers.

"These provisions constitute what is generally regarded by the educated classes, who interest themselves in the government of the country, as an important privilege, and as a salutary means of bringing public opinion to bear upon the functions exercised by Government. You are aware that this privilege has not at present been conferred upon the Punjab. I have no hesitation in affirming the wisdom of this decision. The experiment of investing a newly formed Council with these functions has not hitherto been made, nor could it have been made, inasmuch as no new Council has been constituted since the Act of 1892 was passed, until the present year. I know of no reason why the privilege of interpellation should be claimed from the birth of a Council, nor can I consider it wise to urge such precipitation. It is best to take one step at a time. The British Government does not shrink from criticism, but mere criticism, unless it is helpful and honest, does not promote the public weal: and can we assume that this is the criticism we shall get in the Punjab if we admit it freely into our Councils?

"Some may be prepared to answer this question with assurance in the affirmative, but, while I am fully persuaded of the loyalty of the people of the Punjab to the British Crown, I am convinced that, for the useful exercise of the right of interpellation, an intelligent public opinion on current topics is desirable, and I am not sure that such public opinion can as yet be said to exist in the Punjab. There are few means of testing this, but the tone of the press is, perhaps, the most important; and, although the public press in the Punjab has largely developed since I first knew the Province, I am unable to say that its criticism of Government measures is always as intelligent, as patriotic, or as candid as one could wish. Still there are signs of progress and improvement in this direction, and I hope that there may be such further indications of the growth of a healthy public opinion in the press and elsewhere that the Government of India may be able to confer upon this Province, at no very distant time, the privileges which are enjoyed in other Provinces in connection with their Legislative Councils.

"I do not propose to attempt to lay before you any programme of legislation for the Province, or to sketch the history of past legislation as it affects the Punjab. The Punjab has a pretty full statute book of its own. Its administrators, from the earliest times, have been forward to meet the special circumstances of its growth by proposing legislation suited to those circumstances, and there has been small tendency to borrow measures from other Provinces simply because they have the recommendation of prescription. The early codes of Sir Richard Temple, Sir Charles Aitchison and others, which embodied the spirit of the regulations in force in other Provinces, were, no doubt, to a large extent, merged in the universal Codes of Law which extend to the whole of British India, but a residue of Provincial Law remained as a nucleus for the compilation of the Punjab Laws Act, in which Mr. Barkley rendered such valuable assistance, and, on the Revenue side, the legislation of 1871, introduced by Sir Fitzjames Stephen, with the assistance of Sir Robert Egerton, formed a precedent for a Provincial Code which has been since followed more or less closely in many Provinces. The subsequent labours of Colonel Wace, which resulted in the present Revenue Law of the Province, are well known to the present generation, and the work of Mr. Tupper, Sir William Rattigan, Sir Meredyth Plowden and Sir Charles Roe will contribute to the codification of customary law (which is recognised in the Punjab as nowhere else in India) when the time arrives.

"The facts which I have mentioned show, I think, that Punjab administrators have been forward to pave the way for the delegation to a Provincial Council of legislation affecting the Province, by their readiness to recognise the special features and special needs of this part of India, and to provide for them; and I fully anticipate that this Council will not only find ample sphere for its labours, but will, in faithfully performing them, promote the welfare of the Province and the efficiency of its administration.

"In welcoming you, Gentlemen, to this Council Board, I will only add that I anticipate the happiest results from the association with this Government of non-official gentlemen of position in its legislative deliberations. The Punjab has drawn largely upon the voluntary assistance of men of known character, loyalty and status in the discharge of more humble duties, and I am confident that the admission of such persons into the Council of State will not only strengthen the administration, but will also tend to implant it more firmly in the hearts of the people."

THE PUNJAB GENERAL CLAUSES BILL, 1897.

The Hon'ble MR. DANE moved for leave to introduce a Bill to shorten the language of Acts and other matters, called the *Punjab General Clauses Bill, 1897*. He said:—"The measure which I am about to ask for leave to introduce, and which has been placed in my charge, though formal and technical in its nature, is of a very important character, as is, indeed, sufficiently indicated by its heading, *vis.*, a Bill to shorten the language of Acts. The Bill, which has already been printed and circulated to Members, is called the Punjab General Clauses Bill, and its scope and purpose are explained in the Statement of Objects and Reasons, and I need not, at this stage, go further into the matter. I apprehend that no objection will be taken to the introduction of a measure such as this, which has been framed on lines which have commended themselves in another place, and which is undoubtedly necessary if we are to secure symmetry, conciseness and uniformity of language in our legislation. With Your Honour's permission, I, therefore, beg to move for leave to introduce this Bill, entitled the Punjab General Clauses Bill, into the Council."

The motion was put and agreed to.

The Hon'ble MR. DANE introduced the Bill.

The Hon'ble MR. DANE moved that the Bill and Statement of Objects and Reasons be published in the *Punjab Government Gazette*, and that the Bill be referred to a Select Committee. He said:—"As the Council have agreed that the Bill should be introduced, I have now, with Your Honour's permission, to move that, in accordance with Rule 19, it may be referred to a Select Committee. As it is practically a reproduction of the Imperial General Clauses Act, 1897, it might, perhaps, have been sufficient to move that the measure should be taken into consideration by the Council at once. There have, however, been certain excisions of matter not considered to affect the Punjab, and some slight nominal additions, and it therefore appears to be desirable that, before it is submitted finally for the approval of the Council, the effect of these should be considered in Select Committee by the high legal authorities whom we are fortunate in securing as Members of this Council. If my present motion is carried, the Bill, as it stands, and the Statement of Objects and Reasons, should be published in the *Punjab Gazette*. I, therefore, beg to move that the Bill be referred to a Select Committee (of which the Council might now proceed to nominate the Members, under Rule 22) and that it be published in the *Punjab Gazette*."

The motion was put and agreed to.

The Hon'ble MR. DANE moved that the Select Committee consist of the Hon'ble Sir William Rattigan, the Hon'ble Mr. Madan Gopal and the Hon'ble the Mover (Mr. Dane), who was in charge of the Bill.

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned *sine die*.

LAHORE :

The 1st November 1897.

E. W. PARKER,

Secretary to the Legislative Council
of the Punjab.

Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations.

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE LIEUTENANT-GOVERNOR OF THE PUNJAB, ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACTS, 1861 AND 1892 (24 & 25 VICT., CAP. 67, AND 55 & 56 VICT., CAP. 14).

REPORT OF PROCEEDINGS.

(Rule 37 of the Rules for the Conduct of Business at Meetings.)

THE Council met at Government House, Lahore, on Friday, the 15th April 1898.

PRESENT :

His Honor Sir William Mackworth Young, M.A., K.C.S.I., Councillor of the Empress, Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble S. S. Thorburn.

The Hon'ble *Nawáb* Fateh Ali Khán, *Kasilbásh*.

The Hon'ble Louis W. Dane.

The Hon'ble Sir William H. Rattigan, Kt., Q.C.

The Hon'ble *Khán Bahádur* Khalifa Sayid Muhammad Husain, *Mushir-ud-dowla, Mumtás-ul-Mulk*.

The Hon'ble *Rái Bahádur* Madan Gopál, M.A., Barrister-at-Law.

PUNJAB GENERAL CLAUSES BILL.

The Hon'ble MR. DANE presented the Report of the Select Committee on the Bill to shorten the language of Acts and for other matters, and moved that the report be taken into consideration. He said : Since this Bill was introduced at the last meeting, it has been examined by the Government of India in the Legislative Department, who made certain suggestions in regard to it. These, with the Bill, have been carefully scrutinized by the high legal authorities on the Select Committee, who recommend that the suggestions should be adopted. Some other slight alterations in form and a few additions as noted in the Report of the Select Committee have been made. It is understood that there is no technical objection to the measure being passed, and I therefore beg to present the Report of the Select Committee, and to move that it be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. DANE moved that the Bill, as amended by the Select Committee, be taken into consideration, and that, as notice had not been given of any amendment, that the Bill, as amended, be passed.

The motion was put and agreed to.

ADDRESS BY THE PRESIDENT.

His Honor the PRESIDENT said :—

As the members may be anxious for information as to the causes which are operating to delay the introduction of measures and to render the Council more or less inactive, I may explain that this is due mainly to the rules which govern local legislation.

These rules or instructions have been put together and printed by the Secretary and will be found in paragraphs XVII to XXI of Office Standing Order II of 1897, copies of which will be found on the table.

It will be observed that every *project of law* must be submitted to the Government of India, Legislative Department, for transmission to the Secretary of State, before it is introduced in Council. The only exception to this rule is in the case of a consolidation measure pure and simple.

When this has been done, a reply must be awaited from the Government of India stating either that the Secretary of State has no objection to the introduction of a Bill, or that no reply has been received from the Secretary of State within two months of the date of the despatch addressed to him.

Every Bill containing Penal clauses has to be submitted to the Government of India, in the Home Department, for the previous sanction of the Governor-General in Council.

Only where early action is specially desirable, may exceptions be allowed to these general rules.

Similar references have to be made, if, after a Bill has been introduced, it is materially altered.

Under the Rules of Business, the ordinary time for the making of the Report of a Select Committee is *after the close of two months*.

Punjab General Clauses Bill.

With regard to the Punjab General Clauses Bill, the Select Committee were obliged to wait two months before making their report, and the approval of the Government of India had also to be awaited.

Other Measures.

Certain other measures which the Government propose to introduce are in various stages of preparation, as will be presently explained.

It will be observed that, however these rules may operate to hamper legislation, they effectually secure deliberation and prevent hurried or ill-considered legislation. It is, also, obviously wiser to prevent ill-considered projects from being introduced in the Council, than to interfere at a later stage.

(The Punjab Land Preservation (Hoshiarpur Chos) Bill and the Punjab Land (SIND-SAGAR DOAB) Acquisition Bill.

As to the measures which are under consideration, I may explain that I have approved of draft Bills (I) for the protection of lands from the destructive action of the *chos* in the Hoshiarpur and Jullundur Districts, and (II) for the acquisition of land in the *Sind-Sagar Doab* in view to its reclamation, irrigation and colonisation, and that these Bills are in course of submission to the Government of India.

The Punjab Courts of Wards Bill.

A Bill to consolidate and amend the law relating to Courts of Wards in the Punjab has also been prepared, and is likely very shortly to pass under my observation before it is submitted to the Government of India. It is at present in the hands of the Financial Commissioner.

The Riparian Estates Boundaries Bill.

A Bill for enabling the Local Government to fix the boundaries of estates subject to river action, and so to set at rest constantly recurring disputes, has been drafted and is now under the consideration of the Financial Commissioner, before being submitted to me. It has not yet been printed.

The Punjab Customary Law Bill and the Punjab Customs Declaration Bill.

The Hon'ble Sir William Rattigan has drafted a Bill dealing with Punjab Customary Law, and the Hon'ble Mr. Thorburn has also drafted a Bill calculated to achieve a similar object in a different way.

The latter Bill is intended to empower the Local Government to declare customs and to thus attach a legal presumption as regards their operation. The former Bill aims at specifying in detail the customs to which such a presumption is to be attached. These Bills are under my consideration.

Minor Canals Project.

A draft Bill, prepared in 1890, has long been under consideration for legislating for minor canals. A draft Regulation (under Stat. 33, Vic. Cap. (3) on the subject of such canals in the Pesháwar District, framed on similar lines, was submitted for the consideration of the Government of India some time ago. Now that a Council has been established in the Punjab, the main subject can probably be more appropriately left to it, and the matter is under my consideration.

Briefly stated, then, the state of affairs is this—

Two Bills are in course of submission to the Government of India and are ready, when sanction is accorded, for the consideration of the Council, and

Five more Bills are under consideration by the Local Government.

ADJOURNMENT.

The Council adjourned *sine die*.

LAHORE:

E. W. PARKER,

The 15th April 1898. } *Secretary to the Legislative Council of the Punjab.*

Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled
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PUNJAB GOVERNMENT.

LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE LIEUTENANT-GOVERNOR OF THE
PUNJAB, 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, Lahore, on Tuesday, the 1st
November, 1898.

P R E S E N T :

His Honor Sir William Mackworth Young, M. A., K.C.S.I., Lieutenant-
Governor of the Punjab, *presiding*.

The Hon'ble Báwa Sir Khem Singh, Bedi, K.C.I.E.

The Hon'ble S. S. Thorburn.

The Hon'ble Nawáb Fateh Ali Khán, Kazilbásh.

The Hon'ble L. W. Dane.

The Hon'ble Khán Bahádúr Khalífa Muhammad Hussain, Mushír-ud-
dowla, Mumtáz-ul-Mulk.

The Hon'ble J. S. Beresford.

The Hon'ble Rái Bahádúr Madan Gopál, M.A., Barrister-at-Law.

The Hon'ble C. L. Tupper, B. A., C.S.I.

The Hon'ble Mr. C. L. Tupper, B.A., C.S.I., took his seat as a Member of
the Council.

PUNJAB RIVERAIN BOUNDARIES BILL.

The Hon'ble MR. THORBURN moved for leave to introduce a Bill to amend the Punjab Land Revenue Act, 1887, and the law relating to the ascertainment and determination, in certain cases, of the boundaries of Riverain Estates in the Punjab. He said:—"Your Honor,—As "The Punjab Riverain Boundaries Bill," which I shall presently move for leave to introduce, is the outcome of many years of inquiry and discussion, a sketch of the causes leading up to its actual preparation will, perhaps, be useful.

"The Punjab, or "land of the five rivers"—Sutlej, Beas, Ravi, Chenab Jhelum,—as constituted after the Mutiny, is a land of seven rivers, for it extends on the east to the Jumna, and on the west to the foot of the mountains beyond the Indus. The length of these rivers within the Province is roundly 2,500 miles, and their beds or valleys—taking their average breadth at only three miles—contain an area of about 7,500 square miles. As the plains through which they all flow with a converging direction—the Jumna excepted—from north to south-south-west, is very level—the fall seawards being seldom more than two or three feet to the mile, and as the volume of water conveyed varies from fordable streams in the cold weather to, in the rains, great rivers of from one to twelve miles in width, the annual shiftings in the courses of the low-season channels, are consequently extensive. It follows that inside these river-valleys, land-marks and channels of running water, Nature's boundaries, so to say, are never constant.

"Throughout the period of the decline and fall of the Moghul Empire, and in this century during the rise and consolidation of the Sikh power, villages within the river-valleys were few; communities were congregated here and there on the high banks, or at least above the flood level; each was more or less self-governing, the strong brotherhood, family, or man of the day dominating the rest: cultivation in the valleys was patchy and inconsiderable, except close under villages or towns: there were neither fixed boundaries between villages, nor, as a rule, need for them, population being sparse and land abundant: river-beds where not sand or water, were jungles, chiefly utilised as pasturage. Thus, the loose dividing-line between opposite communities and jurisdictions was usually the natural boundary, some deep stream of the river. Whilst such was the condition in the Punjab, 1,200 miles eastwards, the East India Company was establishing law and order in what was then Bengal, and gradually extending British dominion North-West towards Sikh territory.

"Early in this century the Governor-General in Council enacted at Calcutta the di-alluvion measure known as Bengal Regulation XI of 1825. Briefly put, it declared that claims and disputes about land in river-beds should be decided by "immemorial and definite usage, when such shall be clearly recognised and established," and that, where no such usage obtained, gains by gradual accession should belong to the estate to which they accreted, but losses, by a sudden change in the deep stream, should, so long as the land was identifiable, "remain the property of its original owner," and further that new islands, surrounded by unfordable channels, should be at the disposal of the Government. Some of the other rights of Government in river-beds were also declared. The above positive rules as regards accretions, so called "avulsed" but identifiable lands, and new islands appear to have been based on Roman Law, assumptions of equity or practice and obvious convenience. It did not follow that such a Regulation, however suitable for small rivers, like those of Italy, or the large but well-defined Ganges and lesser streams of Bengal, would be equally suitable for the great rivers of the Punjab, which at the time were but vaguely known to the legislators of Calcutta, and entirely beyond the purview of the enactment. Twenty-four years after the Regulation had become law for Bengal, the Punjab was annexed (1849). With the advent of peace and good government, cultivation extended in the river-beds of the new province, and di-alluvion questions soon demanded attention.

"So far back as 1852 it was proposed to "give *samindars* losing land on one side of the river (Sutlej) a preferential claim to newly formed lands on the other side." On examination of the proposal, Regulation XI of 1825 was found to be the only law which dealt with the subject. As it prescribed, as the first rule of decision, "immemorial and definite usage," it became necessary to ascertain what the usage was. Inquiries were instituted, the result of which was that it was held that generally the boundary of usage was the "deep stream." From the very first the Regulation had been in force in the Punjab, the Civil Courts of which were in 1849 required generally "to conform, as nearly as the circumstances of the case will permit, to the provisions of the Regulations in force" in the North-West Provinces. As a consequence, both in the Circulars of the Board of Administration, and later in those of the Financial Commissioner, issued with the approval of the Lieutenant-Governor, the validity of the Regulation was assumed, and its provisions followed. All such orders were formally validated by Section 25, Indian Councils Act, 1861. Finally the Regulation itself was formally declared to be in force in this province by the Punjab Laws Act IV of 1872.

"In the sixties Mr. (now Sir James) Lyall and the late Colonel (then Captain) Wace, severally, put forward proposals, which together may be regarded as the germ of the action now being taken. These officers pointed out that the "deep-stream" usage was generally condemned, advocated legislation for its annulment, and the substitution therefor of fixed equitable boundaries between estates. In 1870 the information, which had been slowly accumulating, was brought together with the result that a modified form of the deep-stream rule was pronounced to be the usage. The modification was one which, though causing litigation, somewhat corrected the harshness of the hard and fast practice of shifting boundaries, namely, that so long as land was identifiable its original owner retained it, no matter where the main body of the river happened to be flowing. There were three exceptions:—On the Beas the deep-stream rule pure and simple was reported to obtain; on the Ravi, a small river, fixed boundaries were said to have been somehow established, and on the Indus practices were held to be uncertain.

"On the above data, the conclusion arrived at amounted to a finding that Regulation XI of 1825 sufficiently met all necessities. It was further held that, even if the shifting boundary custom had not been established for five of the seven rivers of the Punjab, the laying and maintaining of fixed boundaries was impracticable, the scientific measurements required for the purpose being beyond the then resources of the province. After 1870, for about twenty years, discussion languished on the question of fixed *versus* shifting boundaries as the dividing rule for proprietary rights in river-beds. The people were left to fight out their disputes in the Civil Courts, and these in turn had in each case to take evidence as to custom, and, of course, the evidence was rarely satisfactory.

"Before noticing the action initiated in 1890, out of which the present Bill has grown, it will, perhaps, be well to refer to past attempts at codifying river law. In 1860 Mr. Cust, the then Financial Commissioner, drafted what he called a "Code of River Law applicable to the seven great rivers and for the whole of the Punjab." In arguing his case he wrote as follows:—

It may seem equitable at first sight, and is indeed provided for by Regulation XI of 1825, that disputes of this kind should be determined by definite and immemorial custom; but this presupposes a period of order and law, during which that custom would have developed itself naturally, not a period of misrule and absence of law, which has led to the anomaly of precisely contrary customs being asserted on the same or similar rivers. We are introducing a new rule and a new system, and as yet there has been no conflict of precedents decided on contrary principles. Let us lay down a clear and distinct rule for the future.

" This he proceeded to do in the ten rules of his Code; which was, fortunately for the populations of our river-valleys, never sanctioned, because, though he argued against a custom, which had grown up in a period of misrule, he yet adopted the deep-stream as his rule. The idea of fixed boundaries had, perhaps, not occurred to him, or as was held a decade later, he recognized we had not the means of accurately laying and maintaining them.

" A stronger attempt at codification was made between 1878 and 1884 by the Legislative Council of the Governor-General. A draft Bill was prepared with a view to consolidate the law of di-alluvion into one enactment for Lower Bengal, the North-West Provinces and the Punjab, but after being twice amended, was finally withdrawn, the difficulties of framing a single measure suitable to the varying needs of the three Governments proving insuperable.

" To return now to the re-opening of the question in 1890. In that year four districts of the Rāwalpindi Division came simultaneously under revision of settlement, and each district had long frontages of the Jhelum or Chenab, or both, in them. The Commissioner of the Division urged that the opportunity was good for a final settlement of the fixed *versus* shifting boundaries question, and summed up the reason for preferring the former. It was at once admitted that the matter was "fairly open to reconsideration," and the collection of further information and opinions was ordered, a chief object being to discover a satisfactory solution of the difficulty, which had long been recognised of how equitably to deal with plots cis-line belonging to proprietors of a trans-line village. The action which has now been taken is the outcome of the proceedings begun in 1890. From the foregoing, it will be seen that the question in all its bearings has been more or less under inquiry and discussion for forty-six years, and that the law in the Punjab is that contained in the Bengal Regulation XI of 1825.

" Now, as has already been observed, the first rule of decision in that Regulation is "immemorial and definite usage." A little examination will, I think, show that, in its strictly legal sense, a "deep-stream" custom, *i.e.*, *inter alia* an ancient, certain and invariable practice, could hardly have been established before 1849. In the long period of unstable rule, preceding the advent of the British dominion, the physical barrier of an unfordable channel necessarily separated jurisdictions and opposite villages, whenever the power on either side was either too weak, or too indifferent to retain lands, once its own when transferred by river action across-stream. As "might" usually made "right," it is difficult to conceive that in any other case a change in the course of a river would have involved the surrender of valuable land.

" In the quotation already made from the arguments used by Mr. Cust for superseding "custom" by "a clear and distinct rule," he appears to have been influenced by the view of facts just stated. Lawless times, I admit, sometimes promote the transition of an occasional practice into an established custom, but such could hardly have been the case with the "deep-stream" boundary, because the temporary strongest would have disregarded such a boundary, whenever it was advantageous so to do. The want of continuity in will of the temporary strongest, *plus*, since our reign of law began, the inconclusiveness of evidence, help to explain the absence of uniformity in findings on "custom" by our Civil Courts and Settlement Officers. In fact, in establishing a "custom," the latter certainly, and the former probably, have sometimes to relax its postulates, and accept instead a repeated act or waiver or even the declared sentiment of a community, when supported by perhaps a few doubtful precedents.

" Take the case of the usage, held in 1870 to be in force for four of our great rivers, that the "deep-stream" bounded rights in property, but that nevertheless "ayulsion," as it was called, did not cause the lapse of such rights so long as the land

was recognisable. On their face the two "customs" would appear to be incompatible, and could hardly have existed concurrently before 1849. The probability is that the modification, which saved identifiable, *i. e.*, as a rule immediately valuable land, from the operation of the general custom, grew up between 1849 and 1870, and was due to our officers' sense of equity, supported, as it was, notwithstanding the comprehensiveness of the deep-stream usage by the opposite rule on the subject in the old Bengal Regulation. If we examine the numerous deviations from the deep-stream usage, pure and simple, now accepted as custom or rules of decision on most of our Punjab rivers, we find that in the last half century three causes have been operating, namely, (i) Judicial decisions, (ii) Evolution, (iii) The direct initiative of a District or Settlement Officer confirmed by an agreement.

"As to (i), Judicial decisions have necessarily been limited to small areas, to disputes between opposite villages or individuals as to custom, which of several is the "deep" stream, appropriation of new alluvion and the like. Such cases have often been fought to the bitter end, and the Chief Court, whilst giving effect to what the evidence proved to be the "custom," has sometimes recognised the hardships of the "deep-stream" rule, and has even pointed out that it could be abrogated by contract. Such suits, have generally been costly, slow in reaching finality, and of dubious issue. As a consequence that issue has occasionally resulted in a *reductio ad absurdum* of the "deep-stream" rule. For instance, I remember a case in which the Appellate Court decided in favour of that rule, and, following the map used in the suit, fixed the line of the boundary accordingly, whereas at the time the Court's "deep-stream" had wandered off some miles Westwards. In the case referred to, the plaintiff village, was, I think, "hoist by its own petard."

"As to (ii), the evolution of a custom since 1849, instances as regards customs of inheritance and adoption will occur to Hon'ble Members of this Council. Possibly the fixed-boundary rule on the Ravi, and certainly that on parts of the Indus and other rivers are cases in point. The seeming contradiction, already noticed, that so-called "avulsed" but identifiable lands, except apparently on the Beas, are retained by their original owners, even where the deep stream is the boundary is, I expect, another instance.

"As to (iii), it is probable that most riverain rules of decision, other than the "deep-stream," owe their origin to the initiative of a District or Settlement Officer, supported by an agreement, *i. e.*, by a duly attested entry in a Record of Rights. In and before the seventies, a Settlement Officer had a freer hand than now. In those days, if he found popular inclination favorable, it was easy for him to give his *Zamindars* a lead, and so with the necessary confirmatory agreement, materialise shadowy forms into substances. Thus, then, Judicial decisions, evolution, and Settlement action appear to explain the otherwise hardly explicable deviations from the "deep-stream" usage, which have become established in localities on some of our great rivers, notably the Sutlej, Jhelum and Indus. To illustrate what I may call the formation of a "custom" or a rule of decision by agreement, I may take the case of the Indus Valley in the Bannu District, an area of nearly 450 square miles, with a population of over 60,000. Early in the Settlement (1872-78), the Settlement Officer decided that fixed boundaries obtained; he accordingly, where necessary, connected his village boundary maps to a common boundary, and, for the whole of the immediate bed of the Indus under the Eastern bank, near which the main stream was then running prepared a field map and *Khasrah* for each village—no matter whether the area was sand or water—after which all concerned attached an agreement to abide by the partition, whenever valuable land should re form. This was done a quarter of a century ago, and since then the Indus has trended to midvalley channels, and much good alluvion has formed to their Eastwards. In answer to a reference as to how the Settlement proceeding had worked, the Deputy Commissioner of Bannu has just replied as follows:—"I find on inquiry that the Settlement

Officer's arrangements have been very effective indeed, and and that the few disputes that are carried into Court are promptly decided by a reference to the partition agreement effected under his orders."

"When this Bill becomes law, what the Settlement Officer of Bannu did by agreement, Government will be able to do by authority, and we may be sure that, on each river, the Boundary Officer, though he will have authority at his back, will carry the people with him in most of his work, for the people long for fixity and certainty.

"I have made these remarks with a view to show that the deep-stream usage was the product of times of the absence of law, was hardly in the strict sense of the term a "custom," was unsuited to a period of law and order, was early condemned by Revenue Officers, and sometimes set aside by them with the full approval of the people, was never popular with those subject to its caprices, and has been the cause of much waste of money in uncertain litigation, and of great hardships to the riverain populations generally. The chief object, then, of the Bill is to give the Local Government power to fix permanent boundaries in river-beds between estates now subject to the deep-stream rule, without interfering, otherwise than after payment of full compensation, with individual rights in land so long as these rights are of substantial value. By this means the sudden vicissitudes of fortune, and consequent disputes and expensive litigation, which together have hitherto oppressed our river-bed agriculturists, will be ended. With these remarks, Sir, I now move for leave to introduce "The Punjab Riverain Boundaries Bill."

The motion was put and agreed to.

The Hon'ble MR. THORBURN introduced the Bill and, in doing so, said :—

"Your Honor,—I have already described the chief aim of the Bill, which I have now the honor to introduce. As explained in the "Statement of Objects and Reasons," it takes the form of an amendment to the Punjab Land Revenue Act, and so avoids the necessity for devising new machinery to carry out its provisions. Though the said Statement is very full, it seems advisable to note briefly the purport of each section. The Bill consists of four Sections, of which the first is formal. The second adds five Sections—101 A to E., inclusive—to Section 101 of the Punjab Land Revenue Act. Section 101 A, gives the Local Government the power to have a fixed boundary laid down between estates or portions of estates subject to river action, by the Collector or a Revenue Officer appointed for the purpose. Section 101 B, enacts that the boundary so demarcated shall be fixed and constant, any law, custom or order notwithstanding, provided that the rights of substantial value of trans-line holders shall be reserved to them by written order, unless and until such rights cease to be valuable. Section 101 C, provides an easy method by which a cis-line village may buy out the reserved rights of trans-line holders within its boundary. Section 101 D, determines all such reserved rights whenever transferred by private contract to any proprietor of a cis-line village. Section 101 E, subjects transferred rights in all land inside the fixed boundary to the incidents of tenure and liabilities of the estate to which the land has been transferred. The third Section of the Bill takes proceedings under it out of the jurisdiction of the Civil Courts. This is done by adding a clause to the twenty-three excluded matters enumerated under Section 158, Punjab Land Revenue Act. The fourth and last Section supplies the amendments to Sections 2 and 3 of Regulation XI of 1825, considered necessary to give effect to a fixed against a deep-stream or other customary boundary between estates subject to river action,

"The working of the above provisions will be somewhat as follows:—The Local Government having decided to what river or locality to apply the Act, will empower the Collector or a specially appointed Revenue Officer to lay down "a just and equitable" boundary, "with due regard to the history of the estates and the interests of the persons respectively owning them or possessing rights therein." With the help of the Settlement and professional-survey maps and other records, the Boundary Officer will have no difficulty in acquiring exact knowledge of river action during the last fifty years or so. He will thus be able to check and verify from authentic records all the information he will gather during his local inquiry from the proprietary of the villages concerned. After that he will be in a position to decide approximately the course of his equitable boundary. His line will, we may expect, have the full approval of all owners, whose immediate pecuniary interests are not adversely affected by it. The demarcation finished, he will, by written order, declare what trans-line plots on either side of his boundary are of substantial value, and the rights in them will not be transferred unless and until the land ceases to yield profits, or is acquired by the cis-line village privately by agreement, or compulsorily under Section 101 C. For Revenue and other administrative purposes, trans-line holders will be treated as restricted owners or *málikán kabza* in the cis-line village, and thus the fixed line will take effect at once.

"As the whole operation will be of a give-and-take character; as the Boundary Officer will be the impartial friend of all parties, and as the retention of isolated plots trans-line will be inconvenient for their holders, it is a reasonable assumption that during his proceedings the Boundary Officer will effect amicable exchanges between individual holders, with or without money compensation added. Should no private settlement be concluded, it will be open to cis-line villages to buy out the reserved rights of trans-line holders within their boundaries. The machinery for the purpose provided in Section 101 C of the Bill is very simple. The proprietary of the cis-line or acquiring village may apply, in order collectively, sectionally, or individually for the immediate expropriation of trans-line right-holders within their limits. Reasonable compensation will then be fixed, and, if deposited as prescribed, the transfer of possession will be effected as soon as the rabi crop has been harvested. If at any time a trans-line *málik kabza* transfers his holding privately to any proprietor or the cis-line village, all further action under the Act *ipso facto* ceases, its object *quod* the plot transferred having been accomplished. After that any dispute as to pre-emption or other matter will be a question between the acquirer and the other proprietors of his village to be decided in accordance with the incidents of tenure of the village.

"With these remarks I proceed to move that the Bill now introduced be referred for report to a select committee consisting of (1) Mr. Madan Gopál, (2) Mr. Tupper, and (3) myself, as the Mover. I further beg to move that the Bill be published in three successive issues of the *Punjab Gazette* (English and Urdu), and be specially circulated for an expression of opinion thereon."

The Hon'ble MR. THORBURN moved that the Bill be referred to a select committee consisting of the Hon'ble Mr. Madan Gopál, the Hon'ble Mr. Tupper and the Hon'ble the Mover.

The Hon'ble MR. THORBURN further moved that the Bill and Statement of Objects and Reasons be published three times, in three successive issues of the *Punjab Government Gazette* (English and Urdu), and that the Bill be circulated for the purpose of eliciting opinion thereon.

The motions were put and agreed to.

The Council adjourned *sine die*.

LAHORE:

E. W. PARKER,

The 1st November, 1898. } Secretary to the Legislative Council of the Punjab.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 & 56 Vict., Cap. 14).

THE Council met at Government House, Lahore, on Friday, the 28th April 1899.

P R E S E N T :

His Honour Sir William Mackworth Young, M.A., K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Báwa Sir Khem Singh, Bedi, K.C.I.E.

The Hon'ble Mr. S. S. Thorburn.

The Hon'ble Nawáb Fateh Ali Khan, Kazilbásh.

The Hon'ble Khán Bahádur Khalífa Syad Muhammad Hussain, Mushir-ud-dowla, Mumtáz-ul-Mulk.

The Hon'ble Mr. J. S. Beresford, M.E., M.I.C.E.

The Hon'ble Rái Bahádur Madan Gopál, M.A., Barrister-at-Law.

The Hon'ble Mr. C. L. Tupper, C.S.I.

The Hon'ble Mr. J. Wilson, M.A.

N E W M E M B E R .

The Hon'ble MR. J. WILSON took his seat as Member of Council.

PUNJAB RIVERAIN BOUNDARIES BILL.

The Hon'ble MR. THORBURN presented the Report of the Select Committee on the Bill to amend the Punjab Land Revenue Act, 1887, and the Law relating to the ascertainment and determination, in certain cases, of the boundaries of riverain estates in the Punjab.

The Hon'ble MR. THORBURN moved that the Bill, as amended by the Select Committee, be taken into consideration. He said—

"In moving that the Punjab Riverain Boundaries Bill, amended in the way explained in the Select Committee's report, be taken into consideration, I have a few remarks to make.

"Since its first approved inception this project has gone through several material alterations.

"In the original scheme the equitable fixed boundary was to be laid, and changes in proprietary rights were to be unaffected until such action of the river had taken place as would, by law or custom, deprive trans-line owners of their trans-line interests. As this process would have been slow and have led to quarrels and uncertain litigation—facts and customs in river-beds being doubtful—when it came to framing a draft for a Bill, provision was made that valueless land should be transferred at once, and that rights in valuable land should lapse when, by the action of the river, such land became valueless or was transferred to the other side of the main stream. To that extent the original intention was departed from in the sketch of a draft Bill submitted to the Government of India. Before the criticisms of that Government and of the Secretary of State were received, it was seen that the provision that rights in valuable land should lapse upon certain contingencies happening and not otherwise, whilst hastening the ultimate adjustment of interests, would operate harshly in individual cases. The Bill, therefore, as introduced into this Council on November 1st last, facilitated the expropriation of trans-line holders of valuable land, but only after the payment of full compensation to them.

"It has since been duly published, and the Select Committee, in two sittings, have considered the despatch of the Secretary of State for India on the draft in its first form, two letters of the Government of India, the earlier on that despatch, the later on the Bill as introduced, and the opinions of a number of experienced Revenue and Judicial officers serving in the Punjab. No opinions have been received from representatives of the classes whom the Bill directly concerns. I mention this with reference to paragraph 5 of the Secretary of State's despatch. This abstention is to be regretted, but was not unexpected, as riverain agriculturists, like their neighbours, are ignorant and inert until concretely affected by any legislation. It may, however, be safely anticipated that the Bill, as now amended, will be acceptable to the village communities of our rivers, and that even had it been introduced in the form of the original draft, its interference with individual interests would have been immeasurably less than that caused by the deep-stream rule, the genesis, inequity and unpopularity of which were discussed by me in this Council on the 1st of November last.

"In the Bill, as now amended, endeavour has been made to meet all material criticisms to which it has been subjected, other than those which will best be dealt with in executive instructions. We believe that it has now been purged of the last vestige of the reproach that it curtails unnecessarily individual rights in property, and summarily decides questions better left to the arbitrament of law and custom as administered by the Civil Courts.

"Did the Bill stop short after providing for the fixation of the permanent boundary and the transference of all immediately valueless land, and no more, to the cis-line village, such a half measure would have given rise to disputes, ill-feeling between limited and full owners, wasteful litigation, an indefinite postponement of finality, and considerable administrative inconvenience. We believe that these evils have now been minimised and that the individual rights of *mālikān kabṣa* or limited owners in property cis and trans-line are now sufficiently protected. In the first place, the Collector will, doubtless, exercise his discretion wisely and, under the proviso to sub-section (2) of Section 101 C., reject applications for the expropriation of trans-line limited owners, unless he sees that it is to the true interests of both sides that such owners should be bought out. In the second place, such owners, so long as the suspending order under the proviso to sub-section (1) to Section 101 (B) is maintained, will be upheld in their limited rights in their trans-line village and in all their pre-existing rights in their cis-line village, in the records of both of which their names will appear. If, for administrative convenience, they are required to pay the land-revenue of the reserved plots with their trans-line village, that fact will not affect rights already accruing to them in their cis-line village from the possession of such plots. That this is the case is clear, for the Bill merely transfers land from one revenue estate to another, and leaves all rights in valuable parcels undisturbed, except in certain contingencies, when holders can be bought out, it may be against their will, but in any case on terms very favourable to them.

"Let me try to demonstrate this proposition by an illustration:—Suppose that a fixed boundary transfers 1,000 acres from village A to village B, and that 900 being presently valueless pass at once, and 100 being valuable are reserved to their previous holders. In respect of the 100 acres these reservists are now limited owners in B, but remain full owners in A.

"Now suppose that one or more of the "old agriculturists" in B apply to acquire the 100 acres, and that the Collector, for good reason, decides not to veto acquisition, and, further, that whilst he is preparing materials for his award, the limited owners concerned sell 50 of the 100 acres to a money-lender, a "new agriculturist" of B, the Collector's proceedings as regards the plots privately sold will now determine as provided in Section 101 D, but he will make an appropriate award as regards the other 50 acres. The money being duly paid, the whole 100 acres will now be part and parcel of village B. Whoso chooses will be at liberty to bring a suit for pre-emption against the acquiring "new" agriculturist. As to the 50 acres, the subject of the award, the payment of the amount awarded will no doubt give the payer an exclusive lien on them until questions of distribution, if any, amongst the land-owners are decided as provided in Section 101 E, in accordance with the incidents of tenure of the village.

"Under such circumstances the late owners can have no cause for dissatisfaction for they have got rid of an inconvenient possession, and by the clever voluntary sale of half their land have thrown the apple of discord amongst their intending expropriators in B. Similarly, the B owners, as a community, can have no cause for dissatisfaction, being relieved of the presence in their midst of the obnoxious limited owners, and having now every acre of land on their side of the fixed boundary in their own possession. If they now fall out about pre-emption or distribution amongst themselves, it is their affair, but I doubt if many disputes of the sort will be fought out in court, as costs would be heavy, result uncertain, and the successful litigant would have to pay 15 per cent. more than the land would be worth.

"I now move that the Bill be taken into consideration."

The Hon'ble MR. TUPPER said— "In the general scheme of law and rules applicable to the Punjab this Bill occupies a triple position. It supplements our Land Revenue Act. It supplements the Civil law existing outside that enactment; and it presupposes that it will itself be supplemented by rules under the Land Revenue Act or other executive instructions. Indeed, the Bill has been carefully framed in such a way as to avoid the rigidity of enacted law in respect of those matters for which rules under the law or executive instructions will suffice. The advantage of this method of legislation which is, I believe, generally unexceptionable, is conspicuous in the present instance. The work of boundary settlement which will devolve upon Revenue Officers under this Bill is to some extent novel in character; and by rules and instructions framed in accordance with the law we should be able to utilise experience as it accumulates and deal with difficulties as they arise. And as these rules and instructions can be altered from time to time by the authorities by which they are made, we hope in this way to avoid any frequent resort to legislation. If this measure had been fuller and longer than it is we should merely have secured greater elaboration in detail by a sacrifice of elasticity.

"These remarks bear, I think, upon one set of difficulties to which the Hon'ble Mover has alluded. The discussions on this Bill since it was referred to a Select Committee have dealt chiefly with the case of land transferred from the losing to the gaining estate, but of which the chief effects of the transfer are temporarily deferred because the land is at the time under cultivation or reasonably fit for cultivation or yields produce of substantial value. How are we dealing, how do we propose to deal, with land in this condition of suspended transfer? That, it appears to me, is the *crux* of the whole position.

"Now I will take, first, the case of this debateable land, the 100 acres in village B, according to the speech of the Hon'ble Mover, in relation to the losing village. Well, the Bill takes power to reserve all their rights to the landowners and other rightholders already in possession of them until the land ceases to have value. So far as I am aware there are only two legitimate modes in which any one can be deprived of a right of property of which he is in possession. It may be taken from him by legislation; or it may be taken from him by decree of court. Now, when the proviso of Section 101 B has been brought into force by the written order of the Collector, the effect is that no transfer of rights occurs in respect of the land to which the order relates. Everything remains as before except that the land has come within the boundary of the gaining village. It follows that the Bill as it stands meets the difficulty pointed out by the Hon'ble Mover. The landowners will have exactly the same rights, as regards the common land of their own village, as they had before; because nothing has been done either by legislation or by decree of court to deprive them of the same. This, however, does require clear explanation in executive instructions; because, if the revenue is paid with that of the gaining village and the shares in the common land of the losing village are regulated according to the measure of right entered on the Settlement record of that village—*hasb rasad khawat* as the vernacular phrase is—it might very easily be held by Revenue Officers who did not know how the Bill was intended to work, that the alteration in the Settlement record consequent on the fixing of the boundary would operate to curtail rights relating to the common land of the losing village. It might be supposed that a *Malik kabza* in village B could have had no rights of *Shamilat* in village A in respect of his *Malik kabza* holding. This, however, is not intended; nor is it enacted. The *Malik kabza* is such only in respect of the estate to which his land has been added. In respect of his own original village, he remains a full landowner as before. Just as he gains no *Shamilat* rights in the gaining village, so he loses no rights of *Shamilat* in the village which has eventually to surrender all rights in his land when it has ceased to be valuable.

"Next, I will take the case of this much debated land, this land of rights destined for eventual transfer, in connection with the estate to which it accrues. It is, I think, generally accepted that the sooner we can, with justice, end our

boundary case the better, and the Hon'ble Mover has dwelt upon the evils which result from its prolongation. The Bill, therefore, contains two sections intended to promote finality. First, if the Collector so permits, any land-owner or landowners of the gaining estate may compulsorily acquire the rights under suspended transfer. Secondly, any one in possession of those rights may voluntarily transfer them to any landowner of the gaining estate; and if he does so, the order suspending the transfer of rights ceases to operate.

"As to the first of these expedients for promoting finality it is, I think, extremely liberal to the losing village. The expropriated rightholders get the market value of their rights plus 15 per cent. added in consideration of the compulsory nature of the transaction. The gaining village, of course, has no cause for complaint as no one in that village need apply for compulsory purchase unless he wishes to do so. In the Bill, as referred to the Select Committee, there was a provision apparently intended to lay down the order in which the privilege of compulsory acquisition could be claimed by the landowners of the gaining village. This order followed generally, but with certain differences, the order fixed for pre-emptors by the Punjab Laws Act. No one made a more valuable contribution to the present discussion than Mr. Alex. Anderson, Officiating Commissioner of the Jullundur Division. He acutely pointed out that the precedent followed was not really appropriate to the case. When land accrues to a village by alluvion or avulsion, there are four ways in which it may be appropriated. It may be restored to the owner of the site, that is of the plot which was destroyed by the river in the same locality, or it may be added to the holding of the land-owner upon the margin of whose land it appears; or it may be treated as the common land of the sub-division of the village or of the village as a whole, that is as *shāmīlāt ṭaltī* or *shāmīlāt deh*. The order of preference amongst competing purchasers would vary according as the custom of the village followed one or other of these four rules. We therefore thought it expedient to omit all mention of any order of preference and to leave the Collector discretion to deal with this matter according to circumstances. As the Bill now stands, the Collector may reject an application for compulsory acquisition at any time before he makes his award. I think that when any of the land-owners of the gaining estate apply for compulsory acquisition notice of the fact should be given to all the other land-owners of the same estate, and if it appears that there is a dispute as to the person or persons preferentially entitled to make the purchase, the Collector should decline to proceed with the application till the dispute has been amicably settled or settled by a declaratory decree. So also if for any other reason the proposal to acquire the rights compulsorily stirs up strife in the gaining village, or might, if accepted, unduly increase the prosperity and influence of some individual land-owner, I hope that the Collector will refuse to proceed. The plan of compulsory acquisition is doubtless beneficial when all are agreed; but I am sure it is not intended that the plan shall open a field for the exercise of the petty tyrannies and jealousies of village faction.

"The case of the voluntary transfer of the rights in suspension is simpler. I was at first disposed to object to Section 101 D., because I thought it might stimulate the small feuds and intrigues to which I have just alluded; but on further consideration I perceived that this was not its effect. This Bill in no way touches the large question of restraints upon the alienation of land. As I have said, it is supplementary to the general civil law of the Province; and under that law any man may transfer his rights of ownership or his rights of occupancy subject always to certain restrictions which are well known and are untouched by the Bill. In the case of rights under suspended transfer, that is of rights destined to eventual transfer to the gaining village, all that Section 101 D. does is to cancel the order of suspension when a voluntary transfer takes place. It leaves the law of voluntary transfer as it stands, and merely removes a possible doubt as to title when a voluntary transfer occurs. This being its effect, it appears to me to be quite unobjectionable and I quite approve of it.

"I have said something of the relation of this Bill to our Punjab Laws and Rules, and it seems worth while to add, though the observation is really obvious that it cannot, of course, apply to any territory outside the Punjab. Now if we look to the definition of the Punjab contained in Section 2, clause (45) of Punjab Act I of 1893, we shall see that under this Bill we cannot lay down fixed boundaries in riverain lands as between any Punjab district and any district of the North-Western Provinces, or any Punjab district and any Native State, until in British territory there has been supplementary legislation beyond the competence of this Council to enact, and in State territory there has been supplementary action on the part of the authorities of the State. It is just as well, perhaps, that we should first test the procedure of the Bill where there are Punjab districts or Punjab estates on both sides of the river. We may come to negotiate with our Native States or, subject to the permission of the Government of India, with a neighbouring Government, in course of time.

"With these remarks I beg to support the motion that the Bill be taken into consideration."

✓ The Hon'ble Mr. MADAN GOPAL said :—"I have given some thought to this measure and, to justify the support that I intend to give to it, I beg leave to make a few observations.

"We have seven great rivers in this Province, besides many smaller ones which in the rainy season contain large volumes of water. It has been stated that there is no part of India which is more affected by river action than the Punjab, —the approximate length of river-bed and bank exposed to river action being 3,600 miles.

"The changes in the courses of these rivers are very great every year. Indeed, these rivers are regular vagabonds and wander at their own sweet will carving out beds capriciously and leaving them alone as illogically, so that it becomes quite exciting to watch them in their frolics, but most troublesome to mark off on the map their different past courses.

"A fickle stream is the worst enemy of the peasant. 'If the current sets against your lands, you may be made a beggar in a single night, or perchance the stream in a more genial mood may pile rich banks of silt along your border, which may continue stable for years and grow magnificent harvests.' However, you never know when it may sweep across your fields in destructive floods, and therefore agriculture becomes a simple lottery, and this, in a great measure, accounts for the recklessness and improvidence of riverain proprietors. This periodical movement of the great rivers cannot be checked by the feeble hand of man. The only thing we have to deal with is, what should be the law governing the transfer of holdings due to these contingencies.

"It is interesting to find out what measures have been taken from the earliest times for this purpose.

"Among the Romans the deep-stream rule did not exist.

"Among the Hindu Lawyers Brihaspati says : If a large river or a king taking land from one village gives it to another, what is done shall not be disturbed. It is according to the good luck or bad luck of persons ; but if a field, with a growing crop on it, is dissevered by the force of the current, then the former owner shall have it. Here we have a trace of the deep-stream rule but in a modified form—modified to avoid the extreme hardship which too strict an adherence to the rule might entail and the modification practically abrogates the rule. Nothing is known of the rules governing such cases during the Moslem régime. Before the British annexed the Punjab, the circumstances were these : The English ruled across the Sutlej. The Sikhs on this side. The necessities of the times when there were opposing jurisdictions on each side, and when any maintenance of authority over land which had been completely cut off by the river from the side

to which it formerly belonged would have been difficult and likely to produce constant disputes, led to the recognition of the deep-stream rule, pure and simple, as the boundary between two Governments and necessarily also between villages. After the districts on both sides of the river had come under the same sway, the same rule continued to be observed, though the same necessity had ceased to exist. Finally, though there was no express legislation, Regulation XI of 1825 was, with other Regulations, made applicable to the Punjab.

"This Regulation prescribed certain rules, subject, however, to a sweeping exception, in favour of clear, definite and immemorial usage, and an illustration was given—'such as that the main channel of the river dividing the estates shall be the constant boundary.'

"As I have said, the deep-stream rule came into recognition owing to the necessities of the times, but it is not a rule of universal application. Settlement Reports show that the villages on some rivers have fixed boundaries and on other rivers there are other customs that have the force of law, or a modified form of the deep-stream rule is followed. We have thus a great deal of diversity, and I support the present Bill, in the first place, because it substitutes uniformity for diversity.

"Then the deep-stream rule operates very harshly on the proprietors who lose by it, while those who gain do not really benefit, because the fickle current may sweep all away again with some of their own best lands in the bargain, and this fear deters them from applying their labour and resources. While it reduces those whose land is cut off to the position of labourers, it gives to the proprietors of the other village, it may be for only a season, it may be for more, a greater quantity of land than they can make use of, or are willing to utilise. The value of property in river villages is thus depreciated. There is no permanency. It is a game of gambling. The above statement is sufficient to show that such a usage cannot but act very injuriously; that it is most inequitable and unsatisfactory.

"Further, this rule gives rise to vexatious suits, and by the time the final decree is issued, the whole face may have changed and all this expensive litigation end in smoke. Again, no more arduous task falls upon the officials than the investigation of these alluvion and diluvion cases. The villagers need little provocation to turn out and break each other's heads in resisting rival claims. Serious riots and loss of life have often occurred in quarrels of this kind. These are circumstances which it is not desirable to leave alone.

"Let us see how this rule works as far as the administration is concerned. Villages and their inhabitants are transferred from one jurisdiction to the other; serious inconvenience is caused both to the people and the officials. Records are handed about from one district to another, backwards and forwards, subjecting them to undesirable risks. New police and chaukidari arrangements have to be made. Government loses revenue. Thus this rule is objectionable on the ground that it depreciates the value of lands, that it is adverse to Imperial interests and more or less unsuited to the times.

"Notwithstanding the above objections, if the custom were clung to tenaciously by the people, it might not be desirable to supersede it merely for the sake of uniformity. That it is distasteful to the people is clear from Settlement Reports and Revenue records. And how can we expect them to favour it? Is it right to expect a man to be happy and contented when he is deprived of his acres, his trees, his wells, his houses, because a river flows to the right instead of the left of his village? The weight of the opinions of all the chief Revenue authorities in the Province from 1832 to 1897 is in favour of the abandonment of the Had-i-sikandari. All these circumstances combine to make the case under consideration one in which, to use the words of Mr. Ibbetson, a superstitious fear of meddling with anything sanctified by the name of custom should not hold us back from substituting an equitable and uniform rule for the varying and uncertain custom at present in force. This is my second ground for supporting this measure.

"The sole argument in favour of the deep stream is that it is a natural boundary, but the determination of the deep stream is not always easy. There are sometimes two or more main branches and the advantage of a natural boundary then ceases. These are all grounds for fixing once for all the boundaries of villages independently of the situation of the stream.

"The great advantages of the present measure are that it is enabling and not obligatory; that it does not stereotype the state of things existing at any given time, thus causing instant hardship, but directs the determination of the line after consideration of the gains and losses caused by changes in the river's course for a sufficiently reasonable period, and that it does not disturb actual possession of cultivated and productive land except under equitable and reasonable safeguards. We thus substitute fixed boundaries for moving boundaries without transferring to one village or person cultivated land in the possession of another except by granting him adequate compensation on the same lines as are laid down in the Land Acquisition Act. But even this is left to the discretion of the Revenue Officer. He may direct the transfer of cultivated land straight off if he considers this desirable in the circumstances of the case on payment of compensation to the original occupants by the persons to whom it is assigned. This will obviate the necessity of creating chaks and malikan kabza and secure a permanent boundary at once.

"The only other provision that I wish to notice is about the exclusion of jurisdiction of the Civil Courts. Civil Courts can only enforce civil rights as proved by past facts. What is proposed here is a new system. The basis of the award of the Revenue Officer would be not *right* as previously exercised but a balancing of contending claims, and therefore any interference by the Civil Courts would be out of place. Lastly, from inquiries that I have made, I am in a position to say that there is great probability of this measure meeting with the approval of those whom it will affect, and that they will gratefully remember Your Honor's Government for showing solicitude for their welfare in the very first original measure that it is hoped this Council will enact since its institution."

✓ The Hon'ble KHALIFA SYAD MUHAMMAD HUSSAIN said:—"The object and principle of this Bill is that the fixing of the boundary will in no way destroy any just rights of riverain land-owners, but will make their rights more certain and will establish them on a fixed basis for all time, and thus benefit both parties who are now burdened with fluctuating rights depending on a fluctuatory boundary. The Hon'ble Mr. Tupper has referred to two points in regard to which the Bill is, in one sense, necessarily incomplete, namely, in the settlement of boundary disputes on the river Jumna between the North-Western Provinces and the Punjab, and in dealing with rivers which divide British territory from Native States, but these deficiencies are inevitable from the point of view of this Council. I am myself doubtful as to the effect of the measure in regard to land which is to pass from one village to another, because it is of no substantial value, and my reason for doubting the effect of the measure is this, that in regard to land which is subject to river action it may at one moment of time be of no substantial value, but at another it may become culturable. The Bill, however, disposes of rights in such land finally and for ever upon the Collector's dictum given at the time the boundary is fixed. There will be some heart-burning about what land is or is not of substantial value at the time the boundary is fixed. I am myself in favour of the Bill as a good solution of a difficult problem and feel sure that if carefully worked, with due regard to what is equitable, it will prove a blessing to the country."

The motion was put and agreed to.

✓ The Hon'ble MR. THORBURN moved that the Bill, as amended, be passed. He said:—"With reference to the remarks made by the Hon'ble Mr. Tupper, as I have already stated, points requiring elucidation will be dealt with in executive instructions. As regards the doubts raised by the Hon'ble Khān Bahādur Khalifa

Muhammad Hussain that, as presently valueless land will sooner or later become valuable, to transfer it suddenly to a trans-line village may cause its former owners future appreciable loss, my Hon'ble friend's apprehensions are to some extent real. I would, however, point out that the permanent boundary line will be a just and equitable one on a give-and-take principle, and that, in any case, the possible future loss to one village will be infinitesimal compared with the certain loss annually caused by the gambling insecurity of possession under the superseded deep-stream rule.

"I now move that the Bill, as amended, be passed, and in doing so I may refer to the fact that no amendments have been brought forward and no expression of dissent has been made at this meeting. No object would be gained by further delay and no changes have been made which render it necessary to republish the measure or to invite further discussion."

✓ The Hon'ble MR. TUPPER said :—"My object just now was to offer some explanations which may be convenient and to suggest for consideration certain matters which may become the subject of rules or executive instructions when the Bill has passed into law. I desire now to say something upon the general principle of the Bill.

"When the Bill passes into law, it will be the second enactment of this Council, but, as observed by my Hon'ble friend on the left, it will be the first enactment of special importance and significance which this Council will have passed. Punjab Act I of 1898 is a General Clauses Act, an Act preparatory to further Punjab legislation. This Bill deals with a well-known part of Punjab Customary Law and deals with it in a way which forms to my mind an excellent precedent. I think, Sir, I may heartily congratulate you on this measure. It accords with opinions held by Revenue Officers in this Province for more than twenty years, and it is mainly due to your own initiative and personal proposals as Financial Commissioner that we have this project of law before us to-day.

"Following the late Colonel Wace and in general accordance with views expressed by Sir James Lyall, I advocated the substitution of fixed boundaries for the deep-streams rule in a note dated December 20th, 1878, which has been printed in Volume III of the Punjab Customary Law Series. I think myself fortunate in being able to join to-day in legislation which has that object. I borrowed in the same book a quotation made by Sir Robert Egerton from the late Lord Beaconsfield :—"Customs," said Lord Beaconsfield, 'are spontaneous. They grow out of man's necessities and inventions; and as circumstances change and alter and die off, the custom falls into desuetude and we get rid of it. But if you make it into a law, circumstances alter, but the law remains and becomes part of the obsolete legislation which haunts our Statute-book and harasses society'.

"Sir, the effect is the same if by action of our Courts we give to harassing and obsolete customs the force of law. With the abolition of anarchy and private war in this part of India, vanished any rational support for the deep-stream rule; for a custom which added to the inevitable misfortunes due to the caprices of nature the further misfortune that a man might lose valuable and recognisable land by a mere change in the course of the river. This custom will be abrogated when the Bill is applied, and it is, after half a century of British rule, quite time it should be abrogated. But the Bill substitutes for a custom which has no proper place under our settled Government another custom which is entirely suitable. It enforces the *Wār pār* rule which assumes that the whole bed of the river belongs to some estate or another, and that the boundaries of these estates are fixed whether they are under water or not. In case it may be supposed in some quarters that we are unduly interfering with custom, I think it worth while to remind this Council that the *Wār pār* custom is very widespread.

"It prevails", said Sir James Lyall, "to my knowledge on the Indus, from where it leaves the hills at Kálabágh to the frontier of Sind; on the Jhelum in the Jhang District; on the Chenab in Jhang and between Mooltan and Muzaffargarh; on the Chenab or Panjnad between Muzaffargarh and Baháwalpur; on that part of the Ravi which is below the Sidhnai in Mooltan; and on the greater part of the Sutlej between Mooltan and Baháwalpur."

"There are other localities also where it is believed to prevail, but this surely is sufficient to show that what we are doing is to quicken in a beneficial way the normal process of social advance. Even if the extension of the *Wárpár* rule was in a measure due to the action of our Settlement Officers, still this was the substitution of a custom consistent with settled Government for a custom which became obsolete when anarchy itself and the consequences of anarchy became anachronisms. Sir, I have long held that in matters of legislation we should be the students of Punjab custom, but by no means its servile expositors. The problem that we have to face is a somewhat complex one. It is that Punjab customs having grown out of necessities and conditions which prevailed under a different sort of rule and at an era more remote from civilisation, we have now so to modify them as to bring them into accord alike with the inherited frame and with the changed environment of native society. One solution in regard to one set of customs is offered by the Bill; and I shall always rejoice if on future occasions we are equally able to remove an obstacle to justice and a harassment of society by generalising and applying, in accordance with carefully considered rules of law, a practice which already prevails in many parts of the country.

"With these remarks I cordially support the motion that the Bill as amended be passed."

✓ The Hon'ble MR. MADAN GOPAL said that he cordially supported the motion.

His Honour the Lieutenant-Governor said:—"It has been already remarked that with one exception, and that purely of a routine character, this is the first measure which, having passed through the various stages, is now before the Council for its final vote of approval. And I take it as a happy augury that this first distinctive Act of our Local Legislature should be one framed with the simple object of diminishing litigation. The Hon'ble Member who introduced the Bill in November last sketched the history of riverain custom in the Punjab, and showed that it was scarcely less shifting than the course of the rivers themselves. For more than thirty years it has been realised that fixed equitable boundaries between estates liable to such varying conditions were greatly to be desired. In some cases a fixed boundary already exists. But in others, generally owing to the inability of the landowners to come to an agreement, the deep-stream rule, with its uncertain working and its endless litigation, has hitherto prevailed. The object of the present measure is to provide the means of introducing the fixed boundary in these cases. It may be asked why this much-needed reform has been so long postponed, when its necessity has for so many years been admitted. The reply is that there were two difficulties to be overcome. The first was the mechanical difficulty of mapping such a boundary. This difficulty has been largely removed by the great advance in the proficiency of the field survey. We are able now to map with accuracy both sides of the largest river, including the river bed, on a common system of squares, and to trace on the map a boundary capable of identification. The second difficulty arose from the nature of the case. The existing mode of deciding the boundaries of riverside estates is based on ancient custom, and, however productive of disputes, is acquiesced in by the people. To fix authoritatively any boundary is an interference with the existing custom. The power to do this

required to be limited by safeguards. No satisfactory scheme for doing this was proposed until the year 1893, when the compromise embodied in the present Bill was suggested. For six years it has been discussed, and I believe in its present form it will be found to be workable. There has been no opposition to it: indeed the opinion of all who have been consulted is unanimous in favour of the Bill becoming law. Without depriving any riparian land-holder of any land which is capable of being put to any agricultural or pastoral use, the Bill aims at rectifying the unfair operation of past usage, and preventing its continuance. In the former case, all that we are doing is to take away from those who are not equitably entitled to it, land of no agricultural or pastoral value, and restore it to those to whom it equitably belongs; and to provide a machinery for the compulsory transfer on compensation of land which has such value. In the latter, we merely prevent the evil going further. This minimum of interference with a thoroughly bad custom is amply justified by the object in view; namely, to put an end to annually recurring unsettlement and strife.

"It is very possible, and it is sincerely to be desired, that in the great majority of cases the fixed boundary will be determined by agreement, and without resort to the compulsory provisions of the Bill. Power has been taken to give conclusive effect to such agreements, and I regard this provision as fully equal in importance to the other. I firmly believe that the measure which is now to become law will prove a boon to the riverside agricultural population of the Punjab."

The motion was put and agreed to.

ADJOURNMENT.

The Council then adjourned *sine die*.

LAHORE:

E. W. PARKER,

The 28th April 1899. } Secretary to the Legislative Council of the Punjab.

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 & 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).

THE Council met at the Council Chamber, Barnes Court, Simla, on the 16th August 1899.

PRESENT :

The Hon'ble Sir WILLIAM MACKWORTH YOUNG, K. C. S. I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Mr. S. S. THORBURN.

The Hon'ble Hájí Nawáb FATEH ALI KHAN, Kaziábásh.

The Hon'ble Khán Bahádúr Khalífa Sayad MUHAMMAD HUSSAIN, Mushir-ud-dowla, Mumtáz-ul-Mulk.

The Hon'ble Mr. J. S. BERESFORD, M.E., M.I.C.E.

The Hon'ble Rái Bahádúr Mr. MADAN GOPAL, M.A., Barrister-at-Law.

The Hon'ble Mr. H. C. FANSHAWE. ✓

The Hon'ble Mr. L. W. DANE.

NEW MEMBERS.

The Hon'ble Mr. H. C. FANSHAWE and the Hon'ble Mr. L. W. DANE took their seats in Council.

[Mr. Fanshawe.]

[16TH AUGUST]

PUNJAB LAND PRESERVATION (CHOS) BILL.

The Hon'ble MR. FANSHAW moved for leave to introduce a Bill to provide for the better preservation and protection of certain portions of the territories of the Punjab situate within or adjacent to the *Siwālik* mountain range or affected or liable to be affected by the action of streams and torrents, such as are commonly called *chos*, flowing through or from, or by the debodement of forests within, that range. He said—

"I have the honor, Sir, to ask the leave of the Council to introduce a Bill for the protection of certain tracts in or adjoining the *Siwālik* range in this Province affected by debodement of the range and by the *chos* or sandy torrents which issue from it.

"The *Siwālik* range, which extends along the north-east border of the Hoshiārpur and Umballa Districts, consists mainly of a soft sandy conformation remarkable for the absence of clay constituents. In consequence, where the range is not protected by a natural growth of grass, underwood and trees, it is liable to violent erosion by the heavy annual rainfall which amounts to some 40 inches, and the sand detritus thus washed down is carried far into the plains and is the cause of most serious damage there. This damage is greatest in the Hoshiārpur District in which no less than 1,000 villages are affected; but it also extends to nearly 70 villages in Jullundur and is not unknown in the Umballa District.

"The facts of the damage done in the first two districts during the last 50 years are as follows. In 1852 the area affected by *chos* in Hoshiārpur was slightly under 50,000 acres, and the area so affected in Jullundur was under 1,000 acres. At the last land revenue settlement fifteen years ago these areas had risen to 80,000 acres, and they have now reached 100,000 acres, or just double the area affected at the middle of the century. Besides this, a further area of not much less than 20,000 acres in these districts has been so far injuriously affected by *cho* action as to require a reduction of assessment. It is obvious from these facts that the loss and suffering caused to the cultivators of the areas in question must have been very great, and that they call for a remedy if one can be reasonably supplied. If the loss to Government in the matter of land revenue is put at one lakh of rupees only, the loss to the villagers must have been at least ten times that amount; and it has been ascertained that in the Hoshiārpur District they are deeply involved in debt. The evil, moreover, has been and is proceeding in a rapidly increasing ratio, as is always the case under such conditions as those of the Hoshiārpur *Siwāliks*, and the measure of damage done in the past is no adequate test of that which will probably happen in the future.

"The principal reason why this natural evil has assumed such serious proportions during the last fifty years is that, while previous to 1852 the waste lands of the *Siwāliks*, which were at that time well protected by trees and bushes and grass, were considered to belong to the State and were controlled by State servants, at the first regular settlement of Hoshiārpur these lands were divided up among the villages in and adjoining the hills, and have since that time been treated as village common lands. The consequence of this and of the development of the adjoining large villages and small towns in the plains, has

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been that the grass and brushwood and trees on the hill sides have been largely destroyed, and that the number of cattle and sheep and goats kept in the villages in the hills has increased beyond all reasonable limits; and it is certain that unless special legislative action is taken to check the evils in question, they will increase until a common ruin involves both the villages in the hills and the villages in the plains.

"The question of such action as regards the *chos* has been under consideration ever since 1876, when the necessity for it was first mooted by the Deputy Commissioner of Hoshiarpur, Mr. Coldstream. A special report on the subject was prepared in 1879 by Mr. Baden Powell, then Conservator of the Forests in the Punjab, and another report was written in 1883 by Mr. Moir, Deputy Conservator of Forests, who had specially studied the question of the reclamation and protection of similar areas in the south of France. Since then the opinions of various experts, Forest and Revenue, have been recorded on various occasions to the effect that special measures ought to be adopted by Government to prevent the growing evils of *cho* action. For a long time it was proposed to attack the evils, which must be faced at the seat of their origin in the hills, as training works in the plains afford only a local remedy by passing the evils on elsewhere, by recourse to existing provisions of the Forest Act; but, after full and detailed consideration of the matter during the last four years, it has been decided that not only are these provisions inadequate to meet the very special circumstances of the *chos*, but that they would be rendered practically inoperative by the very large amount of compensation which would have to be paid under the terms of the Land Acquisition Act. In consequence the present Bill has been submitted to the Government of India and has been approved by Her Majesty's Secretary of State for India, and if, on the one hand; the Punjab Government can hardly be accused of precipitate action in this connection, it must be remembered, on the other hand, that a measure which purports to restrict the exercise of rights of long standing properly demands a long and careful consideration. The full title of the Bill is "A Bill to provide for the better preservation and protection of certain portions of the territories of the Punjab situate within or adjacent to the Siwálík mountain range, or affected or liable to be affected by the action of streams and torrents, such as are commonly called *chos*, flowing through or from, or by the debolishment of forests within, that range," and it is this Bill which I now ask the leave of the Council to introduce."

The motion was put and agreed to.

The Hon'ble MR. FANSHAWE introduced the Bill, and, in doing so, said—

"In introducing the *Chos* Bill in accordance with the motion just carried, I desire, Sir, to lay briefly before the Council, in supplement of the printed Statement of Objects and Reasons, the provisions by which the Government proposes to control the injurious action of the *chos*.

"I need not I think refer at this stage to the definitions contained in the Bill, which it will be observed is applicable to all areas in the Siwálíks or affected by *chos* from them.

[Mr. Fanshawe.]

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" The procedure laid down in the Bill is as follows. In the first place Section 3 empowers the Local Government to issue a notification in the *Punjab Gazette* declaring that it is desirable to provide for the better preservation and protection of any particular area which is to be brought under the provisions of the Act, situated in or adjacent to the Siwálíks or affected by *cho* action. Thereupon any general orders issued under Section 4 and declared on issue to be applicable to all areas which may be notified, and any special orders which may be issued under Sections 4 or 5 with reference to the notified area in question, will come into force as regards such area. These orders will under the provisions of Section 6 be published in the *Punjab Gazette* and will state that Government is satisfied that the restrictions imposed by them are necessary; and a public notice of the effect of them will, under Section 8, be given by the Deputy Commissioner. Orders, whether general or special, issued under clauses (a)—(c) of Section 4, are subject to strict limitations. So far as the clearing and cultivating of land or the quarrying of stone and burning of lime are concerned, they cannot affect any action *taken* BEFORE the date of the notification declaring the area in which these rights have been exercised to be a notified area; while as regards the cutting of trees and the removing of forest produce, they cannot affect anything which is done for the *bona fide* domestic and agricultural purposes of the inhabitants of the notified area. On the other hand the practices of firing the hill sides and of grazing sheep and goats, which are the principal causes of the damage resulting from *chos*, and the prohibition of which will in the opinion of many Forest experts be almost sufficient of itself to largely secure the reboisement of the now denuded hill sides, can be absolutely forbidden under clauses (d) and (e) of Section 4. Clauses (f) and (g) of the same section provide for the minor matters of granting permits for removing forest produce from the notified area and the examination of produce so removed.

" Orders issued under Section 5 must in all cases be special and will be issued to meet special circumstances. They may restrict or prohibit the rights of breaking up and cultivating land and the quarrying of stone and burning of lime *though* exercised *before* the date of the declaration of the area to be a notified one,—the rights to cut trees and take forest produce *although* for *bona fide* agricultural and domestic purposes,—and the right of pasturing all cattle, and not merely sheep and goats. It may here be noted that the number of sheep and goats pastured in the Hoshiárpur Siwálíks exceeds 50,000. The restriction of existing rights under Sections 4 and 5 is subject to the payment of compensation which is provided for in Sections 14 and 15 of the Bill; and the Deputy Commissioner will therefore publish the orders directing such restrictions in every town and village affected, and in doing so will warn all persons who claim compensation for the restriction of rights to appear before him within a fixed period of not less than two months to prove their claims. Sections 14 and 15 make, I think it will be admitted, provision for a full and fair enquiry into such claims, and the amount of compensation awarded will, like all other orders of the Deputy Commissioner with two small exceptions, be subject to appeal, revision and review as in the case of orders of a Collector under Sections 13—16 of the Punjab Land Revenue Act. During the latest investigations into the matter it has been ascertained that the owners of goats

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and sheep in the Hoshiarpur Siwálíks are not so dependent on their flocks as to be likely to suffer any considerable hardship from the enforced reduction which their exclusion from notified areas will necessarily entail, and these owners have expressed themselves willing to receive the compensation for this restriction which was proposed to them when the matter was under discussion locally. Similarly, it is anticipated that there will be no special difficulties in awarding compensation which will satisfy them to persons whose rights of cutting timber and taking forest produce may be restricted.

"So far the provisions of the Bill affect mainly notified areas within the Siwálíks or immediately at their feet ; but Section 9 empowers Government, for two specified purposes of protection, *either* to require the owners of a *cho* bed which is not cultivated nor culturable to carry out those measures, *or* to declare, either in the first instance or upon the owner's failing to comply with such requisition, the bed of the *cho* to be vested in Government for a term of years or in perpetuity, without payment of any compensation. This provision has been inserted in the Bill because no land revenue is assessed on such *cho* beds, and because it is generally impossible for a number of villagers, still more so for a number of villages, to combine to carry out works of protection which if steadily persisted in will often render portions of the land affected by the *cho* culturable. In most cases no doubt the villagers would in the first instance be offered the opportunity of themselves reclaiming affected lands in the *cho* bed ; and where this task is entirely beyond their powers they would probably be only too glad that the Government should undertake it, as even if their individual rights in the lands ultimately reclaimed are extinguished, such reclamation will be greatly to the benefit of the adjoining village lands, and the *cho* bed lands actually reclaimed would, if not restored on easy terms of repayment of the cost of reclamation to Government, be ordinarily leased no doubt to members of the village community for cultivation.

"The other provisions of the Bill may be lightly passed over at this stage. Section 13 gives the necessary power to Government officers to enter on to lands notified under Sections 3 and 9, and Section 16 provides for the preparation of a due record of rights in all notified areas. The penalty imposed for the breach of any orders of the Local Government under Sections 4 and 5 is the usual one in such cases, namely, imprisonment which may extend to six months or fine which may extend to Rs. 500 or both."

The Hon'ble MR. FANSHAW moved that the Bill be referred to a Select Committee consisting of the Hon'ble MR. THORBURN, the Hon'ble KHALIFA SAYAD MUHAMMAD HUSSAIN, the Hon'ble MR. MADAN GOPAL and the Hon'ble the Mover ; also that the Bill be published in the Punjab Government Gazette in English and Urdu.

PUNJAB LIMITATION (ANCESTRAL LAND ALIENATION) BILL.

The Hon'ble MR. MADAN GOPAL moved for leave to introduce a Bill to regulate the period of limitation of suits arising out of the alienation of ancestral land by persons who are subject to the Customary Law in force in the Punjab. He said—

"The question whether it is competent to a peasant proprietor in the Punjab, belonging to an agricultural tribe, to transfer ancestral land without necessity and without the consent of agnates descended from the same common ancestor to whom the land originally belonged, has been set at rest by judicial decisions too numerous to detail. The *modus operandi* has been to lay the onus of proving that he has the power to alienate, in the absence of justifying causes, on him who asserts that power. Inquiries have shown that in respect of ancestral immoveable property in the hands of any individual, there exists some sort of residuary interest in all the descendants of the first owner. The owner in possession is not regarded as having the whole and sole interest in the property, and power to dispose of it so as to defeat the expectations of those who are deemed to have a residuary interest, and who would take the property if the owner died without disposing of it. These persons have a power to control dispositions which act prejudicially to their interests. The alienation gives them a cause of action to have it set aside as against them, so as not to affect their succession. The question on what date their cause of action arises, and from what date the period of limitation for such suits commences to run, has been the subject of conflicting rulings by the Chief Court. It must be remembered that this system of tenure is peculiar to the Punjab. It is unknown in other parts of the country, and, consequently, we have no distinct and specific provision made to govern cases relating to it in the Indian Limitation Act, 1877. The question first came up before Mr. Justice Barkley, and his decision is reported as No. 48, P. R., 85. The point was not, however, properly argued at the Bar, and the decision proceeded on the merits of the case. It was seriously raised for the first time before Mr. Justice Plowden, and his decision is reported as No. 13, P. R., 90. It was contended before him that the case of the childless proprietor was analogous to that of the Hindu widow. Both had a restricted power of alienation; and as the cause of action of the husband's agnates to question the widow's alienation arises on the widow's death, the same rule should hold good in the case of the male proprietor's alienation. Mr. Justice Plowden held that this contention was based on false analogy. "The male proprietor is full owner with a restricted power of alienation. A widow has a limited interest. In the case of the male owner, the successors in title on his death are *his* heirs; in the case of the widow, the successors are the heirs, not of the widow, but of the last owner before the widow. As a rule, possession under a title created by the widow during her life interest is not adverse to the reversionary heirs. It is different when the owner alienates: then the possession of the alienee is adverse to the owner, and to all persons who claim under him." He accordingly held that, in the case of an alienation by a male proprietor having by custom a restricted power, the cause of action arises on the date of alienation, and the period of limitation for a suit to set aside the alienation commences to run, under Article 120, from the date of the alienation or from the time when the fact of alienation comes to the knowledge of the heir.

"The question again came up for discussion before a Full Bench consisting of Sir M. Plowden, S. J., and Messrs. Rivaz and Stogdon, JJ., in No. 116, P. R., 90, where it was held that where the suit for possession was brought by the heirs within 12 years of the alienation by the male proprietor, it was within time. The point was still left undecided as to when the cause of action in such a case arises,

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and from what point the period of limitation commences to run. The next case bearing on this point is No. 141, P. R., 92, where Benton and Rivaz, JJ., held that an agnate of a male childless proprietor claims through the latter within the meaning of Section 3 (1), Limitation Act, and his suit for possession brought more than 12 years after the date of alienation was barred under Article 142, because the alienor discontinued possession on the date of alienation. The essential ground of this decision, as well as of those preceding it, was that the agnate claimed the right to sue through the alienor. This view was called in question in No. 18, P.R., 95, where it was contended that the reversioner's title to sue was not derived from the alienor but from the common ancestor. A distinction was drawn between right to possession and a right to sue for possession. It was stated—"granted that the collateral heir derives his right to possession on the death of the last holder, through the last holder from the common ancestor, yet his right to sue for possession on the last holder's death is not a right derived from or through the last holder, because the last holder himself had no right to sue for possession of property alienated by himself. The two rights are distinct, and must be so treated in construing the Limitation Act." It was conceded that this class of cases was a *casus omissus* in the schedule to the Limitation Act, because in 1877 the peculiar position of landholders in the Punjab was not in the cognisance of the Legislature, and was not even fully known to the Punjab Courts.

"The ruling of the Full Bench (Roe, C. J., and Frizelle and Rivaz, JJ.) was to the effect that Article 142 did not apply, because the reversioner did not derive his right to sue from or through the last holder. "His right is derived from no individual, but from the customary rule, which places a restriction upon the owner's powers of disposition of ancestral property, and renders him liable to be controlled by his collateral heirs. Such a right never accrued to the alienor himself, and, therefore, cannot be passed on by him to his successors." They, therefore, fell back upon Article 144, and held that the possession of the alienee became adverse to the reversioner, not during the lifetime of the alienor, but from the moment of his death.

"It should be noted that in the similar case of an alienor having lineal descendants, in respect to an alienation by him, the cause of action of the son arises on the date of alienation—Article 126. Is there any reason why, in the case of collateral succession—where the right, if anything, is weaker—the starting point of limitation should be any other? The result of this Full Bench ruling has been exceedingly disastrous to the people of the province. Alienations which took place shortly after the acquisition of the province by the British, at a time when nobody imagined that a proprietor had limited ownership, or that his alienation could be called in question, are now being constantly challenged. Titles accepted on the strength that owners had full powers of alienation, and that in any event 12 years' possession would give a parliamentary title, have been placed in jeopardy, and call for protection as a matter of justice. After this great lapse of time, the alienees find it most difficult—nay impossible—to prove that the alienor parted with the property under the pressure of necessity. To produce witnesses to a transaction of such long date is impossible. Even if some were produced, it is not likely that they would be witnesses of truth. Their memory of it must, in the nature of things, be very feeble, and the Courts would be found

[Mr. Madan Gopal.]

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unwilling to attach much credibility to statements made under the circumstances. The result is that titles of long duration, and possession of sometimes fifty years' standing, are liable to be set aside, and innocent people find themselves deprived of their properties purchased for full and valuable consideration by reason of an *ex post facto* view of rights working retrospectively. That such a state of things is much to be deplored, and that it calls for a speedy remedy, will admit of no question.

"The Judges of the Chief Court were the first to bring the matter to the notice of Government. They admitted that till 1895, it had been the general belief that 12 years' actual possession gave a good title, but that this general belief had been shown to be unfounded in law by the Full Bench ruling. They feared that the decision would lead to very serious consequences,—hundreds of titles hitherto deemed secure may be called in question,—and they, therefore, suggested that the Limitation Act should be amended by the following additions:—

- (1) Article 126 (a) : By a person governed by customary law in the Punjab to set aside an alienation of ancestral property, 12 years—when the alienee takes possession of the property.
- (2) Article 141 (a) : By a person governed by customary law in the Punjab and entitled to possession as heir to recover possession of ancestral property alienated by an ancestor or a kinsman, 12 years—when the alienee takes possession of the property.

And they added that these provisions should be allowed to come into force at once, so that the hundreds of titles which are now open to being impugned might be made safe.

"After some discussion, proposals to give effect to these suggestions were formulated and circulated for the opinions of judicial and executive officers. Some distinguished executive officials objected to the principle of the proposed legislation on the ground that it would lead to facilitate alienation of ancestral land; others concurred in the advisability of declaring the law on the subject in order to give security to title. Having considered the whole question Your Honour was of opinion that no good results could be expected from using such means to discourage alienation as are furnished by the wholesale unsettling of titles of alienees. Insecurity of rights conferred by transfer is more likely to disturb the course of business, impair agricultural credit, and lower the price of land, than to diminish the political and social evils which result from reckless alienation. The Government of India were therefore addressed on the subject. In January last sanction was conveyed by the Government of India to the necessary legislation being proceeded with in the Provincial Council. It was pointed out that, as the measure provided a special period of limitation relating to a local matter, the proposed legislation should take the form of an independent enactment of the Local Legislature. In accordance with these views the present Bill has been prepared."

The motion was put and agreed to.

The Hon'ble MR. MADAN GOPAL introduced the Bill.

16. August 1899

PUNJAB LIMITATION (ANCESTRAL LAND ALIENATION). 21

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[Mr. Madan Gopal.]

✓ The Hon'ble MR. MADAN GOPAL moved that the Bill be referred to a Select Committee consisting of the Hon'ble MR. DANE and the Hon'ble the Mover; also that the Bill be published in the *Punjab Government Gazette* in English and Urdu.

The motions were put and agreed to.

ADJOURNMENT.

The Council adjourned to November 2nd, 1899.

SIMLA :

E. W. PARKER,

The 16th August 1899. } Secretary to the Legislative Council of the Punjab.

PUNJAB GOVERNMENT.

LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 & 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).

THE Council met at the Council Chamber, Government House, Lahore, on the 2nd November 1899.

PRESENT :

His Honour Sir WILLIAM MACKWORTH YOUNG, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble C. L. TUPPER, C.S.I.

The Hon'ble L. W. DANE.

The Hon'ble S. S. THORBURN.

The Hon'ble *Rái Bahádúr* MADAN GOPAL.

The Hon'ble *Nawáb* Sir AMIR-UD-DIN AHMED KHAN, of Loharu, K.C.I.E.

The Hon'ble *Sardár* BHAGAT SINGH, C.I.E., Chief Secretary to His Highness the *Rája* of Kapurthalla.

NEW MEMBERS.

The Hon'ble MR. THORBURN, the Hon'ble MR. MADAN GOPAL, the Hon'ble *Nawáb* Sir AMIR-UD-DIN AHMED KHAN and the Hon'ble *Sardár* BHAGAT SINGH took their seats in Council.

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24 PUNJAB LIMITATION (ANCESTRAL LAND ALIENATION)
AND SIND-SAGAR DOAB COLONISATION.

[Mr. Madan Gopal ; Mr. Tupper.]

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PUNJAB LIMITATION (ANCESTRAL LAND ALIENATION) BILL.

✓ The Hon'ble Mr. Madan Gopal presented the Report of the Select Committee on the Bill to regulate the period of limitation of suits arising out of the alienation of ancestral land by persons who are subject to the customary Law in force in the Punjab, and, in doing so, mentioned that the report required the republication of the Bill.

SIND-SAGAR DOAB COLONISATION BILL.

The Hon'ble Mr. Tupper moved for leave to introduce a Bill to establish the title of the Government in land to be acquired for the purpose of colonising portions of the *Sind-Sagar Doab*. He said:—

"On the last occasion on which I had the honour to address this Council I ventured to congratulate you, Sir, on the accomplishment of a measure, long desired by all Revenue Officers, which owed its acceptance and the principle which brought about its acceptance to your initiative as Financial Commissioner. The measure which I am now about to ask leave to introduce is also in part a Revenue Officer's Bill, and it is, at least as much as the Riverain Boundaries Act, the result of your personal exertions as Financial Commissioner. I think, Sir, it must be satisfactory to you as President of this Council to see measures which you devised in another capacity reaching their fulfilment in the shape of enacted law.

"We have, however, to look for a few moments behind the actual structure of the Bill to discern the large and operative causes, fraught with social consequences of great importance, which induced you to give time and trouble to the subject of the measure. Regarded from this point of view the Bill is the result of two great and closely connected movements which have characterised the administrative history of the Punjab during the last forty years. I refer to the spread of canal irrigation and the systematic colonisation of waste lands, the property of Government. We have obtained, one after another, the Bári Doab Canal, the Sirhind Canal, the re-alignment and extension of the Western Jumna Canal, the Chenab Canal, and the commencement of the Jhelum Canal. When the Jhelum Canal shall have been completed, it will be admissible to call the Punjab, the land of five great rivers, the land also of five great canals. The area irrigated by canals in this Province has expanded from 760,000 acres in 1865-66 to 5,214,258 acres in 1897-98. Doubtless before 1885 there was some colonisation of the waste by private and unguided enterprise. But the systematic colonisation to which I refer, based on the principle of relieving congested districts by settling selected cultivators under suitable conditions on lands, the property of Government, begins with the experiment on the Sidhnái Canal, initiated in 1885 and brought to a successful issue in 1888. The experience gained on the Sidhnái suggested the more systematic and comprehensive proceedings in the Chenab Colony; and it is the experience gained both on the Sidhnái and on the Chenab which has largely prompted the present measure.

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[Mr. Tupper.]

"One Doab after another having fallen under the dominion of the Irrigation Department, when the Jhelum Canal has been completed the Sind-Sagar Doab will remain. It is the hope of the Punjab Government that eventually a canal will be made for that Doab drawing its waters from a point near Kálábágh on the Indus and commanding an area of some 7,000 square miles, of which 4,600 square miles are in the Dera Ismail Khan District and the rest in the districts of Bannu, Shahpur, Jhang and Muzaffargarh. The main object of the present measure is to bring the fulfilment of that hope within the range of practical administration.

"If the experience since gained in the Chenab Colony had been available in 1875, I doubt not that the settlement of the Dera Ismail Khan waste lands would have been made on a different principle. Sir James Lyall, the Settlement Commissioner, did indeed suggest a stipulation that, were a canal to be constructed in the *Thal* tract, the settlement might be revised and the excess waste separately dealt with. But I do not think Sir James Lyall contemplated the resumption of the excess waste for the purpose of colonisation: and at any rate his proposal was not accepted by the higher Revenue authorities of the day, and it was not considered necessary to do more than reserve in some fifty-eight villages power to take, without compensation, land required for the bed and banks of a canal or for roads or buildings. Subject to this condition, where it applied, the Settlement Officer effected a partition of rights between the Government and the landholders. He allotted most of the waste to the villages according to the number of cattle, sheep and goats enumerated at settlement, and formed the residue into Government *Rakhs*. In this way the villagers obtained nearly two million acres—more precisely 1,974,160 acres—in addition to 270,969 acres previously held by them in proprietary right. The Government retained 700,714 acres as reserves. The enormous area of waste made over to the villagers was assessed at an average rate of Re. 1-4-0 per 100 acres, and this apparently generous concession has by no means proved an unmixed boon. Between 1886 and 1890 years of drought occurred, causing great loss of cattle, and the pressure of the grazing assessment was severely felt. The Settlement Officer had foreseen the possibility that the waste might in some cases be found to be more a burden than a benefit, and had indicated the remedy to be applied. 'If,' he wrote, 'a village has enough cattle for its grazing, it can readily pay the revenue; if the revenue presses heavily in proportion to the cattle, it is a proof that the grazing area is in excess of its requirements, and the Government would at all times be ready to resume the surplus, making a corresponding reduction in the demand.' This passage, Sir, indicated to you the main principle which underlies the Bill. As Financial Commissioner you were reviewing proposals for a fluctuating assessment which had been suggested by the calamities of the season already mentioned, and you suggested the acquisition by Government of the waste in excess of village requirements with a view to the future colonisation of the tract. The settlement gave the people more waste than they wanted, much more than that for which they were able to pay. We propose, not arbitrarily to resume a mistaken gift, but, freely acknowledging that we were committed to a gift which we cannot resume, to acquire by fair bargain that which benefits the people but little now, but which will, in the

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proper hands and by the treatment intended, enormously benefit alike the people and the State, because, unless our hopes are frustrated by unforeseen events, a wide wilderness will be converted into a canal-irrigated colony, such as we have on the Chenab.

"Your suggestions were made in June 1892, and in the same month the Irrigation Department was consulted. Colonel Ottley, the Irrigation Secretary, pointed out that if colonisation were left to unaided private effort, the financial return would come in too slowly to warrant the expenditure; and that the original property of the villagers, the 270,969 acres already mentioned, was now practically worthless, but if commanded by a canal would become a valuable property indeed. Thus the verdict of the Irrigation Department was no land, no canal; and this verdict, I understand, still holds good.

"It was at first in contemplation to acquire the land by negotiation without the support of a special Act. Your suggestions of June 1892 were communicated to the people, and in August 1892 you met the leading zamindárs of the Bhakkar and Thal villages and discussed the matter with them. Munshi Ganga Rám, a retired Extra Assistant Commissioner, now Honorary Magistrate at Kunjah in the Gujrát District, was then deputed to confer with the zamindárs and explain the intention of Government. Munshi Ganga Rám was well qualified for this duty both by sterling qualities which have commanded the respect alike of his own countrymen and of his official superiors and by his local experience gained as Sub-Divisional Officer of *Bhakkar*. He prepared the way, Sir, for another visit to the spot by yourself, which was made in February 1893. At that time the Lieutenant-Governor, Sir Dennis Fitzpatrick, was on tour in the Dera Ismail Khan District, and, after fully reconsidering the situation in the light of the negotiation with the zamindárs, you discussed with your predecessor the scheme which is now embodied in the Bill. The most important condition in the draft form of agreement, then prepared, was that one-fourth of the area to be acquired by the Government should be re-allotted to the zamindárs on the construction of the canal. The value of this concession, for which provision is made in Section 5 (1) (b) of the Bill, is measured by the difference between the waste prairie value of some 482,886 acres and the value which the same quantity of land will acquire when it is commanded by a canal. You, Sir, however, satisfied yourself that we could not obtain what we wanted on cheaper terms.

"The proceedings of February 1893 were followed by a long correspondence with the local officers, the Government Advocate and the Government of India, of which the text was the draft form of agreement mentioned just now. I need not attempt to follow that correspondence in detail. It will suffice to explain briefly why legislation has been accepted as necessary, and why the Land Acquisition Act has been deemed unsuited to the case.

"Legislation is necessary because Government must have a clear title to the waste acquired, not only to enable it to make valid grants under a colonisation scheme, but also to ensure that a clear title shall be given to the zamindárs

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[*Mr. Tupper.*]

themselves when one-fourth of the acquired area is re-allotted to them. It would be an intolerable miscarriage of the whole scheme if grants made by Government, whether to colonists or local zamindárs, could be impugned on grounds of defect in the agreements for surrender. The alienation of agricultural land in the Punjab is subject to restrictions usual in other countries, such as those which invalidate alienations attempted by minors or persons of unsound mind, and also to certain special restrictions imposed by Customary Law, such as the right of pre-emption and the requirement that the alienation of ancestral land, save for necessity, shall be subject to the consent of the agnates. It is a consequence of those restrictions that when we are operating on a large scale, acquiring some two million acres in a waste tract of country from numerous villages, we cannot be sure of a clear title unless we have a statutory guarantee.

"Doubtless the title under the Land Acquisition Act is clear enough. But the application of that Act would wreck the scheme financially, and give the local zamindárs more than is just to them and more than they are themselves willing to accept. It is true the Act declares that no increase to the value of the land acquired, likely to accrue from the use to which it will be put when acquired, shall be taken into consideration in assessing the market value for the purposes of the Act. But if it was decided to construct the canal, the actual market value of the waste at the date of the declaration of the intention to acquire—and it is this that constitutes the market value of the Act—would rise greatly, and even if it rises to no more than ten rupees an acre, the cost would then be prohibitive, and the canal would never be made. Moreover, if, as appears to be the case, the people, or most of them, are ready to accept our terms, why should we offer them better terms and, in particular, why should we give fifteen per cent. above the market value, as we should be forced to do under the Land Acquisition Act? Lastly, why should we do this for men whose original holdings will acquire an enormously enhanced value by no effort of their own? There is no justification for this double benefit at the public expense, and the Land Acquisition Act was evidently never meant to meet a case like the present.

"I have to add the caution that Government is not pledged to construct a canal in the Sind-Ságar Doáb. We hope the canal will be constructed, but it certainly never will be constructed unless the Bill, or some modification of it, is passed into law. The Bill enables the land-owners, occupancy-tenants and right-holders of the locality to surrender their lands under valid agreements, and thus to restore to the Government the waste which was given away at settlement, as I have described. But those agreements will take effect only on and from the date on which the work of constructing a canal in the Sind-Ságar Doáb is commenced by the Government. Till that date the proprietary right will remain with the zamindárs.

"With these remarks I ask leave to introduce the Sind-Ságar Doáb Colonisation Bill. I have confined myself to a general account of the objects and history of the measure. The particular mechanism by which it is proposed to give effect to the intention of Government will be more appropriately discussed on some future occasion."

[*His Honour the President.*]

[2ND NOVEMBER

His Honour the PRESIDENT said :—" The Hon'ble Mover has fully explained in his interesting speech the object of the Bill which he has asked permission to introduce, but I shall make no apology for briefly covering the same ground, as I think it important that I should distinctly identify myself with a measure which is of great importance, and which certainly requires a certain amount of explanation.

" The scheme, for the furtherance of which this Bill has been framed, is the construction of a canal from the Indus to irrigate the Sind-Ságar Doáb. As the Indus is the largest of our Punjab rivers, so is this scheme larger than any of the great irrigation schemes hitherto carried into execution in this Province, which have been its mainstay in seasons of drought such as that through which we are passing. The supply of water in the Indus river is practically unlimited, the area capable of receiving irrigation from it is computed at 7000 square miles, or about four-and-a-half million acres. This is nearly as large an area as the total area now annually irrigated by canals in the Punjab, so the magnitude of the undertaking will readily be recognised. And our experience in the case of the Chenab Canal has abundantly proved the incalculable benefit conferred upon the Province by such large irrigation works, which not only swell the resources of the country, and largely increase the food-supply, but also relieve the congested population of the densely inhabited tracts, and contribute materially to the expansion and development of agricultural industry. The initial outlay upon the Sind-Ságar Doáb Canal will be very large, probably not less than six or seven crores of rupees, and it will be impossible to face this outlay, unless we can be sure that the lands commanded by the canal will speedily be brought under cultivation and an adequate return secured. This cannot be, unless the Government has power to introduce colonists from other parts of the Province, for the population of the Doáb is extremely sparse. And Government can only do this, if it holds the land in proprietary right. With the exception of some 700,000 acres of Government land reserved as *Rakhs*, the whole of the waste area of the Bhakkar and Leiah Thal was at the last settlement allotted to the villages of the Doáb. It was not then realised that any important object would be served by maintaining the right in the waste which then pertained to Government, and it was abandoned. The Chenab Colonisation has shown our mistake, and an attempt is being made to rectify it. Our position is this: the canal cannot be constructed unless Government recovers the control of the greater part of the waste; the waste is scarcely of any value without the canal; the people will be immensely benefitted if they are able to irrigate a small portion of that waste. Hence both parties, the State and the owners of the waste, will reap advantage from a compromise, under which these owners shall restore to Government the bulk of the lands entered as common lands of the village at the last settlement, and thus enable it to embark upon the canal, which will enrich them by irrigating the lands which they retain. Unless such a compromise is arrived at, matters must remain in *statu quo*, and the Sind-Ságar Canal project must be indefinitely postponed. The Bill which is being introduced does not provide for forcing this arrangement on the owners of the waste. The only inducement we desire to bring to bear on them is self-interest. If they do not believe that they will profit by the scheme, they are at liberty to leave it alone. But it has been already ascertained that a

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large number of owners are willing to enter into such an arrangement, and the object of the Bill is to remove certain obstacles in the way of carrying it out. However anxious the people may be to make over to Government the waste area in question, the existing law and custom of the country are such as to prevent their conveying to the Government an absolute title in the lands surrendered. To enable them to do so is the object of the Bill.

"I have thought it necessary to make this brief statement, to prevent misunderstanding which might easily attach to our proposals. I remember when the subject was first mentioned to Sir Dennis Fitzpatrick, he declined to have anything to say to it, until the Irrigation Department should assure him that without the surrender of the waste the Government could not contemplate the construction of the canal. The Chief Engineer of the time, Colonel Ottley, emphatically declared that this was so, and Sir Dennis accepted the fact that what we were asking the people to do was for their own advantage, as well as for the advantage of the Province generally. This belief has been shared by all who have had to deal with the subject, and it is in this belief that the Government of India and the Secretary of State have sanctioned our plan of operations; and have agreed to the introduction of this Bill for the purpose of facilitating it. If we are successful in getting all the owners of the waste in question to share the same view, then there is a prospect of the Sind-Sagar Doab project being carried to completion without many years' delay. If otherwise, I do not see how this vast scheme is to be worked within the next century. The Great *Thal* must then remain a sandy desert, and the waters of the Indus must flow on in their bed, instead of spreading fertilisation far and wide. We believe that the people will see their best interests and co-operate with the Government in making the canal possible. In any case the Bill before us merely renders it possible for them to do so, and is manifestly the first step towards the execution of the project."

The motion was put and agreed to.

The Hon'ble MR. TUPPER introduced the Bill.

The Hon'ble MR. TUPPER moved that the Bill be referred to a Select Committee consisting of the Hon'ble MR. BERESFORD, the Hon'ble Nawab MUHAMMAD HYAT KHAN and the Hon'ble the Mover.

The Hon'ble MR. THORBURN asked whether the 700,000 acres mentioned as reserved, as Government *Rakh* land, included any portion of the Mianwali *Thal*.

The Hon'ble MR. TUPPER replied in the negative, pointing out a passage in the papers connected with the Bill where the 700,000 acres were mentioned as belonging to the Bhakkar and Leiah *Tahsils* only. He added that the only reference in his speech to the Bannu District, was where he described the area to be commanded by the proposed canal as including 4,600 square miles in the Dera Ismail Khan District and 2,400 square miles in other districts, amongst which was Bannu.

The Hon'ble MR. THORBURN then explained the reason why he had asked the question, *viz.*, that when he was Settlement Officer of Bannu he had reserved for Government a large area in the Mianwali *Thal* with a view to the possibility of a canal being constructed which would command it.

The motion was put and agreed to.

[*Mr. Tupper.*]

[2ND NOVEMBER.

The Hon'ble MR. TUPPER moved that the Bill be published in the *Punjab Government Gazette* in English and Urdu.

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned to Saturday, the 23rd of December 1899.

LAHORE:

E. W. PARKER,

The 2nd November 1899. }*Secretary to the Legislative Council of the Punjab.*

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PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 & 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).

THE Council met at Government House, Lahore, on Saturday, the 14th April, 1900.

P R E S E N T :

His Honour Sir WILLIAM MACKWORTH YOUNG, K. C. S. I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Mr. C. L. TUPPER, C. S. I.

The Hon'ble Rái Bahádúr MADAN GOPAL, M. A., Barrister-at-Law.

The Hon'ble Sardár BHAGAT SINGH, C. I. E.

The Hon'ble Nawáb MUHAMMAD HAYAT KHAN, C. S. I.

The Hon'ble Mr. A. F. D. CUNNINGHAM, C. I. E.

The Hon'ble Mr. JAMES WILSON.

NEW MEMBERS. ✓

The Hon'ble Nawáb MUHAMMAD HAYAT KHAN, C. S. I., the Hon'ble Mr. A. F. D. CUNNINGHAM, C. I. E., and the Hon'ble Mr. J. WILSON, took their seats as Members of Council.

PUNJAB LIMITATION (ANCESTRAL LAND ALIENATION) BILL.

The Hon'ble MR. MADAN GOPAL moved that the report of the Select Committee on the Bill to regulate the period of limitation of suits arising out of the alienation of land by persons subject to the Customary Law in force in the Punjab, be taken into consideration. He said :—

“ In moving that the Bill to regulate the period of limitation for suits arising out of the alienation of ancestral land by persons who are subject to the Customary Law in force in the Punjab be taken into consideration, I will briefly recall to the Council the circumstances under which the Bill was introduced, and make some remarks on the changes which it has undergone in form and in some of its details when passing through the Select Committee.

[Mr. Madan Gopal.]

[14TH APRIL

"In this province, a peasant proprietor belonging to an agricultural tribe has been found, by inquiries made by Settlement and Judicial Officers, not to be competent, by Customary Law, to transfer ancestral land without necessity or without the consent of agnates descended from the same common ancestor to whom the land originally belonged. These agnates have power to control dispositions which would act prejudicially to their interests. The alienation gives them a cause of action to have it set aside as against them, so as not to affect their succession. The question as to the date on which their cause of action arises and when the period of limitation for a suit by them commences to run, though at first it appears to be very simple, has in practice given rise to several conflicting rulings. Up to 1895, the general belief was that twelve years' actual possession gave a good title. This was in accordance with the general policy of the Limitation Law. The Ruling No. 18 of 1895 laid down that this general belief was unfounded. For the reasons given in the judgment, the date when the possession of the alienee became adverse to the reversioner is not the date of the alienation, but the date of the death of the last owner. So that if the transfer took place, say, in 1860, and the alienor died in 1890—a not uncommon occurrence—the reversioner would be competent to sue the alienee till 1902—*i. e.*, forty-two years after the alienation. Even the learned Judges themselves felt that their pronouncement would lead to very serious consequences and that hundreds of titles, till then deemed secure, might be called in question. Accordingly they drew the attention of the Government to this evil in April 1895. The matter has thus been under discussion for the last six years. In August last, I had the honour to introduce the Bill by which the restoration of the old period of limitation was proposed. The matter was referred to a Select Committee which submitted its report in November last. The amended Bill and the Report of the Select Committee were republished six months ago, so that the Council will see that the matter has received long and anxious consideration and been before the public for at least nine months and is, in my opinion, now ripe for consideration and to be passed into law.

✓ "The Select Committee considered the following points:—

"(a). The substitution of the word "land" for "immoveable property." The Secretary of State for India had suggested that the period of limitation should count from the date on which the transfer was attested in the Register of Mutations. As our Revenue papers only deal with agricultural land, the presumption is that the scope of the measure was intended, in that quarter, to be confined to such land. Moreover, so far as enquiries have gone, it has been established that a restriction as to alienation exists only as regards agricultural land and not *quid* any other property—moveable or immoveable. As to moveable property, the power of the proprietor is absolute, and, as to ancestral houses, inquiries have not shown that custom placed any restriction on his right of alienation. The Bill was, therefore, so amended as to leave out the indefinite expression "property" and to confine it to agricultural land. In consequence of the above, a definition of "land" was inserted in section 3. This definition was taken bodily from the Tenancy Act. This was the view of the Select Committee, but there have been divergent views on the point which will be mentioned when I move for leave to make certain amendments.

1900.]

[Mr. Madan Gopal.]

"(b). In Article 1 of the first column of the Schedule the words "son or" were added before the word "reversioner."

"(c). Another change made was in the starting point of limitation : whereas in the first Bill, this point was the date of the alienation, the Select Committee fixed three separate starting points. Accepting the suggestion of the Secretary of State, it was provided that the period of limitation will begin to run from the date of the attestation of the entry, if any, made in the Register of Mutations. Such registers are maintained under the Land Revenue Act and, under section 34, it is obligatory on the alienees to report the fact of alienation to the Patwari. Not only is this obligation laid down by law, but it is exceedingly likely that, in his own interest, to remove all cloud from his title, the alienee will be induced to make this report. The next provision is one which lays down that the period of limitation will also run from the date of taking physical possession of the property alienated. Those who are conversant with the law of limitation will see at once that this provision will apply only to those cases where actual tangible possession is taken, *i.e.*, some corporeal or perceptible act done which of itself conveys, or ought to convey, to the mind of a person, notice that his right has been prejudiced. It excludes the notion of possession through a tenant. The third starting point was provided for cases where there was no present right to possession,—where, by the nature of the transaction, the alienor does not give or agree to give immediate possession to the alienee. This provision was made for cases of what are called simple or collateral mortgages, or *hypothecs* in the language of the Roman Law. As the matter will have to be discussed in connection with an amendment on the point, no more need be said at present on the subject.

"(d). An important change was made in regard to the date from which limitation should begin to count in cases where the alienor may have died before this measure becomes law.

"After due consideration, the Select Committee were of opinion that the second clause of Article 2 of the Bill should be omitted. The object of the Bill is to restore the state of things which existed before the Full Bench Ruling above referred to was passed, *i.e.*, that the law should be placed on the basis upon which it had previously been believed to stand. The Legislature has made no provision in the Limitation Act for suits of the nature of those contemplated in this Bill, so that we are not changing any law, but simply enacting a law where none existed before.

"And even if we were abrogating a right—if a right can be said to have been created by a ruling of Court—we were removing the more harmful of two evils.

"This requires some explanation. There are two evils: Insecurity of title of those who bought at a time when the theory of the restricted right of alienation was not known and paid full value for the property believing it to be unincumbered. Why should these people be punished for an innocent act? Why should the theory of restricted ownership be used retrospectively to their disad-

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vantage? In support of the other evil, a remonstrance has been made against our passing a law which would have the effect of prejudicially affecting reversioners who have an existing right to sue. Are reversioners deserving of more consideration than those men whose titles have been twice assailed, (i), when it was ruled that a proprietor has a restricted power of alienation, and (ii), when it was decided that the limitation for a suit for possession by the reversioner begins from the death of the alienor. These persons are entitled to say: (i) "we bought the property at a time when the law did not recognise the right of any other than the alienor in the property, why should *ex post facto* law operate against us? and (ii) we submitted to this harsh treatment and have now matured our title by twelve years' adverse possession. We have obtained full and complete title in another way well known to law. Even this you assail and assail so as to affect past transactions." Who suffers the greater hardship? The alienees who may be ousted of their property, for which they paid full value, by judicial legislation, which admittedly affected past transactions of long standing and affected them violently and abruptly, or the reversioners who did not stir themselves but lay dormant for over twelve years at first and have now done nothing to impeach titles for six years? There is such a thing as retrospective legislation, and this is eminently a case for our interference. Surely the alienees are more innocent, having paid full value and been allowed to treat the property as their own for all these years.

"There is, of course, nothing essentially wrong and unjust in retrospective laws. Our only duty is to safeguard *vested* rights. And, in my humble opinion, the alienees have stronger vested rights than the agnates. The large majority of persons who are likely to be affected are ignorant villagers who give but little thought to the decisions of Courts. It is a large assumption that the people know anything about changes in law made by judicial decisions and, therefore, we should not be deterred in making any provision which deprives a person of a right which it was never intended he should have and he never contemplated that he possessed. Again, more than five years have passed since the publication of the Full Bench Ruling and the time that has intervened has been sufficiently long for vigilant people to have enforced their rights and we are not bound to assist the indolent or help the dilatory. Again, it is indefensible and inequitable to leave a large number of titles open to question for a considerable time. The popular doctrine of twelve years' adverse possession giving a complete and secure title, is eminently desirable and should be maintained, especially because the purchasers were, in most cases, unaware that the Chief Court would, at a future time, hold that an agriculturist land-owner had a restricted power of alienation. Moreover, there does not seem to be any justification in the Customary Law for placing the son or reversioner in a different position, as regards limitation, to that allotted to a son governed by Hindu Law. Twelve years seem to be ample time to allow, for any one who desires to do so, to contest an alienation. It is, on the whole, more important to give an immediate and complete security to all alienees who have had possession for twelve years than to compromise matters by safeguarding the rights which a certain number of reversioners have believed themselves to possess since 1895. In addition to this it seems to be illogical to enact

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a saving clause for cases where the alienor may have died before the passing of the Act. This could be made clear by the following examples :—

"On a certain date in 1886, *A* alienated to *B* and *C* to *D*. Suppose *A* dies one day before this measure becomes law and *C* a day after. According to the view of our critics, the reversioners of *B* should have twelve years, or some shorter time, from the death of *A*, whereas the reversioners of *C* should have no such time, to bring their suit—why should a difference of two days in the demise of the two alienors make all this difference of years? In either case the hardship is equal. There is no greater severity in the former. The proposed omission would make the two cases alike, the limitation uniform, and the treatment logical.

"These are the grounds on which we have made the alterations."

The motion was put and agreed to.

The Hon'ble MR. MADAN GOPAL stated that certain amendments, of which he had given notice, stood in the list of business circulated to Members; he desired to put those amendments in a somewhat altered form, as shown in the printed paper now placed on the table. The changes made were more in the form and language than in the substance of the amendments.

His Honour the President said that, with reference to Rule 27 of the Rules of Business, it was open to any Member to object to the proposed amendments being moved in their altered form.

There being no objection, the Hon'ble Member in charge of the Bill proceeded to move the first amendment standing in his name, and, in doing so, said :—

"The first amendment which I beg leave to propose is as regards the definition of the word "land." There appears to be some difference of opinion as to what property is governed by the Customary Law. The Members of the Select Committee followed the opinions of eminent Judges, like Sir M. Plowden, Sir Charles Roe, and Mr. Justice Chatterji, in holding that the Customary Law places restrictions on the alienation of agricultural land only. The whole principle underlying the enjoyment of, and succession to, lands in villages held by a body of proprietors belonging to one tribe or descended from a common ancestor is that the land does not belong absolutely to the individual holder for the time being—that all the members of the village community originally held their lands in common—that the land provided the subsistence of the group and must not leave its possession, and restrictive rules were made to secure the common interests of the family or the clan. These rules, from their nature, apply to lands only which existed originally and have come down from ancestors. Houses and enclosures have increased according to the requirements of the increasing population. While in the original settlers' time there may have been a few houses only, as their descendants increased in numbers, more accommodation was required and houses multiplied. The alienation of these houses concerns only the members of the domestic family, as opposed to dispositions of ancestral land which affect the genealogical family or all the descendants of the original owner. Again, the right of dwelling in a village is distinct from that of holding land in the estate attached to the village. When a sharer's share is

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alienated, his dwelling house does not necessarily go with it. As an additional reason it may be mentioned that these so-called usages have acquired great support from the policy of the British Government which considers it politically expedient to prevent the transfer of land from the agricultural tribes to outsiders. Most Indian officials who have administered justice are distinctly of opinion that there would have been no recognition of these usages but for this policy. During the Muhammadan and Sikh times, alienations to strangers sometimes took place. There are many instances extant, but no objection was ever raised. Since land has become marketable under British auspices and the scarcity of land with increase of population is making itself felt, the tribal feeling has changed and has taken advantage of the policy, and the feeling now is that a co-sharer has only a life interest in the land he inherits—a sort of general law of entail. British policy has had its last manifestation in the Land Alienation Bill introduced into the Imperial Council last year. That Bill confines itself to agricultural land only. Inasmuch as the policy underlying these customs and the proposed Bill is the same, there does not appear to be any reason why these customs should cover a wider ground. But it is the opinion of some officers of great ability and experience that the restriction as to alienation applies also to the homestead of the village—to the houses and enclosures in the *abādī*, and, in deference to their opinions, I move that, for clause (b) of Section 3 of the Bill, the following be substituted, namely—

“(b) the expression “land” shall mean land which is occupied or has “been let for agricultural purposes, or for purposes subservient to agriculture, “or for pasture, and shall include buildings and other structures on such land, “and also land included within the limits of village sites, and buildings and other “structures on such land.”

The Hon'ble MR. WILSON said :—“I desire to support this amendment, which will have the effect of extending the benefit of the Act to land and houses in the village, instead of confining it to agricultural land outside the village site. I understand that although it has not been distinctly held by the Chief Court that the custom restricting alienation, without consent of the heirs or

reversioners, extends to land and houses inside the village site, it has not been ruled that it does *not* apply to such property. My own impression is that there are villages in the Punjab in which such a custom can be proved to exist, and, as we are, by this Act, making titles in alienated land more secure, I think the opportunity should be taken to secure the titles in such land situated inside village sites and in the houses located on it. Personally I should have preferred that, as originally proposed, this Act should extend to all ancestral immoveable property, but it seems to be the general opinion that there is no custom restricting alienation of house-property in towns, even though it be ancestral. Accepting that view, I accept the present amendment as sufficient, seeing that it will cover all ancestral immoveable property except house-property in towns, which requires no such protection.”

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The Hon'ble Nawáb MUHAMMAD HAYAT KHAN said that he agreed with the Hon'ble MR. WILSON in thinking that the original wording of the Bill, by which it applied to all ancestral immoveable property and not merely to ancestral land, was preferable, but the definition of the expression land now proposed would remove any real objection to the expression "ancestral land," as it would cover the case of houses and land in the village site. He wished, however, to be informed whether, if a person owned agricultural land in village A and a house in the *abádi* of, but no agricultural land in, village B, the proposed definition would extend to the house in the *abádi* of village B?

The Hon'ble the Mover replied that it would.

The motion was put and agreed to.

The Hon'ble MR. MADAN GOPAL said:—"The next amendment that I desire to lay before the Council is with respect to the starting time of limitation as provided for in the Schedule. Transactions which have to be considered may be divided into two broad classes. First, those in which possession is given, or agreed to be given, *i. e.*, in which a present right to possession is given by the transfer. These are cases of sale, gift, usufructuary mortgage and exchange. These, again, may be sub-divided into (a) where possession is taken; (b) where, though the right to possession is given, yet for some cause possession is not taken. In the former case, limitation can safely run from the date of attestation of the transaction in the Revenue Records (an act which takes place publicly in the village itself) or from the date the alienee has acquired physical possession of the land. The second is the case which has presented some difficulty. The question is put—What of those cases where a right to possession is given and yet possession is not taken? If time were to run from the date of alienation, it would be very hard on the reversioner, as the twelve years may run out before he becomes aware of the transfer. Suppose A, the land-owner, lets land to B, and while B is in possession as tenant, a secret sale is made to him. If the period of limitation were to count from the date of sale, which *ex hypothesi* is kept secret, it might run out before the reversioner becomes aware of his right to assail the transaction. This is possible but, in my opinion, exceedingly unlikely. An alienee, in his own interest and to safeguard his title, will in all probability have the transaction entered in the Revenue papers. It is not in human nature, much less in the nature of a wily money-lender, to buy property and yet not take all precautions against his title being questioned. But granted that there may be such cases, there is the law contained in Section 18 of the Limitation Act which lays down that if the parties to a contract intentionally conceal the fact of sale, in that case the reversioner will be taken to have been kept from the knowledge of his right to sue by fraud, and time will run against him from the moment he discovers the fraud, *i. e.*, obtains knowledge of the transaction. In my opinion this provision will amply meet such cases. But it has been thought, by gentlemen for whose opinions I have great respect, that there may still be cases that are not covered by section 18 and, in deference to their views, I propose that

the following be substituted for the entries in the third column of the Schedule to the Bill, opposite the first article in the first column of the Schedule, namely—

"First—in any case in which, at the time of the alienation, possession is "given or agreed to be given"—

"(a) the date (if any) on which the alienation was attested by the "Revenue-officer having jurisdiction, in the register of mutations maintained "under the Punjab Land Revenue Act, 1887;

"(b) or, if the alienation has not been so attested—the date on which "the alienee takes physical possession of the land alienated;

"(c) or, in cases not provided for in (a) or (b)—when the facts entitling "the plaintiff to impeach the alienation first become known to him.

"Second—In the case of a mortgage without possession—the date of "the alienation."

"As respects these last I may state that, as the reversioner will enter into possession on the death of the alienor, a declaratory suit is optional for him. He need not bring it and will suffer no damage, and, therefore, there is no harm in making the date of alienation the starting point for a *declaratory* suit in his case.

"A warning is, however, necessary with respect to the alteration in (c). Our Courts are notorious as quarters where perjury is most committed. While a Ját will speak the truth under the village tree in the midst of his own people and dare not speak otherwise for fear of disgrace, he feels no compunction of conscience in telling a lie in Court, and, when charged with it, will excuse himself on the ground that the statement was made in Court, as if that is the usual thing and a matter of course. If we lay down, as the starting point, the date on which the reversioner becomes aware of his right to sue, a flood of false evidence will be let in on the Courts and they will not know how to repel it. Everything will depend on the statement of the plaintiff. Even if he had earlier notice, he will try and fix the time when he obtained the information at some date within the period of limitation, and his statement, even though false, will have to be accepted. This is a grave evil, but it may be said, on the other side, that the defendant has to thank himself for this disadvantage. If he had only made a report, this difficulty would not have arisen and consequently the merits are in favour of the reversioner. On this ground I lay the amendment before Council."

The Hon'ble MR. WILSON said:—"In supporting this amendment I should like to add a few remarks to the explanation given by the Hon'ble Mover. In all cases in which possession of agricultural land is given, or agreed to be given, the alienee is bound, by Section 34 of the Punjab Land Revenue Act, to give notice of his acquisition of the right to the Patwári, in order that an order attesting the alienation may be passed by a Revenue-officer, and it is only in cases in which the alienee has failed in that duty, and has failed to take physical

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possession of the land alienated, that he will have to prove the plaintiff's knowledge of the facts in order that he may benefit from clause (1) (c) of the amendment. If the alienee has fraudulently, or otherwise, failed to perform his duty in this respect or to take possession, it is only fair to the reversioners that their right to sue should not be injured by his failure, and he will have himself to blame if his failure makes it difficult for him to prove when the facts became known to the reversioner."

The Hon'ble MR. CUNNINGHAM said :—"I should like to suggest a slight alteration in the form of this amendment. I should prefer to see clause (b) placed before clause (a), so that physical possession should supply the first, and the attestation in mutation proceedings the second starting point of limitation—thus following the natural order of events. This would necessitate a slight modification of language, thus—

"(a) the date on which the alienee takes physical possession of the land "alienated ;

"(b) or, if physical possession has not been taken, the date (if any) on "which the alienation was attested, &c., as in the Hon'ble Mover's paper."

The Hon'ble MR. MADAN GOPAL said that he saw no serious objection to the transposition of clauses (a) and (b), but it would, perhaps, be better to make all three clauses alternative rather than successive, and to provide that the earliest contingency, in point of time, should be the starting point for limitation.

The Hon'ble MR. WILSON said he was afraid he must object to the Hon'ble MR. CUNNINGHAM'S proposal, as it was the duty of the alienee to have the alienation entered by a Revenue-officer and, if he failed to carry out this duty, he should not benefit by his failure.

His Honour the President said :—"I think I must overrule the amendment suggested by the Hon'ble MR. CUNNINGHAM on the ground that it is out of order under Rule 27 and is objected to. I am not prepared to suspend the rules in order to admit of its being put to the Council."

The Hon'ble Nawáb MUHAMMAD HAYAT KHAN said :—"I wish to propose a further amendment to clause (c) of the amendment put forward by the Hon'ble MR. MADAN GOPAL. On the one hand, no provision is made for making the date of the registration of the deed evidencing the alienation a starting point for limitation, while, on the other hand, the cases in which the period is to run from the date on which the facts entitling the plaintiff to impeach the alienation first become known to him, should be narrowed down as closely as possible, as it is extremely difficult to fix the time when the facts first come to the plaintiff's knowledge and the door to false evidence and hard swearing is thus opened. I would suggest that the following be added to clause (c), namely—

"in case the deed is not registered, and,

"if it is registered, the date of registration."

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The Hon'ble MR. MADAN GOPAL thought there was no serious objection to the proposed amendment.

The Hon'ble MR. WILSON said :—" I am compelled to object to this alteration also. In all cases, when such alienations are effected by registered deed, it is the duty of the alienee to have the alienation attested, and he should not be in a position to neglect that duty and then claim that the period should run from the date of registration, which may have been concealed from the reversioners."

His Honour the President said :—" For the reasons given on the Hon'ble MR. CUNNINGHAM'S amendment, I must disallow the Hon'ble the Nawáb's amendment also."

The motion, as made by the Hon'ble MR. MADAN GOPAL, was put and agreed to.

The Hon'ble MR. MADAN GOPAL said :—" The third amendment which I beg leave to move is, that the following be substituted for the entries (a) and (b) in the third column of the Schedule to the Bill, opposite the second article in the first column of the Schedule, namely—

" *First*—If no declaratory decree has been obtained—

" (a) as in (a) above ;

" (b) as in (b) above;

" (c) or, in cases not provided for in (a) or (b)—when the facts entitling the plaintiff to impeach the alienation first become known to him, or the date of the alienor's death, whichever event happens first.

" *Second*—If a declaratory decree has been obtained—the date of the alienor's death."

The motion was put and agreed to.

The Hon'ble MR. MADAN GOPAL said :—" I now move that the Bill, as amended, be passed. I do not think I need make any further remarks in support of the motion.

His Honour the President said—

" This Bill, which has for its object the settling of titles in cases where certain ancestral property has been alienated by persons subject to the Customary Law in force in the Punjab and such alienation is impugned, has been necessitated by a decision of the Chief Court, Punjab, passed in 1895, whereby the period of limitation for suits to dispute such alienations was ruled to commence from the death of the transferor, thus disturbing the generally received notion that twelve years' continuous possession gave a good title in such cases. The result of the Bill, which this Council is about to pass into law, will be practically to

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restore the twelve year period of limitation instead of leaving the period dependent on the life of the alienor. The case appears simple, but it has proved somewhat intricate, and I have to express my obligation to the Hon'ble Mover for the time and pains he has bestowed upon it—and for the able exposition of the subject which he has given in his speech. There can be no question that this small piece of legislation is much needed and will serve a useful purpose."

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned *sine die*.

LAHORE :

E. W. PARKER,

The 14th April 1900. } Secretary to the Legislative Council of the Punjab.

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 & 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).

THE Council met at Barnes Court, Simla, on Saturday, the 14th July, 1900.

PRESENT:

The Hon'ble Sir WILLIAM MACKWORTH YOUNG, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Mr. H. C. FANSHAWE, C.I.E.

The Hon'ble Sir *Nawáb* AMIR-UD-DIN AHMED KHAN, K.C.I.E., of Loháru.

The Hon'ble *Nawáb* MUHAMMAD HAYAT KHAN, C.S.I.

The Hon'ble Mr. JAMES WILSON, M.A.

The Hon'ble Mr. C. L. TUPPER, B.A., C.S.I.

The Hon'ble Mr. J. MCC. DOUIE, C.S.

The Hon'ble Rájá PANDIT SURAJ KAUL, C.I.E.

NEW MEMBERS.

The Hon'ble Mr. C. L. TUPPER, the Hon'ble Mr. J. MCC. DOUIE and the Hon'ble Rájá Pandit SURAJ KAUL took their seats as Members of Council

[Mr. Fanshawe.]

[14TH JULY.

THE PUNJAB LAND PRESERVATION (CHOS) BILL.

The Hon'ble Mr. H. C. Fanshawe presented the Report of the Select Committee on the Bill to provide for the better preservation and protection of certain portions of the territories of the Punjab situate within or adjacent to the *Sivalik* Mountain Range or affected or liable to be affected by the action of streams and torrents, such as are commonly called *chos*, flowing through or from, or by the deboisement of forests within that range. He said :

" I have the honor to present the report of the Select Committee upon the *Chos* Bill and to move that it be taken into consideration. I must ask for the indulgence of this Council for the long delay in presenting it, as the report bears the date of October last. At the time of signing, however, it was agreed that the members of the Select Committee should consider it once more, if necessary, when all the opinions of officers upon the Bill had been received. It was impossible, however, for me, owing in the first place to the visit of His Excellency the Viceroy to Delhi, and in the second place to the pressure of famine work, to be present at the meetings of this Council, subsequent to October, or to consider the report further with the other members of the Select Committee, and as these gentlemen are now no longer Members of the Council, I present the amended Bill and report as originally framed by us.

I need not, I think, detain the Council with any statement of the changes made in the Bill by the Select Committee as these are fully contained in our report. So far as they are not changes of drafting they are all in the direction of safeguarding private rights of various kinds, but at the same time they do not, I think, in any way affect the essential provisions of the Bill for the protection of the *Sivalik* slopes and restriction of the damage done by *chos* torrents in the past. The amendments of the Bill as amended by the Select Committee, which by the leave of the Council I shall have to move, are also all in the same direction. The Select Committee were of opinion that no such change had been made in the Bill as called for its republication, and I now beg to move that the report and the "amended Bill be taken into consideration."

The motion was put and agreed to.

The Hon'ble Mr. H. C. Fanshawe then proposed that the amendments to the Bill suggested by the Select Committee be accepted.

The motion was put and agreed to.

The Hon'ble Mr. H. C. Fanshawe asked leave to propose the amendments of which he had given notice, and which had been set down on the List of Business circulated to members. He said :—

" The first amendment which I have to propose is merely a verbal one, namely, that the words "or lying waste" in the second line of clause (2) of Section 8 be omitted as being superfluous."

The motion was put and agreed to.

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[Mr. Fanshawe.]

The Hon'ble Mr. H. C. Fanshawe said : " My second amendment relates to the proviso to clause (2) of Section 8 of the amended Bill. This amendment is proposed in accordance with the wishes of the Government of India, and will, I think, commend itself to all. It is that to the words of the proviso which at present exempts only cultivated or culturable land from the effect of a declaration by Government under the section the following words be added "or yields any produce of substantial value," thus widening the category of lands exempted."

The motion was put and agreed to.

The Hon'ble Mr. H. C. Fanshawe said : " The third amendment also relates to Section 8, and if approved will take the form of clause (3) of that section, the present clause 3 being renumbered clause 4. It is provided on the suggestion of local officers to facilitate the ascertainment of the wishes of the majority of owners and occupiers of a *cho* bed when Government proposes to take action under Section 8 with regard to such a bed, and is as follows :—

" When the owners or occupiers of such locality are unable to agree among themselves regarding the carrying out of such measures, the decision of those paying the larger amount of land revenue shall be held to be binding on all."

The motion was put and agreed to.

The Hon'ble Mr. H. C. Fanshawe said : " The fourth and last amendment which I have to propose is also in part brought forward in accordance with the wishes of higher authority and fulfils the statement which I made in introducing the Bill, that the original owners of the land reclaimed by the action of Government in *chos* beds vested in Government should be allowed the first opportunity of purchasing such land should Government decide to sell it. This too is, I think, a provision which will meet with the approval of all. The second clause of the new section merely provides for the keeping of accounts to allow the values mentioned in the first clause to be ascertained. The new section by which it is proposed to give effect to the above principle will be inserted after Section 11 of the amended Bill and be numbered Section 12, and the numbering of the succeeding sections will be altered accordingly, and is as follows :—

" 12. (1) If in any case the Local Government decides to dispose of any land acquired absolutely and in perpetuity under the provision of Section 8, clause (2), it shall in the first instance offer the proprietary right of the land to the original owner or owners thereof for such price as it considers proper not exceeding—

" (a) the amount expended by Government on the reclamation of the land, or

" (b) the capitalised value of the net income arising from the land reclaimed.

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"(2) For the purpose of ascertaining the amount expended on the reclamation of the land, the Local Government shall at the time of declaring the land to be vested in it under Section 8, clause (2), give such directions as it may consider necessary for keeping proper accounts of the expenditure it may incur in reclaiming and protecting the said land."

The Hon'ble Nawáb Muhammad Hayát Khán asked whether it was intended that sub-clause (b) of clause (1) of the proposed section would apply to the original owners as well as the public; if so he would wish, with the leave of the President, to propose an amendment.

The Hon'ble Mr. H. C. Fanshawe replied in the affirmative, but having explained the terms of the section and having pointed out that the clause might be for the benefit of the original owners, as the capitalised value of the next income might be less than the amount expended by Government on the reclamation of the land, and that the section only declared that the maximum price should not exceed either of the amount mentioned in the two sub-clauses (a) and (b), the Hon'ble Nawáb Muhammad Hayát Khán begged leave to withdraw his application to be allowed to propose an amendment.

The motion was put and agreed to.

The Hon'ble Mr. H. C. Fanshawe said: "I have now the honor to propose that the Bill, as amended, be passed."

His Honor the President said: "As explained by the Hon'ble Mr. Fanshawe in introducing this Bill in August last, measures for arresting the serious damage caused in the Hoshiárpur and Jullundur Districts by the erosion of the Siwálík Range of hills in the former have been under consideration since 1876, when the evil was first brought prominently to notice by that friend of the people, Mr. Coldstream, then Deputy Commissioner of Hoshiárpur. It was discussed in the early stages of the proceedings by Mr. Baden-Powell, brother of the defender of Mafeking, and noted on in the Punjab Government Secretariat by two Members of this Council, the Hon'ble Mr. Tupper and the Hon'ble Mover, and every Lieutenant-Governor and Financial Commissioner since then has had a hand in elaborating the scheme which is now before us. When at last the proposals reached the Government of India and the Secretary of State they met with a cordial reception. And no wonder, for the magnitude of the evil will be fully appreciated when it is considered that no less than 120,000 acres of cultivated land in 1,070 villages have been practically devastated by the inundation of sand poured over the face of the country by the ever-widening torrents descending into the fertile plains of Hoshiárpur and Jullundur from the neighbouring Siwálík Range.

"To deal with such an enemy, drastic measures are necessary. The evil has been caused by the denudation of the hills and it is only their afforestation that can stop it. This means closure of grazing and interference with rights long exercised but long abused. Every effort has been made to make

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MUNICIPAL ACT AMENDMENT BILL.**

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[*His Honour the President ; Mr. Wilson.*]

this interference as little oppressive as is possible under the circumstances, but even if the precautionary provisions embodied in the Bill fail to deprive it of some of its stringency there is a certain retributive fairness in exacting some curtailment of their privileges from those who, without realizing perhaps what they were doing, have by stripping their hills of every particle of verdure rendered them sources of irreparable injury to their neighbours in the plains below. For substantial interference in their rights they will receive compensation; the indirect restraint involving some inconvenience and possibly some loss is the price they will pay for the inconsiderate use they have made of these hills in the past.

"At the same time an attempt has been made to keep the balance between the inhabitants of the hills and those in the plains who have hitherto been the sufferers and in whose interests the measure is devised. The owners of the villages in the plains affected by the torrents are to be called upon to help Government in its efforts to help them by planting out the sandy beds, a measure which has already been found possible and beneficial, or by other means, and in default the Bill reserves to Government the power to step in and take its own measures, the rights of the owners of such beds being held in abeyance or even extinguished.

"These are the main outlines of the measure to which this Council is now asked to give its assent. If there were greater power of co-operative action on the part of the people they might have been left to take such action themselves, or at most a measure putting the means of self-help at their disposal would have been sufficient. The Bill to some extent aims at doing this, but more is required. If the Government does not undertake the remedy, it will not be applied. We have tried to apply it in such a way as to avoid hardship to all parties, and though we cannot be sure of complete success in repairing past damage we are pretty confident that the measure will, if left to its operation, have a beneficial effect in preventing further deterioration of one of the most fertile tracts in the Province."

The motion was put and agreed to.

BILL TO AMEND THE PUNJAB MUNICIPAL ACT, 1891.

The Hon'ble Mr. J. Wilson moved for leave to introduce a Bill to amend the Punjab Municipal Act, 1891. He said: "I have to move for leave to introduce a Bill to amend the Punjab Municipal Act, 1891. The principal object of the Bill is to acquire power to lay water-supply and drainage pipes through private properties in Simla in connection with the works contemplated under the scheme for the improvement of the town now about to be undertaken; and it has been thought advisable at the same time, in view of possible future developments, to take similar powers as regards lighting and telephonic communication; and also to give similar powers to any Municipal Committee that may hereafter wish to make improvements of this nature within the area under its charge. The interests of private owners are safeguarded by the provisions requiring the Committee to give previous notice

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17 PUNJAB MUNICIPAL ACT AMENDMENT BILL AND BILL TO
AMEND SECTION 8 OF THE PUNJAB LAWS ACT.

[Mr. Wilson ; Mr. Tupper.]

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to the owner or occupier of any private property before commencing operations on his land, to conduct those operations in such a manner as not to create a nuisance, and to pay reasonable compensation for any damage occasioned or substantial inconvenience caused, by any such operations. Such powers are commonly exercised in England by local authorities under the Acts relating to the public health, and in India by the Committees of the Presidency Towns, and it is desirable that they should be conferred on the Municipalities of the Punjab in order to enable them to take proper measures for the common good.

"The opportunity has been taken to propose a number of comparatively unimportant amendments in the Punjab Municipal Act of 1891, in order to remedy omissions and defects which have been brought to notice in the working of the Act during the last nine years. These are all of a non-contentious nature and I need not detain the Council by enumerating them.

"I beg to move for leave to introduce the Bill."

The motion was put and agreed to.

The Hon'ble Mr J. Wilson introduced the Bill.

The Hon'ble Mr. J. Wilson moved that the Bill be circulated for the purpose of eliciting opinion thereon.

The motion was put and agreed to.

BILL TO AMEND SECTION 8 OF THE PUNJAB LAWS ACT, 1872.

The Hon'ble Mr. C. L. Tupper moved for leave to introduce the Bill to amend Section 8 of the Punjab Laws Act, 1872. He said: "The measure which I am about to ask leave to introduce is described as a Bill to amend Section 8 of the Punjab Laws Act in respect of the descent of jagirs. Its main object may be briefly indicated by saying that it is a Jagirdar's Primogeniture Bill: and it is founded on a principle which was accepted by the Government of India forty years ago and needs only to be stated to carry with it its own justification. It was in May, 1860, within a fortnight of the date of his famous Despatch which proposed the distribution of adoption *sanads* to Ruling Chiefs, that Lord Canning directed his Under-Secretary to use these expressive terms:—'It is,' he wrote, 'politically desirable that primogeniture should be encouraged. The Governor-General believes that a more unfortunate prospect cannot be before a people, especially a people amongst whom society is of a feudal form than that of the gradual dissolution of all their wealthy and influential families into numerous poor and proud descendants. His Excellency also believes that the task of governing such a people in contentment becomes more and more difficult as this change progresses.' The Bill makes no arbitrary change in the rules of succession applicable to jagirs, but it puts it in the power of jagirdars to co-operate with Government in establishing, by their own act, rules which will prevent the sub-division of their jagirs among numerous

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heirs and the consequent gradual deterioration in social status of many of the leading families of this Province. The distribution of the adoption *sanads* was intended to be a sign to Ruling Chiefs throughout India that Her Majesty desired the perpetuation of their Governments and the continuance of the representation and dignity of their houses. The present Bill cannot, of course, compare either in range or importance with such a measure as that just mentioned. But having regard to the passage I have quoted from Lord-Canning's letter, I think we may, without arrogating too much for the Bill, at least claim for it that it is on the lines of his policy. It affords at any rate some evidence that the Government of India and the Local Government cherish the honour and reputation of those who in this part of India are the leaders of the people; and desire that the holders of all considerable perpetual *jágirs* shall from generation to generation maintain a position befitting their traditions and descent, and enabling them to do loyal service to Government in all times of need.

"This is not the first time that an attempt has been made either to empower the Government to declare the rule of succession in *jágir* cases or to induce the more important *jágirdárs* to accept the rule of primogeniture. There are in the Delhi territory, which became British territory in 1803, but was not included in the Punjab until after the Mutiny, some heritable and transferable grants under the old Regulations which are excluded from the measures now contemplated. Under orders passed by the Government of India on the 25th November, 1859, assignments granted in perpetuity after that date are inheritable, unless a different rule of succession has been prescribed in the grant, integrally by a single heir, whose right does not become complete until his inheritance has been confirmed or recognised by the Local Government. It may be said, therefore, that in the case of grants made since the 25th November, 1859, the needful rule of succession already exists in the *sanad*. Similarly, owing to the foresight of the late Colonel Wace, satisfactory rules of succession, supported by a Frontier Regulation of 1872, have been laid down for the Hazára *jágirs*. As regards other *jágirs*, though there are distinctions between the *cis-Sutlej* *jágirs* and the *trans-Sutlej* *jágirs* and the *jágirs* of the rest of the Punjab, as also between the political *jágirs* of the Kangra Hills, where a *riásut* origin has preserved the rule of primogeniture, and the political *jágirs* of Sikh conquerors in the plains, amongst whom the rules of succession applicable to ordinary property were often applied to political power, it is sufficient for present purposes to say that in the early days of Punjab administration the local authorities assumed, in accordance with the practice of their Sikh predecessors, that they had plenary power to regulate successions. We may now, perhaps, regret that when this assumption was consistent with the fact the opportunity was not taken to lay down generally that modified rule of primogeniture which was prescribed for future grants in 1859. The relative claims of the State and of heirs and collaterals to lapses or to continuance, as the case might be, were fully dealt with; but it is not now easy to explain the omission to prescribe the only rule of succession which can save great houses from slow but sure obliteration.

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"As the Civil Courts became more firmly established the power which the Government at first exercised of moulding successions was gradually lost. At first the jurisdiction of the Civil Courts was barred by the Punjab Civil Code and a circular of the Board of Administration; but on the extension of the Civil Procedure Code to the Punjab and the institution of the Chief Court, that jurisdiction was asserted. Thus in 1867 the Chief Court declared that where there was no reservation in the original grant, the Government must be held to be precluded from interference in the succession. The Government, however, though the jurisdiction of the Civil Courts was admitted for a time, did not long acquiesce in this position. In 1871 the Pensions Act was passed, and once more the jurisdiction of the Civil Courts was barred except on express reference made in particular cases by executive authority. In 1872 was enacted that section of the Punjab Laws Act which the present Bill amends. It prescribed that 'in all cases in which Government has declared any rule of descent to prevail in any family or families of assignees of land revenue, such rule of descent shall be held to prevail, and to have prevailed amongst them from the time when the declaration was made.' Both of these enactments failed to do what was really wanted; that was and is to enable the *jāgirdār* and the Government to concur in establishing for the future a rule of primogeniture. It was found ten years ago that the section in the Punjab Laws Act had effect only in respect of declarations made before the date on which that Act came into force. Revenue Officers frequently held that the Pensions Act enabled the Government to regulate *jāgīr* successions at will, because it barred the jurisdiction of the Civil Courts except upon the certificate of the Collector which could be refused when there was reason for refusal. But these opinions were practically of no avail, because the Government was restrained by certain legal and equitable considerations, to be mentioned presently, from an exercise of power possibly possessed but not expressly conferred by the legislature.

"Meanwhile, some 10 or 11 years before the time of the Pensions Act and the Laws Act, a fairly vigorous effort had been made to induce *jāgirdārs* to declare for the rule of primogeniture. In 1861 the Government directed that those *jāgirdārs* holding in perpetuity whose revenue exceeded Rs. 250 per annum and who wished the succession of their *jāgīrs* to be regulated in future by the rule of primogeniture, should execute deeds to that effect. It appears that deeds were executed in some 47 cases, but in no more than 25 cases did the deed establish primogeniture or succession by a single heir. The force of these deeds, both those purporting to establish primogeniture and others, has never been adequately discussed or generally determined; and in 18 cases the deed has been ignored and succession has taken place in contravention of its terms. It is not necessary for me to trouble the Council with a recital of the considerable number of cases in which from 1859 to the present day the power of Government to regulate *jāgīr* cases has been more or less in issue. In considering these cases I perceive a familiar conflict of ideas which we have assimilated in this country with ideas which we have brought with us from home. The Sikh rulers resumed grants at will, and the Punjab local authorities, inheriting perhaps some

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of the traditions of their predecessors, and relying on the *tabula rasa* of previous tenures which Lord Dalhousie proclaimed, have been disposed throughout to assert that the Government of the day has an inherent right to regulate successions to the proceeds of its own bounty. The Government of India, on the other hand, though admitting the expediency of primogeniture, has been led by the legal and equitable considerations which I mentioned just now, to hold that the rule of integral descent to a single heir can be applied only when it is in accordance with custom, or the terms of the grant, or has been accepted by the grantee. The Supreme Government has thus acted on the well recognised rule of English law governing grants from the Crown, *vis.*, that the Government at the time of making or confirming a grant possesses an absolute power of regulating the succession, but when once the conditions of a grant have been prescribed and the grant has actually been made, this absolute power is lost. The old Punjab rule and the rule of English law are in conflict; and the Bill reconciles the disparity by reviving the power of regulating the succession with the consent of the grantee. I trust it will be felt that this compromise is both expedient and just.

"I can best fortify this hope by explaining as briefly as may be, how it is intended that the Bill shall work.

"The cases which are being and will be taken up are those of perpetual *jágrs* exceeding Rs. 250 in value held from some date prior to that of the orders of 1859.

"The Government, if satisfied that the rule of primogeniture actually prevails in the family and has been continuously and without breach observed in all successions to the assignment since it was made, may declare accordingly, and this rule will then prevail for the future.

"If, however, the intention is to introduce the rule of primogeniture or some modification of it which will have the effect of preventing or diminishing the disintegration of the *jágir*, the *jágirdár* will be given the opportunity of executing a written instrument accepting such a rule of descent which, when declared by the Local Government, will become binding in all future successions.

"A form of instrument has been prepared and approved by Government and is about to be circulated to all Commissioners for use by *jágirdárs*. It contains two important provisions which are not at present in the Bill. These are, first, that if the person who would take under the rule of primogeniture is unfit to succeed, the Government may pass him over in favour of the next fit heir; and, secondly, that the succession may be conditional on the successor making adequate provision out of the grant for the proper maintenance of the widow or widows and child or children (if any) of the last or any previous holder.

"Simultaneously with the discussion which led to this Bill a question arose as to the liability of land revenue assignments to attachment by order of Court. It will be observed from the last clause of the Bill that *jágirdárs* can exempt their *jágrs* from this liability by accepting the rule of integral descent to a single heir.

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21. *BILL TO AMEND SECTION 8 OF THE PUNJAB LAWS ACT
AND SIND-SAGAR DOAB COLONISATION BILL.*

[*Mr. Tupper.*]

[14TH JULY 1900.]

" Finally, I would point out that while no one is under any compulsion to execute the written instruments proposed, the leading jagirdárs of the Province have now an opportunity of co-operating with Government in a political matter of importance. I sincerely hope that many of them will avail themselves of this opportunity, and will thus establish on a firm basis a most salutary rule which will conduce alike to the dignity and stability of their houses and to the ends of good administration, and will do much to ensure that the ability of their successors to serve the State shall not be less than their own.

" With these remarks I beg to move for leave to introduce a Bill to amend Section 8 of the Punjab Laws Act, 1872."

The motion was put and agreed to.

The Hon'ble Mr. C. L. Tupper introduced the Bill.

The Hon'ble Mr. C. L. Tupper moved that the Bill be—

(a) referred to a Select Committee consisting of the Hon'ble Mr. McC. Douie, the Hon'ble Pandit Suraj Kaul and the Hon'ble the Mover; also that the Select Committee under Rule 23 of the Rules for the Conduct of Business be requested to send in their report within one month;

(b) published in the *Punjab Government Gazette* in English and Urdu.

The motions were put and agreed to.

THE SIND-SAGAR DOAB COLONISATION BILL.

The Hon'ble Mr. C. L. Tupper moved that the Hon'ble Mr. J. Wilson be added to the Select Committee appointed to consider the Sind-Sagar Doab Colonisation Bill, *vice* the Hon'ble Mr. Beresford who had resigned.

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned to Saturday, 22nd September, 1900.

SIMLA:

ALWEYNE TURNER,

The 14th July, 1900.

} *Secretary to the Legislative Council of the Punjab.*

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PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Rules 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 Barnes Court, Simla, on Saturday, the 22nd September 1900.

PRESENT :

His Honor Sir WILLIAM MACKWORTH YOUNG, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Mr. H. C. FANSHAW, C.S.I.

The Hon'ble *Nawab* MUHAMMAD HAYAT KHAN, C.S.I.

The Hon'ble Mr. JAMES WILSON, M.A.

The Hon'ble Mr. C. L. TUPPER, B.A., C.S.I.

The Hon'ble Mr. J. McC. DOUIE, C. S.

The Hon'ble Raja Pandit SURAJ KAUL, C.I.E.

BILL TO AMEND SECTION 8 OF THE PUNJAB LAWS ACT, 1872.

The Hon'ble Mr. Tupper presented the Report of the Select Committee on the Bill to amend Section 8 of the Punjab Laws Act, 1872. He said : " In presenting the Report of the Select Committee on the Descent of Jagirs Bill I have to make a few remarks in modification of what I said in regard to the working of the measure at the last meeting of this Council.

" The original intention was to take up only the cases of those perpetual *jagirs* exceeding Rs. 250 in annual value which have been held from some date prior to that of the orders of 1859 ; the assumption being that in all later cases a rule of integral descent to a single heir would be provided in the *sanad*. It has, however, been pointed out that it is only by means of a declaration of the rule of descent under Section 8 as amended that a *jagirdar* can make certain of that exemption of the *jagir* from seizure, attachment or sequestration by process of Court which is conferred by clause 8, sub-clause (3), of the Bill.

[Mr. Tupper.]

[22ND SEPTEMBER]

Accordingly it is now proposed to call for a return of all perpetual *jagirs* of the annual value of Rs. 250 and upwards, from whatever date they run; and in all cases in which the actually prevailing rule of descent involves the devolution of the assignment to a single person as impartible property, to make a declaration accordingly under the amended law. The consequence will be that in all these cases the *jagirs* will get the benefit of freedom from attachment by order of Court.

"As regards perpetual *jagirs* of the value just mentioned where the rule of descent does not at present involve devolution to a single heir, the form of instrument providing for the acceptance of the rule of primogeniture which will be offered to the *jagirdars* will be slightly amended so as to bring it into accordance with what we propose to enact to-day.

"I mentioned at the last discussion that by the form of instrument the Government was empowered when necessary to pass over heirs unfit to succeed and to require the successor to the grant to provide suitable maintenance out of the assignment for members of the family. These provisions now appear in the Bill, and will therefore be applicable not only in cases in which an instrument accepting the rule of primogeniture is now executed, but also in all cases in which a declaration is made under clause 8, sub-clause (1) (a).

"These rules are in accordance with past practice and the necessities of the case. It will be observed from the provisos to clause 8 A that special care has been taken to show that the power to pass over an unfit heir is subject to the claim of the family to the continuance of the assignment. The language now used on the subject of maintenance differs slightly from that employed in the form of instrument which has been approved. As I said last time, the succession might be conditional on the successor making adequate provision out of the grant for the proper maintenance of the widow or widows and child or children (if any) of the last or any previous holder. This form of words, however, would exclude members of the family who were not descendants of the last or any previous holder, as for instance the nephews of the deceased *jagirdar* or his first cousins if the grant had been made to his father. It would also exclude sons whose legitimacy or full legitimacy might be questioned, but who might be acknowledged as sons and by family custom admitted to maintenance. The reference therefore to the members of the family has now been made sufficiently wide to include all whose claims to maintenance might in any case deserve consideration.

"With these remarks I beg to submit the Report of the Select Committee."

The Hon'ble Mr. Tupper moved that the Report of the Select Committee and the Bill as amended be taken into consideration.

The motion was put and agreed to.

The Hon'ble Mr. Tupper said: "I have now the honor to propose that the Bill, as amended, be passed."

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[*His Honor the President.*]

His Honor the President said : " The object of this Bill was so fully and ably expounded by the Hon'ble Mover at the meeting of this Council held on the 14th July last, that it is unnecessary for me to undertake any description of it. It embodies all that can now be done to rectify an omission dating from more than half a century ago, whereby the descent of jagir grants made in perpetuity to the influential families of the Punjab prior to 1859 has been governed by the law or custom applying to the grantee, instead of the only law which was calculated to maintain the dignity of those families and their usefulness to the State, the law, I mean, of primogeniture. The attempt which was made by Lord Canning in 1860 to place this matter on a proper footing failed of any large measure of success, because the adoption of the rule of primogeniture was made to depend upon the will, not alone of the head of the family but also of his reversioners. Under the operation of the Bill which is about to become law the option will rest solely with the grantee for the time being, and we hope that this option will be largely used. I shall be glad if the few remarks which I have to make on this occasion help in any way to bring about this result.

" And first I have to observe that the jagirdar who elects to apply the rule of primogeniture to his jagir will in no way limit the chances of its continuance. Every member of the family who under the prevailing method of partition could inherit the smallest share in the original grant will, if the rule of primogeniture is applied, be entitled to succeed to the whole if there is no nearer heir surviving. The lapse of these ancient grants is the last thing which the Government desires, and there is no latent design in this measure for swelling the Treasury receipts.

" Secondly, it is to the enormous advantage of the fine old families of this aristocratic frontier Province that the Government bounty which represents their *insignia* should devolve upon one single member at a time, and that member the head of the family. For rendering the best service to the Government, for adequately maintaining the dignity of the house, for preserving harmony amongst its members, each family needs its head, its spokesman, its representative, with whom all the visible tokens of authority should rest, and under a rule of primogeniture I see greater probabilities of an increase in the number of men of the stamp of Sir Sahib Dial, Sir Nehal Singh Chachi, and Sir Imam Bakhsh Khan.

" And, lastly, there is the tangible benefit, secured by the adoption of the rule of primogeniture, of immunity from attachment or sequestration of the jagir which is subject to that rule of descent.

" The officers of Government will do their part to persuade the jagirdars of the Province to whom these remarks apply to exercise their discretion wisely in their own interests, and in those of their family which the Government desires to maintain in honour, wealth and dignity. It will rest with the jagirdars themselves to decide whether they will avail themselves of the opportunity now afforded to them, and I hope to find that they will do so freely. They may rest

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AND PUNJAB MUNICIPAL ACT AMENDMENT BILL.

[His Honor the President; Mr. Wilson.]

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assured that if they do, the advantages which I have described will be theirs, and that they have nothing to fear from seconding the efforts of the Government which have been made solely in their interests."

The motion was put and agreed to.

BILL TO AMEND THE PUNJAB MUNICIPAL ACT, 1891.

The Hon'ble Mr. J. Wilson said: "The Bill to amend the Punjab Municipal Act, 1891, has been circulated for opinion, and opinions have been received from the Municipalities of Delhi, Simla, Lahore and Amritsar, from the Deputy Commissioners of those districts and of Rawalpindi, and from the Commissioners of Delhi, Lahore and Rawalpindi. All are agreed that the amendments of the Act which are proposed in the Bill as introduced are advisable. Some comparatively unimportant alterations in the wording have been suggested, and I am about to propose amendments accordingly. A number of other valuable suggestions have been made for the amendment of other sections of the Act than those dealt with in this Bill, but it has not been considered advisable to take action on them at present, as the proposed amendments are mostly of a contentious nature, and would require to be more fully discussed than they have yet been. They will no doubt be taken up and receive full consideration in the proper quarter. Meanwhile I have to propose only such amendments as relate to the clauses of the present Bill.

"I beg to move that the Bill to amend the Punjab Municipal Act, 1891, be now taken into consideration."

The motion was put and agreed to.

The Hon'ble Mr. J. Wilson asked leave to propose the amendments of which he had given notice, and which had been circulated to members. He said: "The new clause (f) of sub-section (1) of Section 11 enables the Local Government to remove by notification any member of Committee who has *since his election* become subject to any disqualification which would have rendered him ineligible *if it had existed at the time of his election*. The words which it is now proposed to add will enable the Local Government to remove any member who was actually disqualified at the time of his election, but whose disqualification was not brought to light at the time.

"I move that in clause 3 of the Bill the following words be added to the proposed new clause (f) of sub-section (1) of Section 11:—

"'or if it appears that he was at the time of his election subject to any such disqualification.'"

The motion was put and agreed to.

The Hon'ble Mr. J. Wilson said: "I beg to move that in clause 9 of the Bill in the proposed new Section 120 A for the word 'sewage' in line seven the word 'sewerage' be substituted."

The motion was put and agreed to.

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[Mr. Wilson.]

The Hon'ble Mr. J. Wilson said : " It has been pointed out that the proposed new Section 120 A does not cover the case of a ventilating pipe being carried up the side of a building. I therefore move that in clause 9 of the Bill in the proposed new Section 120 A for the words 'or over any building or land' in line twelve the words 'over or up the side of any land or building' be substituted."

The motion was put and agreed to.

The Hon'ble Mr. J. Wilson said : " The fourth amendment is of some importance. As the clause stands in the Bill the Municipal Committee are given the power to carry out water-supply, drainage, and other works, 'provided that no nuisance is created by any such operations.' The word 'nuisance' has nowhere been authoritatively defined, and it might be argued that almost any operations affecting private property, as for instance digging a drain through a garden, are a nuisance to the owner or occupier. The addition of the words proposed in the amendment will enable the Committee to carry on the work so long as no unnecessary inconvenience is caused ; while the further proviso and Section 120 B will entitle the owner or occupier to compensation for any real damage done.

" I beg to move that in clause 9 of the Bill in the first proviso to the proposed new Section 120 A after the word 'nuisance' in line one and before he word 'is' the following words be inserted :—

" 'more than is necessarily caused by the proper execution of the work.' "

The motion was put and agreed to.

The Hon'ble Mr. J. Wilson said : " Amendment 5 is required for the same reasons as amendment 3. I beg to move that in clause 9 of the Bill in the proposed new Section 120 B for the words 'or over' in line four the words 'over or up the side of' be substituted."

The motion was put and agreed to.

The Hon'ble Mr. J. Wilson said : " Amendment 6 is proposed in accordance with a suggestion made by the Secretary to the Municipal Committee of Amritsar and supported by the Commissioner of Lahore. It explains itself.

" I therefore beg to move that in clause 10 of the Bill after the word 'added' in line four the following words be inserted, namely :—' In sub-section 3 of Section 122 after the word 'privy' wherever it occurs the words 'latrine or urinal' shall be added.' "

The motion was put and agreed to.

The Hon'ble Mr. J. Wilson said : " Amendment 7. As Section 120 H gives the Committee full power to fix rates and charges in respect of connections and meters, it is unnecessary to repeat the provisions regarding those charges. I

[*Mr. Wilson; His Honor the President.*]

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therefore beg to move that in clause 11 of the Bill the words beginning with 'the fees' in line eight to the end of the clause inclusive be omitted from the proposed new clause (m) in sub-section (1) of Section 143."

The motion was put and agreed to.

The Hon'ble Mr. J. Wilson said: "Amendment 8. Under the proviso to sub-section (1) of Section 143 no bye-law made under clause (a) or clause (b) of that sub-section by the Committee of a Municipality in which the Hackney Carriage Act, 1879, is in force, as it is for instance in Lahore and Amritsar and other large towns) applies to any vehicle to which that Act applies. The insertion of the words proposed in this amendment is therefore necessary to render the proposed sub-section (4) operative in the neighbourhood of such towns. The Municipal Committee is the authority which makes rules for a Municipality under the Hackney Carriage Act, and the powers conferred for this purpose under that Act are practically the same as those conferred by clauses (a) and (b) above quoted; so that the rules regarding vehicles plying for hire are much the same, under whichever Act they are passed.

"I therefore move that in clause 12 of the Bill in the proposed new sub-section (4) of Section 143 at line three after the words 'of sub-section (1)' and before the word 'may' the words 'or of any rules made under the Hackney Carriage Act, 1879,' be inserted."

The motion was put and agreed to.

The Hon'ble Mr. J. Wilson said: "Amendment 9. This corrects what seems to have been merely a clerical mistake.

"I therefore beg to move that in clause 15 of the Bill in the proposed new Section 168 A the word 'board' be inserted between the words 'tree' and 'fence' in line eight."

The motion was put and agreed to.

The Hon'ble Mr. J. Wilson said: "I have now to move that the Bill to amend the Punjab Municipal Act, 1891, as amended, be passed.

His Honor the President said: "I have only to say, in regard to this Bill, that the necessity for passing it without delay arises from the circumstances of Simla, where it has been found necessary to secure for the Municipal Committee certain powers relating to the schemes for improving the drainage, lighting and water-supply which, it is hoped, will greatly improve the summer capital of the Supreme and Punjab Governments. In view of this special urgency no provisions have been admitted into the present Bill which seemed likely from their controversial nature to impede its course through this Council, and the opportunity has only been seized to make a few other amendments which experience has shown to

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[His Honor the President.]

be desirable and which hardly admit of criticism. This line of treatment which was explained by the Hon'ble Mover in his speech introducing the Bill has been strictly adhered to, and accounts for our having had to disregard some valuable suggestions which may be taken up at a future date."

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned *sine die*.

SIMLA ;

ALWEYNE TURNER,

The 22nd September 1900. }

Secretary to the Legislative Council of the Punjab.

Remarks

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, 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 Barnes Court, Simla, on Monday, the 7th October 1901.

PRESENT :

His Honor Sir WILLIAM MACKWORTH YOUNG, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Nawab Sir AMIR-UD-DIN AHMAD KHAN, K.C.I.E., of Loharu.

The Hon'ble Mr. J. WILSON.

The Hon'ble Mr. C. L. TUPPER, C.S.I.

The Hon'ble Mr. J. MCC. DOUIE.

The Hon'ble Raja Pandit SURAJ KAUL, C.I.E.

The Hon'ble Mr. S. PRESTON. ✓

The Hon'ble Mr. S. Preston took his seat as Member of Council.

THE SIND-SAGAR DOAB COLONISATION BILL.

The Hon'ble Mr. C. L. Tupper presented the Report of the Select Committee on the Bill to establish the title of the Government in land to be acquired for the purpose of colonising portions of the Sind-Sagar Doab. He said: "Nearly two years have elapsed since, on November 2nd, 1899, I introduced the Sind-Sagar Doab Colonisation Bill. In that interval much has happened in connection with the Bill, and a short account of its history since its introduction seems necessary.

"It was referred to a Select Committee consisting of the Hon'ble Mr. Beresford, the Hon'ble Nawab Muhammad Hayat Khan, and myself. The Hon'ble Mr. Beresford retired in February 1900, and was succeeded in the Select Committee by my hon'ble friend, Mr. Wilson. This Council has reason to lament the death of the Hon'ble Nawab Muhammad Hayat Khan, a man who rose to great eminence in his own community in this Province, and who, besides being a Member of this Council, was last summer appointed an Additional Member of the Legislative Council of the Governor-General, in which capacity he rendered very valuable service in connection with the Bill that has now passed into law as the Alienation of Land Act. The Hon'ble Mr. Preston, having only now taken his seat in Council, could not be formally appointed a Member of the Select Committee; but I may mention that he has been good enough to aid us in the deliberations on which was framed the Report of the Select Committee that I now have the honor to present. Under the circumstances explained the Report has come to be signed by two Members only, the Hon'ble Mr. Wilson and myself.

It was found that the tenures in the Thal of the Der, depahil Khan were highly complicated, and it was felt that the chief work to be done in connection with the Bill was, first, to ascertain more fully the exact

[Mr. Tupper.]

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nature of these tenures in all their variety ; and, secondly, to test the readiness of the people concerned to accept the bargain to be offered to them which, though necessarily involving the surrender of the whole of the common lands in consideration of the restoration of one-fourth of the same when irrigable, was in details open to modification. Accordingly, in December 1899, Mr. Hailey, the Assistant Settlement Officer mentioned in the Bill, was appointed in that capacity, and directed to arrange for the acquisition of the land in the Thal required for the Sind-Sagar Colonisation Scheme. His instructions were full and included (amongst other things) orders to make an inquiry into the various rights connected with the lands to be acquired, and to propose for approval the conditions (other than those mentioned in the Bill) which should be included in the agreements to be taken from the people. Mr. Hailey submitted his report in June 1900 ; it was reviewed by the Settlement Officer, Captain Crosthwaite, in July 1900 ; by my hon'ble friend, Mr. Wilson, as Settlement Commissioner in October 1900 ; and by myself as Financial Commissioner in February of this year. The Government very promptly accepted the conclusions which had been arrived at by Mr. Wilson and myself, with, however, some criticisms which have subsequently been met. A draft form of agreement was settled with the assistance of Mr. H. A. B. Rattigan as Legal Remembrancer ; and Mr. Hailey, with the approval of Government, and in anticipation of the passing of the Bill, has taken agreements from all or some of the shareholders entitled to make them in 108 villages. In 8 or 10 villages all the shareholders have signed. In some 45 villages the two-thirds majority required by the Bill has been actually or nearly attained. In other villages a half or a third or some smaller proportion of the signatures have been recorded. The work of obtaining signatures is necessarily a gradual one. Mr. Hailey began to take signatures last May, and in the great Thal it was difficult to collect the people who were harvesting their crops on the river side. Now that many of the villagers have already signed, it is hoped that Mr. Hailey will not have much difficulty in securing the adherence of the rest. He reported his proceedings on June 30th last, and has since been here, and personally explained them to the Select Committee. He has now returned to the Dera Ismail Khan District to complete the work ; and I take this opportunity of saying that we are much indebted to him for the zeal and industry which he has shown in a very arduous task involving great patience and tact and much physical exertion and exposure under conditions of a trying kind. I think he has conducted the negotiations with judgment and discretion, and that the results so far attained are very creditable to him.

"The Bill itself is of a novel character, and both as Financial Commissioner and as Member in charge, I am largely responsible for the course, as above described, which we have taken in regard to it. The result is that before asking this Council to pass the Bill into law, I have seen that its principles have been practically tested on the spot by the work already done. I hope this procedure will be approved, and that the Council will accept the present frame of the Bill which is designed to ratify all that has already been done by Mr. Hailey, no less than to enable him to complete the work in the Dera Ismail Khan District, and to empower others to do similar work, so far as may be necessary, in the districts of Bannu, Shahpur, Muzaffargarh and Jhang.

"I have still to notice one most important point in the history of the Bill since its introduction. Last cold weather my hon'ble friend Mr. Preston made a tour in the Thal with results of which he will doubtless himself inform the Council. I need only say just now that next cold weather an Executive Engineer will inspect the Thal from an irrigation point of view (with reference to levels, the percentage of sand hills and culturable level lands, the quality of the soil in the level culturable patches, and other similar points. Tracts will be settled for demarcated survey, and the Executive Engineer will be aided by a Revenue Officer in coming to conclusions as to the agricultural capabilities of such tracts, and the land and water rates which might be imposed upon them.

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[Mr. Tupper.]

"With these remarks I beg to submit the Report of the Select Committee. I shall have something more to say in moving that the Report be taken into consideration, and again in moving that the Bill as amended by the Select Committee be passed."

The Hon'ble Mr. C. L. Tupper moved that the Report of the Select Committee be taken into consideration. He said: "In moving that the Report of the Select Committee be taken into consideration I do not propose to occupy the time of the Council by any lengthy examination of the changes which have been made in the Bill. It seems enough to say generally that they are in the main the outcome of the measures already described which have been very elaborately devised to make the Bill as safe and as practical a measure as the unusual circumstances of the case permit. In addition, however, to testing our proposals where their actual effect will be felt, namely, amongst the people of the Thal, we have received and considered some acute criticisms made not from the primitive point of view of the peasants and graziers of the waste, but from the civilised point of view of the accomplished lawyer.

"From this point of view, and I should add also with reference to the usual principles of administration, perhaps clauses 7 and 8 of the Bill call for some comment.

"Clause 7 in substance enacts that the agreement of land-owners possessing shares equal to not less than two-thirds of the whole of the land shall bind the other persons interested. It will, I think, be admitted that this provision is justified by the necessities of the case. It would be impossible to allow small recalcitrant minorities to obstruct a great public benefit such as that of the extension of perennial irrigation to the waste. Nor—*sua si bona norint*—is it for the interest of possible dissentients that their objections should be allowed to block the scheme. If the canal is made they will, equally with others and to the extent of their rights, share in the one-fourth commanded land to be restored in consideration of the acquisition of three-fourths by Government; and the rights restored to them will be far more valuable, in the case at least of all permanent rights of cultivation, than those extinguished. In fact no penalty will be imposed upon them for their misguided obstruction. It will simply be overruled and that is all.

"Clause 8 deals with the cases of absentees or persons under any disability, such as minority, unsoundness of mind, or the *parda*. It is open to the remark that the officer taking the agreements will naturally be anxious to secure as many signatures as possible, and that this section puts in his hands the power of nominating for the purpose of signature the representatives of persons, who, for one reason or another, are unable to sign: I would ask the Council, however, whether it is at all likely that the officer taking the agreements would nominate men of straw to do his bidding? The general answer, of course, is that nothing of the kind is in the least likely to occur; and that the officer in question may be fully trusted to exercise without abuse the power which this section confers on him. But besides this, I would call attention to the elaborate way in which the Bill as now framed safeguards the rights of absentees and others who are unable to sign. Every one who is interested and has not signed, either himself or by deputy, or expressly refused to sign, gets a notice under clause 7 (4). As the process of taking signatures (which is, as I have explained, a gradual one) goes on, a proclamation is issued calling upon persons claiming rights to make their claims; and the Deputy Commissioner dealing with the claims made in consequence of the proclamation, has power to amend the list of signatories.

"The real fact is that the whole question of signature by deputy is not regarded by the peasantry from the lawyer's point of view. Their disposition is not to question our good faith in nominating one person to sign for another,

[Mr. Tupper.]

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but our good sense in not at once accepting without demur the mere word of any one who says he represents a father or mother or brother or nephew. We cannot go quite so far as that; but I may explain that there is nothing in the Bill to prevent any one giving any one else a power of attorney to sign for him. This will meet cases of persons who are sick or infirm, or who reside outside the district; and as Financial Commissioner I propose to recommend that the Government of India be moved to remit under Section 35 of the Court Fees Act the whole of the Court fee leviable on any *mukhtarnama* presented for any purpose of this Bill. Such facilities offered to the people for appointing their own representatives to sign for them will go a certain way to meet the theoretical objection to the deputy being nominated by the officer who takes the agreement. If *parda* women accept his nominations, it will not be because they cannot make nominations themselves. In the case of minors or lunatics, his power of nomination arises only if there be no guardian or manager duly appointed under the law. It is also worthy of note that the orders of the Deputy Commissioner, or officer empowered as such, passed under this section would be open to appeal, review and revision, as are all orders passed by such an officer under the Bill, except such as are expressly declared by it to be conclusive. This, I may observe, is the effect of a new clause, clause 13, which we have added to the Bill.

"The effect of clause 11 (2) of the Bill is that when one-fourth of the commanded land has been restored the remaining three-fourths will vest absolutely in Government free from all encumbrances. In the one-fourth restored we propose to restore rights as far as possible identical with those held at the time of the agreement by the persons bound thereby. I wish to point out clearly that there are two classes of rightholders to whom it will be impossible to restore identical rights. Pasture will give place to the permanent cultivation of canal-irrigated land, and the scattered and casual patches of melons, of which a good deal has been written, will give way to more profitable crops. The great physical change which the canal will bring upon the face of the country will put it out of the power of our successors 20 years hence to give the graziers and the melon-cultivators the exact equivalent of what they have now. In the area retained by Government their rights will be extinguished. In the area restored the exercise of their rights will be impossible or much curtailed. As regards the melon-cultivators, where the rights are sufficiently substantial to warrant their recognition, special concessions are being made. It is intended, in addition to restoring one-fourth of the total area over which rights are to be acquired by Government, to restore in compensation for the extinction of the right of melon-growing, an area equal to one-half of the already recorded *barani* land. Of course where the rights are of merely nominal value nothing extra can be given in exchange for them. As to the graziers whose occupation will be gone, I strongly commend their case to the Colonisation Officer of the future. It will be necessary to deal with them specially as we have dealt with the so called *Janglis* of the Chenab Colony, and as we intend to deal with people who have any equitable claims on the Government waste in the Jhelum Colony. Assuming that an Indus Canal will eventually be made to water the Sind-Sagar Doab, then in the distribution of the sources of wealth thereby obtained, the claims of pastoral people, whose pastures will be converted into fields, will certainly deserve generous recognition. It is because the attempted restoration of exactly similar rights in the one-fourth area to be restored cannot wholly do them justice, that I thus prominently commend their case to the consideration of our successors.

"I have not tried to exhaust the points on which some explanations may be advisable, but I leave further discussion to my hon'ble colleague in the Select Committee and to other Members of the Council.

"I beg to move that the Report of the Select Committee be taken into consideration."

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[Mr. Wilson.]

The Hon'ble Mr. J. Wilson, in supporting the motion, said: "I may be allowed to add a few words in further explanation of the treatment of the rights of mortgagees proposed in the Bill. It will be observed that the definitions of the words 'land-owner' and 'right-holder' have been so framed as to exclude the mortgagee. The effect of these definitions is to shut out the mortgagee, as such, from the right to enter into the agreement contemplated by the Act, and yet under section 11 of the Act, when the canal has been constructed and the restoration of one-fourth of the land has been made by the Government to the owners, the mortgagee's rights as regards the three-fourths retained by the Government will be entirely extinguished. It is obviously necessary that those rights should be so extinguished, as otherwise the Government would not be able to give an indefeasible title to the colonists to whom the lands retained by it will ultimately be assigned. The reasons why it has not been thought necessary to give the mortgagee, as such, any say in the matter of this extinction of his rights are briefly these. The position of a mortgagee is of only a temporary nature. So long as the security he holds for the repayment of the mortgage-debt is not lessened, he has suffered no injustice, and it would not be equitable to allow him, the holder of a merely temporary right in the land, to have a say as to its permanent alienation. There can be no doubt that the money-value of the one-fourth of the land to be restored by the Government after the construction of the canal will be much greater than the present money-value of the whole of the land, and as the Bill and the form of the agreement which has been adopted provide that the rights now held in the whole of the land shall revive as regards the fourth part of it which will be restored, the mortgagee's security will be of greater value than it now is, and he will have no cause to complain.

"The powers conferred by the Bill as regards the determination of boundaries perhaps call for further explanation. In these sandy tracts, boundaries are often very ill-defined, and disputes regarding them take a long time to settle. It is undesirable that the negotiations contemplated by the Bill should be subject to the long delays which would be necessary, if the Deputy Commissioner had to wait until the elaborate enquiries needed for a final determination for all purposes of the boundaries of the land had been completed. He is therefore given by section 4 of the Bill a summary power to determine the boundaries of the land which is the subject of the agreement, and may, if he so chooses, accept for this purpose the boundaries which have been already determined for revenue purposes, and entered in the revenue-records; and his decision as to the boundaries is by sub-section (3) of section 6 made conclusive so far as the purposes of this Act are concerned, so that the title to be acquired by Government in the land may not be impugned on the ground that the boundaries were wrongly defined. The same sub-section, however, provides that his decision shall not affect the rights of persons other than the Government as between themselves, so that it will still be open to private persons to litigate in the usual manner regarding disputed boundaries, as between themselves, notwithstanding the Deputy Commissioner's decision.

"As I have had some share in the actual negotiations with the land-owners of the Dera Ismail Khan Thal who are being asked to surrender a portion of their rights to the Government in order that it may become financially possible to construct this great canal, I may be permitted to make a few remarks on the attitude of the people regarding the matter. For many of them, living as they do in a desert region of sand-hills, many miles away from any river, it is difficult to believe that some day a canal may be brought from the Indus to irrigate their barren wastes. Though their rights of pasturage and of melon-growing are of insignificant money-value, they cling to them tenaciously, and when I first sounded the land-owners of the Shahpur Thal on the subject, they with one accord declared that they would rather have no canal at all, their chief objections being that there would be no sand-hills left on which they could grow their *so ons*, and that they would often have to drive their cattle a long way round in

[Mr. Wilson ; Mr. Tupper ; Mr. Preston.] [7TH OCTOBER]

a bridge by which they might cross the canal to their usual pasture-grounds ! Since then no doubt the news of the extraordinary prosperity conferred on their fellows by the Chenab Canal has reached their ears and helped to remove their objections, but the assent of the residents of the Bhakkar and Leiah Thal to these agreements has been chiefly obtained by the patient tact with which Mr. Hailey has explained to them the full effect of the agreements on their rights, and the care which has been taken to safe-guard their interests, both present and future. In this connection I may point out that under these agreements the surrender of the land to the Government will not take place until the construction of the canal has actually been begun, so that until that time there will be no interference with the rights and customs of the people, and life in the Thal will go on as if this Act had never been passed."

The motion was put and agreed to.

The Hon'ble Mr. C. L. Tupper moved that the Bill as amended be passed. He said : " In moving that the Bill as amended be passed, I wish to say that there appear to be two very substantial reasons for the course proposed. First, it is the people of the Thal who are affected by this measure, and its general outline has been known to them for eight or nine years. Moreover, Mr. Hailey has now been amongst them for nearly two years, and has made it his constant endeavour to explain to them in great detail both the intentions of Government, and what they are themselves asked to do. No further publication or further official discussion of the Bill would give them any better information than they have already.

" Secondly, as I have explained, Mr. Hailey's work is not yet quite complete. It has been necessary to leave him without full legal authority for what he is doing, for a certain time, while the experience needful to give this measure its final shape was being accumulated. But now that we are satisfied that this experience has been gained, it is obviously proper that the necessary legalisation of his proceedings, and of the like proceedings of any officer who may follow him in the Thal or any other tract subject to the Bill, should be effected with as little delay as possible.

" For these reasons the Select Committee has not recommended any republication of the Bill."

The Hon'ble Mr. S. Preston supported the motion. He said : " I shall not detain the Council long, but the few remarks I have to make may be useful, especially what I shall say with regard to the feasibility of constructing a large canal in the Sind-Sagar 'Thal,' as on the possibility of doing so the necessity for acquiring the land, for which this Bill provides, will depend,

" It is not necessary Government should own the land because it will thereby get a greater return for the canal from it, but because experience on the Chenab Canal has shown the inability of the villagers to obtain the tenants for large tracts which would enable it to be developed with any degree of certainty or rapidity. The object of acquiring the land is therefore to ensure the success of any canal not to increase the return per acre irrigated from it. I do not think that any one can hold that the acquisition of the land is a measure of confiscation. No one ever paid anything for the land ; it was merely recorded in the name of the village community at a previous settlement. Moreover, the value of the one-fourth, which is to be surrendered to the community, will be increased 20 fold at least ; this has been amply shown by the increase in the value of lands on the other canals in the Province, considerable

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[Mr. Preston.]

"The feasibility of constructing a large perennial canal in the 'Thal' has only recently been questioned. Ever since I have been in the Irrigation Department, now over 31 years, I have heard of the great Sind-Sagar Canal which would some day eclipse in size all those constructed before it. I find that many of my predecessors have written Notes on the subject, and even His Excellency the Viceroy in his Minute on the formation of a new Frontier Province alludes to the Sind-Sagar Canal which will bring 1½ million acres under irrigation. It has been always known that there is a good deal of sand in the 'Thal,' but I am unable to find that any of the Chief Engineers who have written Notes on the subject have actually visited the country and seen for themselves what it is like.

"The near approach of the completion of the Jhelum Canal rendered it necessary that arrangements should be made for surveying the 'Thal' in detail so as to permit of the preparation of a scheme and estimate for the construction of a large perennial canal to irrigate it, as it was thought that this would occupy 4 or 5 years at least. With the object therefore of formulating proposals for this survey in February last, I rode from Sahiwal in the Shahpur District to Bitti and Dhullewala in the centre of the 'Thal.' The tract I traversed seemed to me so unpromising from an irrigation point of view that I considered it absolutely necessary I should see something of the western, and what was reported to me to be the better, side of the Doab, and I therefore made a second trip down the Sind-Sagar railway riding out at various places at right angles to it. In this manner I was able to obtain a cursory glance at a considerable area. At the same time I deputed a senior Executive Engineer to ride right across the Doab from Bhakkar to Jhang and to report to me the condition of the country from an irrigation point of view. I am bound to say that his report and my own observation are most unsatisfactory as regards a very large portion of the country. The sand-hills are immense, and it is open to very serious doubt whether a canal can be made and maintained in it.

"Another point which was brought very prominently to my notice was the extremely poor quality of the soil. I was told everywhere by the present cultivators that without manure no crops could be grown, and this is certainly quite true of the present cultivation from wells. Whether the liberal waterings which will be possible from a perennial canal will take the place of manure no one was able to tell me; it is well known that the Indus silt has not the reputation for fertilizing qualities that the Jhelum or even the Chenab Rivers have. It is obviously most important that the feasibility or the reverse of irrigating this tract should be decided as soon as possible; it has therefore been decided, as mentioned by the Hon'ble Mr. Tupper, that a reconnaissance in detail should be made during the coming cold weather by a senior Canal Officer: he will survey and level a certain area in each different class of country met with in the 'Thal.' It is also proposed to have specimens of the soil analysed and the opinion of the Agricultural Chemist to the Government of India obtained as to its capacity for growing ordinary crops without the aid of manure. The Engineer will traverse the whole of the Doab and classify it, calculating from his surveys, the exact proportion of culturable land in all the various classes, and in six months' time it should be possible to determine in which portion of the country it will be practicable to construct and maintain a canal and in which it will be impracticable to do so. If, as I fear, there are considerable areas in which the construction of a large perennial canal is impossible or that the soil on examination turns out to be such as is unlikely to repay cultivation or to attract colonists, it may be possible at no distant date for Government to announce the result and to definitely inform the villagers concerned that the common land in those villages will not be required by Government for the purposes of a canal and this Bill, as far as they are concerned, will be dead within 6 or 8 months of its birth.

"The action taken under the Act will, however, have injured no one, and I have therefore only to add that I support the measure."

[Raja Pandit Suraj Kaul.]

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The Hon'ble Raja Pandit Suraj Kaul also supported the motion. He said: "As I am specially interested in the colonisation of the Sind-Sagar Doab I think it a happy opportunity that I am to-day present in this Council which has met for the purpose of effecting that scheme.

"As a Member of the Viceroy's Legislative Council on the day when the India Budget was passed at Calcutta in March 1899 I spoke about Famine Relief, and I invited the attention of His Excellency the Viceroy in Council to the many advantages that would accrue from the construction of the Sind-Sagar Canal.

"Moreover, I may say that no other officer has been in charge of the Thal Sub-Division, Mianwali, for a longer period than myself. Thus having a personal knowledge of the locality I can emphatically affirm that the Sind-Sagar Doab Colonisation Bill which has to-day been presented before Your Honor for approval will prove most beneficial to the Government and the people.

"There are in general very large areas of land attached to Thal villages which do not produce any considerable income to the land-owners who cannot bring the same under cultivation and at the same time find these areas far more than their needs and wants require. However, in years when there are good and timely rains a good deal of the area of the village is cultivated for kharif crop, and the outturn is also ample, so much so that people are able to pay off the revenues and to maintain themselves for the next two or three harvests; but even then a very large tract of land remains as usual in an uncultivated state, being as it is beyond the power of zamindars to bring such tracts under cultivation. For example, take Van Bhuchhran, one of the villages of the Ilaka Thal in Tahsil Mianwali. More than ten lakhs of kanals of land constitute the area of the village as entered in the Settlement Records, and even in the best years when the rains are plenty and timely, the land-owners are not able to cultivate even one-hundredth of this land and they cannot get any material profit out of it except so far as it is useful for grazing cattle belonging to themselves or their neighbours.

"Similar is the condition of villages Vankella, Harnaali, &c., of the Thal Ilaka. The land of the Thal is of superior kind but, just as in the Muzaffargarh District, there is no Soma-water in it. The land is at a high level from the surface of the water as is sufficiently proved by the wells of Van Bhuchhran and Vankella, and the fertility to the soil can be judged by examining the products of the Thal tract. The Thal lands of Ilaka Bhakkar are nearly similar to those of Mianwali Thal.

"If the measures proposed in the Bill be adopted, then the zamindars will undoubtedly be enriched by the product of the soil attached to them when the land is irrigated by a permanent flow canal.

"Moreover, they will be saved from those hardships and miseries to which they are at present liable in dry seasons. It is usual in the villages of the Thal, in time of famine, for all the men and women with their children to leave their land and wander in different places seeking work and often begging their food. But when the news of the falling of the rains in their country reaches them they return to it.

"When the land-owners and the inhabitants of the Thal who are the people affected by the present Bill fully realize its advantages and actually reap the benefit themselves and see their neighbours in a prosperous state, then they will surely and certainly feel grateful to the Government for the passing of the Bill now before Your Honor.

"I, therefore, support this Bill and recommend that it may be passed."

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[Mr. Douie ; Mr. Tupper.]

The Hon'ble Mr. J. McC. Douie then said :—"The only point in the Bill, which seems to me doubtful and out of which legal difficulties may spring is the exclusion of mortgagees, and especially of mortgagees with possession, from the definition of 'land-owner' and 'right-holder.' 'Land-owner' under both the Land Revenue and Tenancy Acts includes a mortgagee with possession. Obviously a land-owner who signs an agreement under the Bill can only sign away his own rights. He cannot do anything which will legally affect the rights of a mortgagee. I understand from the remarks of the Select Committee with reference to clause 2, sub-clause (c), and clause 11, sub-clause 2, that the fact is accepted that the land surrendered to Government will, as the Bill is drafted, remain subject to any existing mortgage. A considerable time, perhaps eight or ten years, may elapse between the surrender of the land to Government [clause 5 (a)], and the return of one quarter of it to the land-owner [section 5 (b)]. During that period the mortgagee with possession will have an undoubted right to refuse to give it up. And were it otherwise it would not be fair to deprive him of the owner's profits, that is, of the interest on the loan, for eight or ten years. On these grounds I was inclined to propose both in the interests of Government and of the mortgagee to amend clause 2 (c) by substituting for the words 'but does not include a mortgagee thereof' the words 'and a mortgagee who is in possession of land or in legal enjoyment of any share of the profits thereof.' But I understand from my hon'ble friend, who is in charge of the Bill, that, while Government desires to have the power of exercising full control over the land at any time during the excavation of the canal, its occupation of land will in fact by a very gradual process, as there is no intention of actual interference with the possession of any piece of land by a mortgagee or any one else till such interference is really necessary. Under these circumstances it is only necessary to guard against wrongheadedness on the part of a mortgagee. I therefore move that the following additional proviso be inserted in clause 6 (1) :—

"Provided further that as against Government a mortgagee of land which is the subject of an agreement executed under the provisions of this Act shall not be deemed to have any right in respect of such land."

The Hon'ble Mr. C. L. Tupper, speaking in support of the amendment, said :—"I have no objection to the amendment proposed by the Hon'ble Mr. Douie, though I would not have accepted a suggestion that we should make mortgagees parties to the agreements. That would have infringed the principle of the Bill. As the Hon'ble Mr. Wilson pointed out, we deal with permanent rights over the land and acquire them for Government. We do not concern ourselves with the rights of persons *inter se* except in so far as it is necessary to clear from all encumbrances the three-fourths of the total land which the Government will retain for itself.

"The Hon'ble Mr. Douie is quite right in supposing that 8 or 10 years may elapse between the commencement of the construction of the canal and the date of restoration of one-fourth the total area surrendered as commanded land. During that period we intend that mortgagees shall have exactly the same rights as heretofore until it is necessary to disturb them. Colonisation will not be effected as it were by the wave of a magician's wand. It will be a gradual process here as elsewhere. Gradually the branches of the canal and the water-courses will be spread like a net-work over the country; and as land becomes irrigable colonists will be called in and the surrender of three-fourths the total area made effectual by the restoration of the remainder. It is quite true—and I admit to this extent a slight flaw in the Bill which the zealous of my hon'ble friend has detected—that a recalcitrant mortgagee in possession might turn upon us when the canal was under construction and refuse to give up any part of his holding for the construction of a branch or water-courses of the canal. In such a case under the Bill as it stands we might have been compelled to have recourse

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The Hon'ble Mr. J. McC. Douie then said :—"The only point in the Bill, which seems to me doubtful and out of which legal difficulties may spring is the exclusion of mortgagees, and especially of mortgagees with possession, from the definition of 'land-owner' and 'right-holder.' 'Land-owner' under both the Land Revenue and Tenancy Acts includes a mortgagee with possession. Obviously a land-owner who signs an agreement under the Bill can only sign away his own rights. He cannot do anything which will legally affect the rights of a mortgagee. I understand from the remarks of the Select Committee with reference to clause 2, sub-clause (c), and clause 11, sub-clause 2, that the fact is accepted that the land surrendered to Government will, as the Bill is drafted, remain subject to any existing mortgage. A considerable time, perhaps eight or ten years, may elapse between the surrender of the land to Government [clause 5 (a)], and the return of one quarter of it to the land-owner [section 5 (b)]. During that period the mortgagee with possession will have an undoubted right to refuse to give it up. And were it otherwise it would not be fair to deprive him of the owner's profits, that is, of the interest on the loan, for eight or ten years. On these grounds I was inclined to propose both in the interests of Government and of the mortgagee to amend clause 2 (c) by substituting for the words 'but does not include a mortgagee thereof' the words 'and a mortgagee who is in possession of land or in legal enjoyment of any share of the profits thereof.' But I understand from my hon'ble friend, who is in charge of the Bill, that, while Government desires to have the power of exercising full control over the land at any time during the excavation of the canal, its occupation of land will in fact be by a very gradual process, as there is no intention of actual interference with the possession of any piece of land by a mortgagee or any one else till such interference is really necessary. Under these circumstances it is only necessary to guard against wrongheadedness on the part of a mortgagee. I therefore move that the following additional proviso be inserted in clause 6 (1) :—

"Provided further that as against Government a mortgagee of land which is the subject of an agreement executed under the provisions of this Act shall not be deemed to have my right in respect of such land."

The Hon'ble Mr. C. L. Tupper, speaking in support of the amendment, said :—"I have no objection to the amendment proposed by the Hon'ble Mr. Douie, though I would not have accepted a suggestion that we should make mortgagees parties to the agreements. That would have infringed the principle of the Bill. As the Hon'ble Mr. Wilson pointed out, we deal with permanent rights over the land and acquire them for Government. We do not concern ourselves with the rights of persons *inter se* except in so far as it is necessary to clear from all encumbrances the three-fourths of the total land which the Government will retain for itself.

"The Hon'ble Mr. Douie is quite right in supposing that 8 or 10 years may elapse between the commencement of the construction of the canal and the date of restoration of one-fourth the total area surrendered as commanded land. During that period we intend that mortgagees shall have exactly the same rights as heretofore until it is necessary to disturb them. Colonisation will not be effected as it were by the wave of a magician's wand. It will be a gradual process here as elsewhere. Gradually the branches of the canal and the water-courses will be spread like a net-work over the country; and as land becomes irrigable colonists will be called in and the surrender of three-fourths the total area made effectual by the restoration of the remainder. It is quite true—and I admit to this extent a slight flaw in the Bill which the acumen of my hon'ble friend has detected—that a recalcitrant mortgagee in possession might turn upon us when the canal was under construction and refuse to give up any part of his holding for the construction of a branch or water-courses of the canal. In such a case under the Bill as it stands we might have been compelled to have recourse

[Mr. Tupper ; Mr. Wilson ; Mr. Tupper.] [7TH OCTOBER

to the Land Acquisition Act. At the same time it is highly improbable that any mortgagee would be so ill advised, as he would thereby cut himself off from the means of vastly improving the value of his security,—the one-fourth restored in which his mortgage rights would remain being immensely more valuable than the unirrigated land over which his rights obtain at present. Still as a measure of precaution against such a possibility I welcome with pleasure the amendment proposed by my hon'ble friend.

"It will fit in perfectly well with the frame of the Bill. The mortgagee will either claim or not claim under the proclamation. If he claims, the proviso now proposed will compel the Deputy Commissioner to reject his claim as against Government. His rights as against his mortgagee will remain entirely unaffected. If he does not claim, then he is in the position of a person who has omitted to present a notice within the time allowed ; and in either case the agreement will be binding as against him so far as the rights to be acquired by Government are concerned. This will appear clearly if clause 10 (1) (b) of the Bill be read with clause 6. For these reasons, therefore, I think that the amendment proposed may be adopted."

The motion to further amend clause 6, sub-clause (1), of the Bill as proposed by the Hon'ble Mr. J. McC. Douie was then put and agreed to.

His Honor the President said that the motion before the Council was that the Bill as amended be passed.

The Hon'ble Mr. J. Wilson spoke in support of the motion. He said : "Notwithstanding the weighty remarks which have been made by the Hon'ble Member opposite (Mr. Preston), I do not despair of the ultimate construction of this great irrigation work. I have seen a good deal of the tract which will be commanded by the canal, and can appreciate the difficulty of constructing and maintaining a system of irrigation channels among its sand-hills and the comparatively small direct return that is to be expected from it. But I cannot believe that the Government of this country will long be content to see the waters of the mighty Indus rolling uselessly to the sea, when by turning them on to this vast desert tract they could convert it into a region producing food-crops by the million of acres, capable of supporting in prosperity hundreds of thousands of peasants, or that they will be deterred from the execution of this great and beneficent project by consideration only of the small return of direct net profit it may give on the capital expenditure ; though even from that point of view I believe it will be ultimately found to be financially profitable to the State. In any case I am of opinion that we should, by passing this Bill into law, make it possible to construct the canal at some future date, and not, by allowing it to drop, lay ourselves open to the charge of having missed a great opportunity.

"For these reasons I beg leave to support the motion."

The Hon'ble Mr. C. L. Tupper, speaking by way of reply, said : "I am sure the Council has listened with much interest to the moderate and guarded exposition of the facts of the case, as they appear to him, with which my hon'ble friend Mr. Preston has favoured us. I understand not only from what my hon'ble friend has now said, but also from a perusal of records that after his visit to the Thal my hon'ble friend was persuaded that any very large scheme of irrigation is impracticable owing to the enormous proportion of sand-hills to culturable land, and came to the conclusions that the greater portion of the 5½ million acres which it was hoped would come under canal irrigation is hopelessly sandy, and that the maximum area likely to be brought under command is some 575,000 acres. Even that area, I may observe, involves a considerable colonisation scheme, the Government waste land in the Jhelum Canal now about to be opened being only 540,000 acres.

"It is with Mr. Preston's full concurrence that these conclusions will be tested, this cold weather in the manner I have already described. If, however, the facts are such as Mr. Preston supposes them to be, how, it may be asked,

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does it happen that the Government has taken up this scheme at all? The reply is that Government has been acting on the advice of Mr. Preston's responsible predecessors. My hon'ble friend says that though the possibility of irrigating the Thal has been discussed for 30 years there is no record of any inspection of it by a Chief Engineer. I must admit that I have not found any such record; but I find that Mr. Garbett, who reported favourably on such possibility in 1871, was then a Superintending Engineer, and he did visit the locality. Not much store, however, can be laid by this, for his actual words are 'it would be useless to prepare an estimate without greater knowledge of the levels and of the country than a hurried visit has enabled me to obtain.' Further, it has been stated by Mr. Beresford, as Chief Engineer, that surveys were carried out by the Irrigation Department in 1872 and that levels were taken by the Revenue Survey Department shortly afterwards. Colonel Otley, in 1892, recorded that 'from an Engineering point of view the project is a perfectly feasible one.' Having regard to maps and levels Mr. Beresford held a few years ago that nearly the whole country would be easily commanded by any well designed system of irrigation channels.

"These opinions may be cited to justify the action of Government, but of course they do not alter facts. We have to face the facts, whatever they are; and it is my duty to justify the passing of the Bill even if the facts are as unfavourable to the prospect of any comprehensive scheme of irrigation as my hon'ble friend believes them to be.

"This, I think, it is not difficult to do. My general reply to my hon'ble friend is that the Bill is either absolutely necessary or absolutely harmless. If no canal from the Indus is ever constructed to irrigate the Thal, the agreements to surrender lands have no effect and the rights of the people remain entirely undisturbed. This is secured by section 5, proviso (a) of the Bill, which enacts that the agreements shall take effect only on and from the date on which the excavation of a permanent flow canal from the Indus shall be begun in the Sind-Sagar Doab. If a canal is constructed, but with only such limited command of an irrigable area as the Hon'ble Mr. Preston anticipates, then again no harm is done: for the agreements relating to lands not required for colonisation would be cancelled by Government. But to the extent to which colonisation may, in the sequel, prove possible, to that extent, whatever it be, whether 500,000 acres or 5 million acres are commanded, the agreements to which the Bill gives validity, or legal provisions equivalent to the agreements, are absolutely necessary; for without legislation of some kind the land could not be acquired; and without the acquisition of the land, colonisation would be impossible.

"Moreover, even supposing the proportions of the Sind-Sagar scheme shrink to the dimensions prophesied, the policy of colonisation which, in a sense, this Bill expresses, remains unaffected. Sir, when you resign your high office a few months hence I hope it will dwell in the public recollection that the last ten years, of which your term of office now covers nearly five, have been, in this Province, emphatically the era of colonisation. An experiment unique in the history of India, indeed I may say unique in the history of any country, has had an extraordinary, an almost unhopd for success. On the Chenab Canal what was once a desert has now a population of 792,000 souls. We have smaller colonies elsewhere—the Churian, the Sohag and Para and the Sidhnai colonies. The Jhelum Colony, too, is to be started this winter. When I addressed this Council on the subject of the present Bill two years ago it was supposed that the Sind-Sagar Colony would probably be the next after the Jhelum; but thanks to the ability and energy of my hon'ble friend, the scheme for the Lower Bari Doab or Montgomery Canal has now taken shape and we have the promise of another colony of some million and a half acres—all but 340,000 acres being Government land—in the Ravi Tahsils of the Montgomery District and in part of the adjoining district of Mooltan. It is whispered, or perhaps I should say openly alleged, that the Punjab will lose some of its prestige when shorn of nearly all the frontier districts. Sir, I have no fear for the prestige of this Province while—to say nothing whatever of this Sind-Sagar scheme—we can point

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to an area commanded or about to be commanded by Punjab canals of more than 4 million acres on the Chenab, more than a million acres on the Jhelum, and more than a million and a half acres in that new scheme for a Sutlej Canal to which I have just alluded. Much of our work consists in the laborious and usually thankless task of obstructing ill deeds or mitigating their evil consequences; but in this business of colonisation, which has redeemed a bit of the East at any rate from the reproach of immobility, we can feel that we are undoubtedly promoting the welfare of masses of our fellow-men. Personally I rejoice that, in common with some other Revenue Officers, I have a share, small and humble though it be, in this great and beneficent undertaking. Surely, Sir, it must be a matter of profound satisfaction to you that as Financial Commissioner and Lieutenant-Governor your own share in Punjab colonisation has been a very prominent one. But if Punjab canals and Punjab colonisation are the watchwords of Punjab progress, Revenue Officers will not forget that this unexampled social departure, which has surprised and gratified all interested in the welfare of this Province, is primarily due to the skill and energy of those who have given us the canals. This Bill is the first of the Punjab Colonisation Bills, and I do not think it will be the last of them. And when on any public occasion we have, as we have to-day, to refer prominently to Punjab colonisation, I believe, Sir, that you will agree with me that it is well we should remember what great credit is due to the Irrigation Officers, without whose professional knowledge and unremitting exertions we should never have had any colonies at all.

"With these remarks I beg leave to move that the Bill as amended be passed."

His Honor the President said: "I have only a few remarks to make before putting the motion to the vote of the Council. The Bill has been for nearly two years before the public, and during this time there has been no attempt to impugn the principle which the Hon'ble Mover, Mr. Tupper, and myself were at some pains to justify at the meeting of this Council held on the 2nd November 1899. It may be taken for granted that there is nothing of importance to be urged against it. As explained fully on that occasion, the object is to secure to Government a valid title in lands voluntarily surrendered for the purpose of colonisation by the majority of the present holders, the transfer only taking effect when the canal which is to render that colonisation possible is actually undertaken. The necessity of securing this title arises only in event of the canal being constructed. If a canal is constructed, it is of supreme importance that Government should have the control of a sufficient area for colonisation purposes. In fact without the aid of this Bill the Sind-Sagar Canal cannot be contemplated at all in the near future.

"The doubt thrown upon the feasibility of the canal by the present Chief Engineer would be a reason for at all events postponing the present measure, if it committed us to anything independently of the consideration whether the canal can be made or no. This it does not do. If there is no canal, the Act will be inoperative, and the only untoward result will be the expenditure to no purpose of a certain amount of valuable time. On the other hand, if the canal is ever possible, it will then be found that the measures we have taken in passing this Bill and taking agreements from the owners of common land will have removed one of the great obstacles to its construction. Common prudence therefore points to our proceeding to pass the Bill. The survey which is proposed during the ensuing cold weather can alone determine whether the Sind-Sagar Canal can be undertaken with the same prospect of success as has attended recent developments of canal irrigation in the Punjab. Even if the verdict is at first unfavourable, it does not seem altogether vain to express a hope that in view of the splendid progress of Canal Engineering Science which we have witnessed in the last half century, a time may come when that verdict may be reversed, and the difficulties

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removed. The system of irrigation practised by Native Governments which preceded British rule in the Punjab has been replaced by methods of a totally different character so far as the great perennial canals are concerned, and even the sand-hills of the Thal may largely yield to the science of the future even if they defy our present resources. That the waters of the Indus will one day be carried in a perennial canal over no small portion of the vast area which is now barren and useless for cultivation or pasture I venture to predict, and in that case our present action will be amply vindicated."

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned *sine die*.

SIMLA :

H. A. B. RATTIGAN,

The 7th October 1901. }

Secretary to the Legislative Council of the Punjab.

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at the Council Chamber, Government House, Lahore, on Friday, the 17th January 1902.

PRESENT :

His Honour Sir WILLIAM MACKWORTH YOUNG, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Mr. C. L. TUPPER, C.S.I.

The Hon'ble Mr. J. MCC. DOUIE, I.C.S.

The Hon'ble Sir Nawáb IMAM BAKHSH KHAN, K.C.I.E.

The Hon'ble Kanwar Sir HARNAM SINGH, K.C.I.E.

The Hon'ble Mr. D. P. MASSON, C.I.E.

The Hon'ble Colonel J. B. HUTCHINSON.

The Hon'ble Mr. J. WILSON, I.C.S.

The Hon'ble Mr. R. CLARKE, I.C.S.

NEW MEMBERS.

The Hon'ble Nawáb Sir IMAM BAKHSH KHAN, the Hon'ble Kanwar Sir HARNAM SINGH, the Hon'ble MR. D. P. MASSON, the Hon'ble Colonel J. B. HUTCHINSON, the Hon'ble MR. J. WILSON and the Hon'ble MR. R. CLARKE took their seats in Council.

PUNJAB REGISTRATION OF TRANSPORT ANIMALS BILL.

The Hon'ble MR. WILSON moved for leave to introduce a Bill to provide for the periodical enumeration and registration of animals in the Punjab fit, or ordinarily used, for the purposes of military transport, and for the compulsory acquisition of such animals in time of war, and for impressment of the same for hire for purposes of military transport at any time. He said: "I have to ask for leave to introduce a Bill to provide for the registration of transport animals, for the compulsory acquisition of such animals in time of war, and for impressment of such animals for hire for military purposes at any time.

"In all countries it is found necessary in time of war to employ a very large number of animals for the purpose of transporting material and supplies for the armies in the field, and when war has broken out or is threatening, it is of extreme importance that the resources of the country in the matter of animals fit for transport should be made available for military purposes with as little delay as possible. The armed nations of the Continent of Europe have found it necessary, as one of the measures required for the defence of their security, to give legislative authority to the executive government to take possession of any transport animals that may be needed for military purposes, and a careful and elaborate system of registration of such animals is maintained so that there may be no delay in making them available for employment whenever required.

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"The Punjab, standing as it does on the north-west frontier of India, facing a mountainous country inhabited by warlike and turbulent tribes, has proved no exception to the general rule. Since it became part of the British Empire, half a century ago, it has on several occasions been called upon to furnish transport for armies fighting beyond the border, and the people of the Punjab have always loyally responded to the call, and have not only offered brave recruits to take their place in the fighting line, but have acquiesced in the demand made upon them to furnish transport for the needs of the army. Impressment of animals for military purposes is, therefore, an immemorial custom of the Punjab, and may be said to form part of the Common Law of the land. It has not, however, hitherto been legalised by any positive enactment, and the want of such an enactment has often been greatly felt. Although, as I have said, the people of the province generally have always in time of war placed their animals at the disposal of the State, a certain number of them have usually attempted to evade their share of the common burden, and for want of clear legal power it has been difficult for the officers of Government to insist that such persons shall accept their due share of the inconvenience which is inevitable when military operations are in progress, and not throw it on to their more loyal neighbours. Again, experience has shown that the want of a proper system of registration of animals fit for transport leads to a great waste of time, when time is of the utmost value, and to unnecessary hardship to the people. When a military expedition has to be undertaken, a sudden call is made upon local officers to produce a large number of transport animals. These officers have statistics which show approximately the number of animals of each class in the different parts of their districts, but they have no means of knowing which of these are fit and which unfit for transport purposes. The result is that although instructions are issued to the collecting officers to send in only those animals which are fit, a very large number of unfit animals are collected and sent to the passing centres, where they are often detained for days until they can be inspected by a Transport Officer, and many of them are ultimately rejected. Some alleviation of the hardship thus caused to the owners of the rejected animals is attained by the grant of subsistence allowance for the animals so detained, but it is impossible to award adequate compensation in such cases, and the want of system entails unnecessary expense and trouble both on Government and the people. This Bill, therefore, not only legalises the old-standing and necessary custom by declaring that the Government may at any time impress for hire on reasonable terms any animals required for purposes of military transport, but provides for a system of enumeration and registration of animals fit for transport to be carried out at leisure in time of peace by qualified officers. It also—on the analogy of the Land Acquisition Act, under which land required for public purposes, such as a railway or canal, can be taken up by Government on payment of reasonable compensation without the consent of the owner—provides for the compulsory acquisition in time of war, on payment of a fair price, of any animals which Government may decide to purchase instead of impressing them for hire. To estimate the fair price of an animal is a matter requiring not only skill and experience, but time, and if this were left over until troops were actually being mobilised, when everything has to be done at high pressure, it would be certain to result in delay and in mistaken estimates of the value of the animals to the loss in some cases of Government and in others of the owners whose animals were being compulsorily acquired. It has, therefore, been provided in the Bill that the Transport Registration Officer may at the time of making his enumeration draw up a list of those animals which he considers might be purchased in case of war, and price each animal at its market value. This price he will announce to the owner and ask him if he agrees to sell his animal at that price in the event of war. If the owner agrees, the animal will be branded, and when war is threatened Government will be entitled to at once take possession of the animal so branded and registered, on payment of the price already agreed upon with the owner. The Bill gives no power to brand any animal without the owner's consent, but to induce him to

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give his consent it provides that no animal so branded shall be liable to seizure for hire at any time, so that if Government desires to make use of such registered and branded animals it must buy them outright at the price already agreed upon, unless of course the owner consents to let them for hire. If an owner refuses to accept the offer made by the Transport Officer and to allow his animal to be branded, it will remain liable to impressment for hire at any time and to be compulsorily purchased in time of war at the price at which it may then be valued, plus 15 per cent., which—again on the analogy of the Land Acquisition Act—it is proposed to allow in consideration of the owner's being compelled to part with the animal without his consent. It is believed that with this alternative before them many owners will agree to have their animals branded and registered. It will then be possible, when war is threatened, for Government to lay its hands without delay on all these branded animals, and buy them up at the price which has already been agreed on with the owner.

" These then are the main objects of the Bill. In order to provide for the attainment of these objects it authorises a Transport Registration Officer, duly appointed as such, to inspect animals which may be fit for transport purposes, to ask questions relating to them which must be truly answered, and to make an enumeration and record of all animals he may consider fit. It requires all owners and occupiers of land, all revenue assignees, and all local officials and village headmen to give assistance to the Transport Registration Officer in carrying out his duties. It provides a procedure under which, when Government decides to acquire animals by compulsory purchase in time of war or on mobilisation of troops in preparation for war, animals fit for transport will to the number required be collected and put before a committee, who will determine their price with reference to the ordinary market value without regard to abnormal inflation of price due to the sudden demand, and at once pay the price to the owner with fifteen per cent. added on in consideration of the compulsory nature of the acquisition. With regard to the urgent character of the work and the large number of comparatively small sums to be fixed, the award of the committee as to the price is made final, but it will be open to any persons objecting to the distribution of the price awarded among the claimants to appeal as regards its apportionment to the Collector and from him to a Civil Court. It also provides that the punishment of a fine to the extent of fifty rupees may be inflicted upon any person who refuses to answer to the best of his knowledge or belief questions put to him by an authorised officer regarding animals which may be fit for transport, who obstructs any such officer in making his enumeration, who refuses to obey lawful orders in connection with the enumeration or acquisition of transport animals, who fraudulently counterfeits a brand, or who withdraws or conceals an animal which has been impressed for hire.

" The Bill does not authorize the impressment of any man against his will for service with the army beyond the frontier: nor does it authorise the branding of any animal without the owner's consent. What will happen when war is threatened is this. The Government will issue a notification declaring that animals of kinds to be specified are needed for public purposes. The enumeration now to be made will enable the District and Transport Officers to spread the demand over the tracts and villages in which it has shown that such animals fit for transport exist. The animals required will be collected with the least possible delay, as it will be known where they are to be found and as the officers of Government will have legal power to seize them. Those of them which have already been branded and priced with the owner's consent will, if Government decides to buy them, be paid for at once at the price already agreed on. If not, they will be allowed to go, unless the owners are willing to let them for hire. Unbranded animals will either be bought outright at their fair market value plus fifteen per cent., or hired at reasonable rates. The Bill asks nothing of the people of the Punjab that has not in times of public danger been readily given by the majority of those who have been called upon to place their resources at

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the disposal of the State. It merely legalizes and regulates what has been the immemorial custom of the country. Profiting from the lessons learned in the Tirah Expedition, Government have already greatly increased the number of transport animals permanently employed. Several corps of transport camels with their drivers are being raised for service in time of war by voluntary enlistment under the *sillahdāri* system, under which the animals are provided by the drivers or their employers. Between three and four thousand camels, passed, registered and branded, have been provided, together with a sufficient number of skilled drivers, by a special class of grantees of land on the Chenab Canal. Arrangements are in progress under which as large a proportion as possible of the additional number of animals required in time of war for service beyond the frontier will be purchased instead of being hired. A light railway has been constructed from Nowshera to the foot of the Málakand Pass, and another is in process of construction from Khushálgarh through Kohát to Thal. So that Government has already done much, and will probably go on to do more, towards lessening the need for seizure of animals for war purposes without the consent of their owners. And this Bill, when passed, will not only enable Government to learn more definitely what the actual resources of the Province in the matter of transport animals are, but will make it possible to distribute the demand, when it does come, more evenly than before over the districts of the Punjab, and to obviate many of the hardships to which owners of animals have in the past undoubtedly been exposed."

The Hon'ble MR. TUPPER in support of the motion said: "I desire to say a few words in support of the principles of this measure. In time of war or preparation for war it is, of course, absolutely necessary that transport animals should be acquired or impressed for hire by the officers of Government; and, as pointed out by the Hon'ble Mover, the immemorial custom of the country, which is in accord with this necessity, has heretofore been our main support in action to that end. The want of system described by my Hon'ble Friend which has often accompanied the hurried collection of transport animals without adequate legal authority, has, in the past, been productive of serious hardships. Independently of this Bill, the want of system to which I refer is already, as we have been told to-day, being met by executive measures; but I am glad to see that the Bill recognises formal arrangements for registration of animals as a part of the ordinary course of public business; and stamps upon the various proceedings in this matter, which we must certainly take if we are to avoid past evils, a sufficient seal of legality.

"Compulsory purchase and compulsory hire are, in the circumstances presupposed by the Bill, alike inevitable; and purchase is dealt with in the Bill in a reasonable and liberal way. As explained in the Hon'ble Mover's speech, it is intended that the price of registered and branded animals shall be fixed beforehand and agreed to by the owners. To the market value of unregistered animals will be added fifteen per cent., as in the case of the Land Acquisition Act, in consideration of the compulsory nature of the acquisition. Animals that are registered and branded will be exempt from seizure for hire.

"It is left to the Local Government to specify the terms and conditions upon which unregistered animals shall be impressed for hire; but the Bill enacts that no animal shall be so impressed except for purposes of military transport. I believe that the people of this Province will have confidence that the Local Government will so frame these terms and conditions as to diminish as much as possible the pressure of a burden which is inevitable in itself, and has, by long custom, been generally accepted as inevitable.

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Colonel Hutchinson.]

"There is an analogy between taxation and the compulsory acquisition or hire of transport animals in time of war. In each case there is a public burden which must be borne by certain classes of the community. No one doubts that taxation should be carefully regulated by law, and that the tax-collector's powers should be legally certain and legally adequate. To me it appears equally clear that the collection of transport animals should be regulated by the like means. Former want of system, which has been largely due to want of law—for you cannot expect officials to do irregular things in a regular fashion—has not been fair to the people; nor has it been fair to the officers of Government virtually to require them to strain their authority or to act where their legal authority altogether fails.

"The Bill is intended to remedy both of these defects, and I welcome it as a very important defence against that altogether undesigned oppression which results from doing in haste and unsystematically that which ought to be done with circumspect preparedness and with all the consideration for private rights which is compatible with the stern necessities of war."

The motion was put and agreed to.

The Hon'ble MR. WILSON introduced the Bill.

The Hon'ble MR. WILSON moved that the Bill be referred to a Select Committee consisting of the Hon'ble COLONEL HUTCHINSON, the Hon'ble MR. CLARKE, the Hon'ble Nawab SIR IMAM BAKHSH KHAN and the Mover, with instructions to report within six weeks.

The Hon'ble Kanwar Sir HARNAM SINGH, in objecting that the period of six weeks was too short, said: "Your Honor, I wish to say a few words with reference to the Bill which has been introduced by the Hon'ble MR. WILSON. I think six weeks' time allowed to the Select Committee for report is too short. Although the Bill has been under the consideration of the Government for some time, yet it has not been in the hands of the public. I fail to see the necessity of pushing this Bill through hurriedly, nor has the Hon'ble MR. WILSON given us any reasons for doing so.

"I look upon this Bill as an important measure before this Council, and I think the public will rightly demand that sufficient time be given for suggestions and criticism before it is passed into law."

The Hon'ble MR. WILSON said: "I do not think, Sir, that the Bill is of a nature so complicated that it requires much consideration. Its provisions, as I have said, follow in the main the immemorial custom of the country and deal with matters which are to be regarded as inevitable in view of the need of being prepared for war. Whatever the public may think or wish to say about the Bill can as easily be said within six weeks as within six months, and no advantage is to be gained by giving to the Select Committee a longer time in which to make its report."

The Hon'ble COLONEL HUTCHINSON said: "Although I have not yet read the Bill very carefully, I gather that it follows the lines of the recommendations of the Transport Committee of 1898 in regard to the arrangements for acquiring and collecting animals. Those recommendations have been well known for the last three years, and there is, therefore, no element of novelty in the present Bill that requires prolonged consideration afresh. If the Bill be circulated for opinions in the usual way, Commissioners can report quite easily within a month, and the Select Committee can then complete its report within the remaining two weeks."

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6 PUNJAB REGISTRATION OF TRANSPORT ANIMALS BILL
AND PUNJAB STEAM BOILERS AND PRIME MOVERS BILL.

[Mr. Tupper; Kanwar Sir Harnam Singh; His Honor [17TH JANUARY
the President; Mr. Wilson; Mr. Douie.]

The Hon'ble MR. TUPPER said: "I quite agree with the Hon'ble COLONEL HUTCHINSON that official opinion on the subject is already sufficiently formed to be able to express itself adequately within the time proposed by the Hon'ble Mover. But I also agree with the Hon'ble Sir HARNAM SINGH that non-official opinion is entitled to a sufficient opportunity for making itself heard. However, I find nothing in the motion now before the Council to indicate that this Bill will necessarily be passed into law at the end of six weeks; and I think I may venture to add the conjecture that if unexpected difficulty should arise—though I am hopeful that the Bill as it stands will not meet with any considerable opposition—the Government will not press it forward without allowing ample opportunity for all proper representations to be fully heard and considered. I would, therefore, suggest that the Hon'ble Sir HARNAM SINGH might withdraw his objection to the present motion."

The Hon'ble Kanwar Sir HARNAM SINGH said: "I see no necessity for withdrawing what I have said. It may at least be placed upon the records."

His Honor the President said: "I would point out that the instruction to the Select Committee to report within six weeks is only tentative. If strong adverse opinion should manifest itself in the meantime, it is possible that we may then wish to prolong the period. But I would also point out that this measure, like measures of taxation, is one in which we may expect the people most intimately concerned not to be altogether favourable to all its provisions, because it gives to the local authorities certain powers to interfere more or less with property. An appeal to public opinion in these circumstances is not necessarily called for. This Bill is one which we consider a measure of necessity, and it will in the end benefit the people most concerned in common with the general community. I very much question whether in a measure of such a nature it is desirable to descend to the individuals affected by it and invite their opinion, any more than it would be to invite the opinion of the people as regards taxes to be imposed upon them. Be that as it may, we have no intention of hastening the passing of this Bill if any necessity should arise for postponement; and I can assure my Hon'ble Friend that if it should appear that any body of adverse opinion desires an opportunity for expression, that opportunity will certainly not be withheld."

The motion was put and agreed to.

The Hon'ble MR. WILSON moved that the Bill—

- (1) be circulated for the purpose of eliciting opinion thereon; ✓
- (2) be published in the *Punjab Government Gazette* in English and Urdu.

The motions were put and agreed to.

PUNJAB STEAM BOILERS AND PRIME MOVERS BILL.

The Hon'ble MR. DOUIE moved for leave to introduce a Bill to provide for the inspection of steam boilers and prime movers attached thereto in the Punjab. He said: "In asking leave to introduce a Bill for the inspection of steam boilers and prime movers I do not propose to trouble the Council with many remarks. The Bill may be looked upon as a supplement of the Factories Act, rendered necessary by the growth of manufactures in this Province. It cannot be said to be a hasty piece of legislation, for the matter has been under consideration from time to time for the past ten years."

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PUNJAB STEAM BOILERS AND PRIME MOVERS BILL 7 AND PUNJAB LAW OF PRE-EMPTION BILL.

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[Mr. Douie; Mr. Tupper.]

"I do not think any Member of the Council will be prepared to dispute the advisability of a periodical inspection of steam boilers. It is true that accidents have been rare. But while that is a subject for congratulation, it would be foolish to assume that precautions are not required. A good many of the factories in the Punjab are in small country towns, some are in mere villages like Okara and Kot Rádha Kishn. The owners are ignorant of mechanics, and the boilers are often in charge of uncertificated native *mistris*.

"The Bill, when it becomes law, will only come into operation in any local area after the issue of a notification extending it to that area. It provides for the appointment of inspectors. Among the officers of the Locomotive Departments of the North-Western and other railways we have fortunately men admirably qualified for such appointments. Indeed, for years past the North-Western Railway has been willing to send out qualified engineers to inspect boilers in Government and private factories on payment of moderate fees. The boilers of the Murree Brewery Company, for example, used to be, and doubtless still are, inspected by officers of that railway.

"Provision is made for the grant of certificates to persons qualified to work as first class and second class engineers and as engine drivers. When the Bill has become law, and a notification under its fifth section has been issued, it will be illegal to use any boiler without a license from an inspector. No license will be given unless the boiler is in charge of a certificated engineer or, in the case of a boiler of not more than 20 horse power, of an engineer or engine driver, and unless the engine has been passed as safe after examination by the inspector himself, or has been certified as safe by a first class engineer in charge, whose certificate the inspector has been authorised by Government to accept. The license will show on the face of it the period for which it is to remain in force. Even within that period it may be suspended or revoked by a person authorised by Government in that behalf under certain circumstances, for example, when the boiler is injured, or is put in charge of an uncertificated person. An appeal is allowed against the refusal of an inspector to grant a license and against an order revoking or suspending a license, and, as the appellate authority, probably the District Magistrate, may not have a profound knowledge of machinery, he is authorised to call to his aid two competent assessors. The above, with the necessary penal clauses, are the main provisions of the Bill, which I now ask leave to introduce."

The motion was put and agreed to.

In moving to introduce the Bill and that it be published in the *Punjab Government Gazette* in English and Urdu, the Hon'ble MR. DOUIE said: "The Bill which I have laid before the Council is an almost exact copy of an Act which has been in force in the North-Western Provinces since 1899. Eighteen months ago all the Commissioners and Deputy Commissioners of the Cis-Indus Divisions were consulted as to the propriety of passing a similar law for the Punjab. With few exceptions the opinions recorded were in favour of legislation on the lines of the North-Western Provinces Act. It seems unnecessary in these circumstances to refer the Bill to a Select Committee. Any criticisms which its publication in the *Gazette* may elicit will, of course, be considered before it is again brought before the Council."

The motions were put and agreed to.

PUNJAB LAW OF PRE-EMPTION BILL.

The Hon'ble MR. TUPPER moved for leave to introduce a Bill to amend the law relating to pre-emption in force in the Punjab. He said: "It will be in the recollection of the Hon'ble Members of this Council that in the summer of 1898 a committee, comprising several of us who are here to-day, met at Simla to discuss the momentous question of the alienation of agricultural land in the Punjab. One result which followed upon the labours of

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that committee was the passing of the Punjab Alienation of Land Act on October 19, 1900. Although some of the proposals had been made at an earlier date, the history of the measure which I am about to ask leave to introduce may be said to begin with the proceedings of the same committee: and some measure of the present kind has become quite inevitable now that the much debated Alienation of Land Act has been passed.

"The committee of 1898 recommended that the order of priority in pre-emption cases, as laid down in section 12 of the Punjab Laws Act, be amended so as to exclude strangers who have bought into a village; and that the hearing of pre-emption cases be transferred from the civil courts to revenue officers. In substance, and as regards the agricultural community only, these recommendations are incorporated in the Bill. Although the whole of our pre-emption law is repealed by the Bill, so much as it is desired to retain is re-enacted; and the effect is that within the limits of towns and cities, and in respect of foreclosures, both within and without these limits, we leave the law as it is; while in respect of sales amongst the agricultural community we bring the law into harmony with the policy of the Alienation of Land Act and the actual provisions of that enactment.

"The necessity for harmonising different portions of the law is of itself, I conceive, a sufficient reason for introducing the Bill. But the Bill may be supported on other grounds which are independent alike of the policy and of the provisions of the Alienation of Land Act. The Council is aware that schemes, with which the well-known names of Sir WILLIAM RATTIGAN and MR. THORBURN are connected, have been framed for dealing with Punjab customary law. I am one of those who consider that the gradual enactment of particular sections or chapters of our customary law, when thoroughly ascertained by executive inquiries and a course of judicial decisions, is likely to prove an immense relief to the courts and a boon to the people. Were we to proceed by successive measures spread over a good many years, dealing with each topic as it became ripe for treatment, and not before, we should avoid the dangers which would beset an ambitious attempt to settle comprehensively and once for all a variety of matters closely affecting the social welfare and the cherished practices of the people. By such gradual procedure we should slowly free the law from many vexatious and impolitic uncertainties, and relieve the courts from the strain of local inquiries which, necessary as they now may be, are always onerous and often inconclusive in the particular case. I must be careful to say that the policy of such a gradual enactment of our customary law as I have described has not been finally accepted by Government; but those who would be disposed to advocate it may find a first instalment of the desired gain in the measure which is now proposed.

"Technicalities and small details apart, one effect of the Alienation of Land Act is that members of agricultural tribes cannot permanently alienate their lands without sanction, except to people of their own class or to fellow-villagers of other classes who have held land as such since the first regular settlement. The Punjab Laws Act, however, which contains the present law of pre-emption, enumerates the co-sharers and the landowners of the *patti* amongst the pre-emptors without reference to their tribes or the dates when they obtained a footing in the village community. At present, therefore, a *bania* who had become a landowner in a village only last year might, in virtue of his acquisition, succeed in a pre-emption suit, only to find the purchase disallowed by the Collector. The Bill remedies this conflict of laws, and refuses the right of pre-emption to those to whom freedom of purchase is refused by the Alienation of Land Act. In other respects also the law is amended so that, speaking generally, the order of priority in pre-emption will follow the order of proximity in agnatic kinship. This is the well-known custom of the country, and it was no doubt the intention of section 12 of the Punjab Laws Act to give effect to it. But that section fails of its purpose now, because the integrity of village brotherhoods, which it assumes,

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has so often been impaired by the alienation of village lands to outsiders. The Bill, following the intention and policy of Punjab authorities from the days of the Punjab Civil Code, seeks to make the exclusion of strangers from the village brotherhood effective under the changed conditions of the present time and at the instance of the persons primarily affected.

"The policy of the Alienation of Land Act is to arrest, as far as possible, the progress of that incipient agrarian revolution which has been the consequence—the unintended consequence—of the imposition of British laws and institutions upon a society in the tribal and village stage. From the first the able officers who controlled the administration of this Province were aware that the village brotherhoods must be protected against attack from without. There have been two barriers against the insidious tide of outside purchase which, like the ever-varying floods of our great rivers, has sometimes overspread whole villages, sometimes eaten away, little by little, all the fairest lands. As a rule we refused to allow sale of land in execution of decree; but that barrier failed us; and its place has now been taken by an Act of which the operation is one of the secrets of futurity. The other barrier was the law of pre-emption. That, too, has failed; and one object of this Bill is to repair the breach and make that breakwater a sound one. The policy of the Act and the Bill is one and the same; to keep the land in the hands of the old agricultural tribes—with the aid of the officers of Government under the Act, and under the Bill by the voluntary endeavours of the kinsmen of those who are forced to part with their patrimony.

"So far I have dealt with the policy of the Bill and certain changes in the substantive law. As regards procedure, we have departed somewhat from the recommendations of the committee of 1898 which are mentioned in the Statement of Objects and Reasons. Unquestionably the working of this measure, in so far as it is the complement of the Alienation of Land Act, should be entrusted to the revenue staff. In rural pre-emption cases usually one of the main points is what is the true market value of the land; and in the case of agricultural land that is clearly a question for a revenue officer, whose business it is to understand the value of such land for purposes of land revenue assessment. Another point will often be the validity of the claim to pre-emption; and that will probably turn on the degree, if any, of agnatic kinship which can be ascertained from the village settlement record,—a record prepared by revenue officers and left in their custody. Moreover, the policy of the two enactments, so far as they affect the peasantry, being identical, it seems only reasonable that they should, in cases where the peasantry are concerned, be administered by the same staff.

"So far, then, we are in entire accord with the committee of 1898. The difference is one of purely technical detail. They suggested, and we have rejected, the procedure prescribed by the Land Revenue Act for partition cases. I believe, however, that it is now generally accepted that the partition procedure is a blot on that Act which ought to be erased on the first opportunity. We have also taken care that difficult questions, involving substantive rights rather than mere matters of land valuation, shall be heard by the revenue staff as revenue courts, not merely as revenue officers. The proceedings of the revenue staff, whether they act as revenue officers or as revenue courts, will be subject to appeal, review and revision as provided in the Land Revenue and Tenancy Acts for cases falling under those enactments.

"We have left foreclosures of mortgage to the civil courts and the unchanged law, because we anticipate that, in respect of agricultural land and amongst the classes which it is the design of the Alienation of Land Act and of this Bill to protect, foreclosures will now cease. The Alienation of Land Act, for the protected classes mortgaging their lands to members of the unprotected classes,

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abolishes foreclosures absolutely ; and as regards existing mortgages, conditional sales have been made inoperative as such, and sales in execution of decree of land belonging to members of agricultural tribes have been forbidden. With the residue of foreclosures unaffected by these provisions we do not think we need much concern ourselves.

"It is no part of the policy of the Alienation of Land Act or of the Bill to interfere in any way with urban communities. The pre-emption law of cities, usually based on local contiguity, differs from the pre-emption law of villages customarily based on agnatic kinship. None of the reasons which justify the legislation of October 1900 are applicable when we pass from the villages to the towns. The Government, therefore, has not, in pursuance of its policy, proposed any change in what I may call urban pre-emption. But speaking merely for myself as Member in charge of the Bill, I wish to say that I believe the present law has been found to be in several points defective even in the case of urban pre-emption ; and I do not wish that the mere fact of our leaving it unchanged in the Bill should preclude proposals for its improvement. The main motive of the Bill is one of revenue policy, but if we can combine with this some ameliorations of the law to be administered in towns by civil courts, it is my personal opinion that we should not miss the opportunity. Whether in this branch of the law there are defects of sufficient importance to call for a present remedy is a question which will be solved by the call proposed to be made for opinions on the present Bill.

"With these remarks I beg to move for leave to introduce this Bill to amend the law relating to pre-emption in force in the Punjab."

The motion was put and agreed to.

The Hon'ble MR. TUPPER introduced the Bill.

The Hon'ble MR. TUPPER moved that the Bill be referred to a Select Committee consisting of the Hon'ble Kanwar Sir HARNAM SINGH, the Hon'ble MR. J. WILSON, the Hon'ble MR. R. CLARKE and the Mover.

The motion was put and agreed to.

The Hon'ble MR. TUPPER moved that the Bill—

- (1) be circulated for the purpose of eliciting opinion thereon ;
- (2) be published in the *Punjab Government Gazette* in English and Urdu.

The motions were put and agreed to.

ADJOURNMENT.

The Council adjourned *sine die*.

LAHORE :

H. A. B. RATTIGAN,

The 17th January 1902. } *Secretary to the Legislative Council of the Punjab.*

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts 1851 and 1892 (24 and 25 Vict.), Cap. 67, and 55 and 55 Vict., Cap. 14).

THE Council met at the Council Chamber, Government House, Lahore, on Friday, the 28th February 1902.

PRESENT :

His Honor Sir WILLIAM MACKWORTH YOUNG, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Mr. C. L. TUPPER, C.S.I., I.C.S.

The Hon'ble Mr. J. MCC. DOUIE, I.C.S.

The Hon'ble Sir Nawáb IMAM BAKHSH KHAN, K.C.I.E.

The Hon'ble Colonel J. B. HUTCHINSON.

The Hon'ble Mr. J. WILSON, C.S.I., I.C.S.

The Hon'ble Mr. R. CLARKE, I.C.S.

The Hon'ble Rái Bahádúr MADAN GOPAL, M.A.

NEW MEMBERS.

The Hon'ble Rái Bahádúr MADAN GOPAL took his seat in Council.

PUNJAB REGISTRATION OF TRANSPORT ANIMALS BILL.

The Hon'ble MR. WILSON moved that an extension of time for the presentation of their report be allowed to the Select Committee on the Bill to provide for the periodical enumeration and registration of animals in the Punjab fit or ordinarily used, for the purposes of military transport, and for the compulsory acquisition of such animals in time of war, and for impressment of the same for hire for purposes of military transport at any time. He said: "At the last meeting of Council the Select Committee on the Punjab Registration of Transport Animals Bill were instructed to report within six weeks. That term has now expired. We have received and considered a number of valuable opinions, but we do not find ourselves yet in a position to submit our final report. I have therefore to move that an extension of time for the presentation of their report be allowed till the next meeting of Council to the Select Committee on the Bill."

The Hon'ble MR. TUPPER said: "The request of the Hon'ble Member in charge of the Bill has my full concurrence. In saying this I wish also to make it clear that I in no way depart from the opinion I expressed at the last meeting of this Council, namely, that it is both wise and just to take power by legislation to enumerate animals fit for transport and to compulsorily purchase or hire them in case of need for military purposes. That, I take it, is the main principle of the Bill, and to that principle I adhere. But this is a matter in which, if we have regard, as we are bound to do, to the effect of the measure on the owners of transport animals, methods and details are of hardly less consequence than principles. Here I must admit that on the perusal of the official opinions which came before me the Bill was, in my humble opinion, shown to need very considerable amendment. I may mention in particular one very valuable paper contributed to the discussion by Mr. Alexander Anderson, the Commissioner of the Jullundur Division. A perusal of that paper alone was sufficient to convince me that there was probably more work before the Select Committee than they could reasonably be expected to get through in the time allowed; and

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AND PUNJAB STEAM BOILERS AND PRIME MOVERS BILL.

[Mr. Tupper ; Mr. Douie] [28TH FEBRUARY]

that it was not at all unlikely that the Select Committee would amend the Bill to such an extent as to make its further publication desirable. Of course I am not able to say whether such publication is necessary or not till I have had an opportunity of perusing the amended Bill.

"I would add that I do not, by any means, regret the turn which events have taken. I anticipated that six weeks would suffice for an expression of official opinion, and that has proved to be the case. If the passage of the Bill through Council cannot be as rapid as may have been hoped, still I, for one, am not aware of any strong reason of public importance for passing this measure in any haste. On the contrary it so materially affects the property and interests of the owners of transport animals that I welcome the opportunity, which is now afforded, of the treatment of the subject in a very deliberate way."

The motion was put and agreed to

PUNJAB STEAM BOILERS AND PRIME MOVERS BILL.

The Hon'ble MR. DOUIE moved that the Bill to provide for the inspection of Steam Boilers and Prime Movers attached thereto in the Punjab be passed. He said : "The modest Bill which I had the honor of laying before the Council at its meeting on 17th January was published in three successive issues of the English and Urdu Editions of the *Punjab Gazette*.

"The scanty criticisms which have been passed in the Press do not touch the provisions of the Bill but the manner of working them when it becomes law. Advice, the value of which can be weighed at leisure, has been given to Government as to the quarter to which it should look in choosing Inspectors. The *Civil and Military Gazette* has suggested that the Punjab Government should imitate the prudence shown by the Government of the North-Western Provinces where 'the unwisdom of harassing petty village industries by a system of boiler inspection borrowed from the great English manufacturing cities is recognized.' It is suggested that 'in the Punjab there can at any rate be no useful scope for the Bill outside the three cities of Lahore, Amritsar, and Delhi. Big firms,' it is said, 'are as a rule inclined to welcome boiler inspection by an expert officer as a safeguard, but a mufassil mill, whose whole driving machinery consists of an antiquated donkey-engine, is so feeble a spark that the official breath, however well intentioned, is more likely to blow it out than to fan it into a flame.'

"In working section 1 (2), which provides that the Act 'shall extend to such local areas in the Punjab and from such date or dates as the Local Government may from time to time by notification in the Gazette direct,' the Government will, I do not doubt, be fully alive to the impolicy of fussy interference with trade. But it cannot be assumed off hand that the proposed legislation is only required for the large towns. There are large factories outside these towns. The Egerton Woollen Mills, for example, which is one of the most important factories in the Province, are on the outskirts of the petty village of Dháriwāl, and it would be dangerous to assume that the necessity of inspection is confined to mills in which the machinery is good and powerful. In such places the men in charge usually understand the forces with which they are dealing and the need of caution. A toy cannon in the hands of an ignorant school boy may be more dangerous to the person who uses it and to those beside him than a naval gun in the hands of a master gunner. It is worth while in this connection to note that attention was first directed to the need for legislation in the Punjab by the occurrence of an accident not in Lahore, or Amritsar, or Delhi, but in the small country town of Chunián. I believe several lives were lost on that occasion. With these remarks I beg to move that the Bill to provide for the inspection of Steam Boilers and Prime Movers attached thereto in the Punjab be passed."

The motion was put and agreed to.

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[*His Honor the President.*]

His Honor the PRESIDENT said: "Gentlemen,—As this is the last meeting of the Council held under my Presidentship, I take the opportunity of saying a few words by way of farewell. The Council has been in existence for about 4½ years, during which time it has passed some measures of no small importance. The first of these, the Punjab Riverain Boundaries Act, was designed to put an end to the confusion resulting from the shifting of the boundaries of riverain estates owing to the working of the deep stream rule in all its developments, an annually recurring source of unsettlement and strife. The machinery of the Act, which facilitates the substitution of a fixed boundary in such cases, has been already applied to the estates of eight districts, on the Jhelum, the Chenab, the Beas and the Sutlej, and though I have not yet seen any account of operations completed under its provisions, I have no doubt that the result will be that which was anticipated, and that the change from uncertainty to fixity will be made on every river of the Province wherever fixed boundaries are not already laid down.

"The next measure of importance is the Land Preservation or Chos Act for facilitating the reboisement of the Siwálík Range and thus checking the devastation of some of the most fertile tracts in the Province by the action of the chos. This measure, like the first I have mentioned, had been advocated and discussed for a whole generation without any practical result, and we have now the necessary machinery for dealing with an extensive evil, which will, I trust, be fully utilised.

"Of still greater importance to the well-being of the Province is the Act which has for its object the preservation, in face of the disintegrating process of law and custom, of the great families of the Punjab aristocracy, by facilitating the application of the rule of primogeniture to the large perpetual jágírs in the Province. From the time of Lord Canning the desirability of this measure had been recognised, but the legal obstacles to its execution had prevailed in most cases, and the means of overcoming these obstacles have now been provided. Already several of the leading families have passed from a position of danger into one of safety, and as the acceptance of the rule of primogeniture is a final act, admitting of no retrogression, the effect of our measure will be cumulative, and its benefits far reaching.

"The last important Act passed is the Sind-Ságar Doáb Colonization Act, to facilitate the acquisition of large tracts of waste by the State and thus place the Government in the position of being able to utilize the waters of the Indus in a vast canal, taking out from Kálabágh and traversing the country to the east of the river. The utility of this measure is summed up by saying that without it no Indus Canal seems practicable; with it, it is at all events possible—and I would fain believe, capable of achievement.

"Now these four measures, each of them, I venture to think, in the highest degree conducive to the welfare of the people of the Punjab, have passed this Council, during the first four years of its existence. I do not say that we should have had none of them if there had been no Local Legislature, but I am convinced that they have been greatly facilitated by its constitution, and I think they may be taken as an earnest of the benefit that will result in future years from its labours. Other measures of scarcely less importance are now under consideration, of which I may particularize the Registration of Transport Animals Bill and the Minor Canals Bill. The first of these is a measure I should have been glad to see passed during my term of office, for I regard it as one which will confer an inestimable boon on the owners of carriage throughout the Province, by regularizing and systematizing the State's requisitions in times of military preparation, and mitigating the hardships resulting from such requisitions. But time has not permitted of this, and I must commit my interest in it to those who will continue to sit at this Council Board. The Minor Canals Bill also is a measure for which I desire to enlist your tender regards. Since the year 1890 I have with the exception of two periods of absence from the Province striven to promote the passing of this Bill, but I regret to say that I have not

even succeeded in getting it introduced, and after several revisions it has now to be again recast before that stage can be reached. The measure is needed, and will, I trust, be passed in time.

"A few words will perhaps not be out of place, with reference to the important measure which, with my full consent, was taken out of the hands of this Council and passed by the Imperial Legislature. I allude to the Alienation of Land Act. It will be many years before a competent verdict can be passed on the effects of this measure, meanwhile it is fortunate for the Province that its working will be controlled by its author and ablest exponent, Sir Charles Rivaz, and supervised by my Hon'ble Friend MR. TUPPER. If experience points to amendments in the law as now framed, none will be so well qualified as they to determine their precise nature, and none more careful to watch its working, or more willing to adjust their views in accordance with experience gained. The sequel to this Act, in the shape of the Pre-emption Bill, has already been introduced into the Local Council, and will doubtless be placed on the Statute book during the current year.

"In the course of some remarks which I had the honour to make at the first meeting of this Council I alluded to the fact that the right of interpellation had not been conferred from its inception, and, as you are aware, the privilege is still in abeyance. I affirmed then the wisdom of this decision, and I do so again. But I feel that my natural inclination would be in favour of its being conceded. The strength of an administration lies in its being right and the opposition wrong, not in ignoring or suppressing opposition. And honestly, I think, I prefer being dissected to being swallowed whole. I shall hope for the time when the Punjab will possess the privilege. It is more fit for it than it was five years ago. And if we are to judge of the intelligence and good feeling of the community by the productions of the Native Press, I have no hesitation in saying that both have improved. Still there is much to be desired, and the standard of press criticism is not one which I should be willing to see introduced into our debates. And though I do not assert that there is any necessary connection between press criticism and interpellations in Council, I think experience shows that the former is to some extent an index of the latter, as it is also, to a considerable extent, of the feeling of the educated community: There is nothing more important in the political life of a Province, nothing which I more earnestly desire to see growing in the Punjab, than a sound healthy strong public opinion, if only it be genuine. I could wish that there were in the Punjab a wider field for the selection of non-official members for the Local Legislature. The number of persons fully qualified for this important duty is extremely limited, and the choice too restricted. That is a defect which time will cure. The larger the choice the stronger will be our counsels. One method of adding weight to the deliberations was, I regret to say, ruled impossible when I put it forward. I have not been permitted to submit the name of a Judge of the Chief Court for a seat on the Council. I think there is no good reason for the exclusion, and I trust it may be reconsidered. I am sure that such an addition to the Council Board would indicate a great accession of strength and would tend to the elimination rather than the introduction of any possible element of friction.

"In conclusion, Gentlemen, I beg to tender you, and others who have sat upon this Council, my acknowledgments for excellent work done in the course of its deliberations, and to express my sense of the honour which I have enjoyed in having had the privilege of presiding over it for the first period of its existence."

The Hon'ble MR. TUPPER said: "As you, Sir, have observed, this is the last occasion on which this Council will meet under your Presidentship, and I think that I shall express the sense of the Council if, as the Senior Member of that body now present, I say that we reciprocate your kind expressions of farewell. You, Sir, have presided over the first meetings of

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[Mr. Tupper ; Mr. Madan Gopal.]

this Council, as it was constituted simultaneously with your assumption of office. You have reviewed the principal measures which have been passed since the work of the Council began; and I think we may fairly claim that the amount of work done has been good; though on such a point you, Sir, as Lieutenant-Governor, are in a better position to speak than any one of ourselves. As to the measures you have mentioned, I may say that the Riverain Boundaries Act is in full operation, and that judging from some of the work under that enactment which has come up to me I feel confident that the results will prove most beneficial to the inhabitants of villages bordering on our great rivers. The supervision of the work under this Act is in the able hands of my Hon'ble Friend MR. WILSON, and I regard this as a guarantee that the application of the Act will be successful. In the case of the Hoshiarpur Chos Act I am glad to state that we shall be able to find lands on one of the extensions of the Chenab Canal for a good many of the Gujars and others whose grazing privileges in the Lower Siwálíks will be inevitably restricted as the Act comes to be applied. The present position with reference to the Descent of Jágírs Act is one of much interest. I have received, but not yet submitted to Government, a good many more applications either for the declaration or for the acceptance of the rule of primogeniture; and recent orders will enable us to hold out to jágírdárs an important inducement to accept the rule where it is not already applicable to their families. I am hopeful, therefore, that this Act also will bear good fruit in time. The operation of the Sind-Ságar Colonization Act necessarily belongs to a distant future; but I may perhaps mention that during the course of my recent tour a rumour reached me—I have not yet tested it and cannot say what it is worth—that the prospects of making a big canal in the Thal are not really so bad as they were last year supposed to be. I can only hope this rumour is true; and if it is, no doubt the cloud of gloom which hung over the debate in Council when this Act was passed will be somewhat broken, if not entirely dissipated. So far, then, as practical experience can yet have been gained of the application of the Acts of this Council they seem to be working well. More than this it is not for us to say of the quality of the products of our labours; of that the Government of India, the public of the present generation, and in some instances posterity itself must be the judges.

"As regards the future we shall lay to heart the advice which you have given us and spare no efforts to make the Registration of Transport Animals Bill and the Minor Canals Bill at least as effective as other measures which have been passed in this Council.

"On the other matters appertaining to the future on which you, Sir, have remarked it is hardly fitting that I, in attempting to represent the unanimous sense of the Council, should offer any comment. What does concern us all is to acknowledge the cordial help you have always afforded us in our labours and the uniform courtesy and consideration which you have extended to all of us both individually and as a body. Sir, we say these few words of farewell with regret; and heartily unite in wishing you a prosperous and happy future and congenial fields elsewhere for the exercise of those qualities which we recognise with admiration and respect."

The Hon'ble MR. MADAN GOPAL said: "I should like to be allowed to say that I heartily endorse the sentiments expressed by the Hon'ble MR. TUPPER on behalf of this Council in bidding farewell to His Honor the PRESIDENT, and I do so more particularly on behalf of the Native Members, in recognition of the conciliatory way in which the Government has always received suggestions and criticisms from us."

ADJOURNMENT.

The Council adjourned *sine die*.

LAHORE :

H. A. B. RATTIGAN,

The 28th February 1902. } Secretary to the Legislative Council of the Punjab.

Remarks

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at the Council Chamber, Government House, Lahore, on Monday, the 10th November 1902.

PRESENT :

His Honour Sir CHARLES MONTGOMERY RIVAZ, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Nawáb Sir IMAM BAKHSH KHAN, K.C.I.E.

The Hon'ble Kanwar Sir HARNAME SINGH, K.C.I.E.

The Hon'ble Mr. D. P. MASSON, C.I.E.

The Hon'ble Colonel J. B. HUTCHINSON.

The Hon'ble Mr. J. WILSON, C.S.I., M.A., I.C.S.

The Hon'ble Rái Bahádúr MADAN GOPAL, M.A. Bar-at-Law.

The Hon'ble Mr. C. L. TUPPER, C.S.I., I.C.S.

The Hon'ble Mr. ALEXANDER ANDERSON, C.I.E., I.C.S.

NEW MEMBERS.

The Hon'ble MR. C. L. TUPPER and the Hon'ble MR. ALEXANDER ANDERSON took their seats in Council.

ADDRESS BY THE PRESIDENT.

His Honour the President addressed the Council. He said: "As this is the first occasion on which I have had the honour of presiding over a meeting of this Council, I wish to say a few words before we pass to the business of the day. I see that Sir Mackworth Young, in the farewell remarks which he made when the Council last met, enumerated a substantial list of important enactments which had been passed by our Local Legislature during the first four years of its existence, and I find that several further measures of utility and interest are at present in progress or under preparation. I trust that my tenure of office will be characterized by a satisfactory outturn of sound and solid, but unostentatious and unsensational legislation, and that in dealing with our business we shall proceed with careful and cautious deliberation. And as regards Bills introduced on behalf of Government, I give an assurance on the part of myself and my official colleagues that we shall always be ready to welcome and give our best consideration to the opinions and suggestions which we may receive in respect of them."

PUNJAB MILITARY TRANSPORT ANIMALS BILL.

The Hon'ble MR. WILSON presented the Report of the Select Committee on the Bill to provide for the periodical enumeration and registration of animals in the Punjab fit or ordinarily used for the purposes of military transport, and for the compulsory acquisition of such animals in time of war, and for impressment of the same for hire for purposes of military transport at any time. He

[Mr. Wilson.]

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said: "I have to present the Report of the Select Committee on the Punjab Military Transport Animals Bill, together with the Bill as amended by us. The late MR. CLARKE, whose death is a grievous loss to this Council, as well as to the Punjab generally and to his many friends, was a Member of this Committee and took part in our deliberations: and practically the whole of the amendments we suggest had his approval. We had the advantage of the criticisms on the Bill as originally presented of a number of experienced Revenue Officers and others, and have adopted many of their suggestions. The changes we propose are shown in the Bill itself in thick type, and are mentioned in detail in our Report, and I need only make a few remarks regarding the most important of the amendments.

"The Bill applies only to animals required for the purposes of military transport, and we have altered the definition of the word "animal" in clause 2 so as to exempt from its operation those bullocks which are accustomed only to draw the plough or to work the Persian-wheel and are not trained to carry loads or to draw carts, as such bullocks would be of little use for the purposes of military transport and are required for carrying on the agriculture of the country. On the other hand we have inserted the word "town" in clause 13 so as to make clearer what was the original intention of the Bill, *vis.*, that all owners of transport animals in the Punjab, whether residing in town or country, should be liable to share the burden of furnishing transport for the military operations on which their security ultimately depends.

"We have provided in clause 3 that the Transport Registration Officer, who will ordinarily be a Military Officer, shall work under the control of the Collector. His duties as such will be confined to the registration of fit animals, and to the valuation and branding of such animals as the owners may agree to have branded and valued under Section 10. The effect of such branding, as I explained in my remarks when introducing the Bill, will be that should Government at any time desire to secure the services of a branded animal for military purposes it will not be able to impress it for hire, but may, if it thinks fit, acquire it by purchase at the price previously agreed upon between its owner and the Registration Officer. Meanwhile the owner will be left free to transfer the branded animal as he pleases, but we have provided in clause 10 (3) that an animal once valued and branded with its owner's consent can be acquired on the terms so agreed upon from any person into whose possession it may subsequently have passed.

"Besides maintaining a register of branded animals, the Registration Officer is given powers to make a register of all other animals fit for military transport, and no doubt arrangements will be made to gradually compile such a register in time of peace, so that when war threatens and transport has to be hurriedly collected, the officers of Government will know where the necessary animals are to be found and will be able to distribute the demand fairly and equitably over the owners of such animals.

"We have amended clause 13 and other clauses so as to leave the actual work of collection, acquisition and impressment of animals to be carried out by "any person authorised by the Local Government in this behalf." We understand that the necessary authority will usually be given to the Collector and his Assistants, including Tahsildars and Naib Tahsildars, so that these powers will be exercised by those officers who have been in the habit of exercising similar powers and who know, and are known to, the people. An important change made in clause 13 throws the responsibility of selecting the actual animals to be acquired on the person specially authorised, *i. e.*, as a general rule, the Collector, instead of on the village headman, as was proposed in the Bill as originally drafted; and makes the owner of the animal selected himself responsible for producing it on due notice given. The village headman will of course be bound to aid

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the authorities in the matter, but the real responsibility for the selection and for enforcing the production of the animals will rest with the officer specially empowered.

"I now come to the most important clause of the Bill, clause 25, which legalizes impressment for hire for purposes of military transport, whether in time of war or peace. The need for conferring the power of impressment on the Executive Government was explained in my remarks when introducing the Bill, and is acknowledged on all hands. It is incumbent on us, however, to restrict this power to what is absolutely necessary and to guard against the abuses to which past experience shows it is apt to give rise. One of the chief causes of injustice has been that, owing to the want of clear legal authority, it has been impossible to distribute the demand for transport equitably over the owners of animals, so that one man was compelled to bear more than his due share of the common burden, while another escaped it altogether. Under the powers conferred upon it by this Bill, the Local Government will be able to distribute the demand fairly over all who ought to share in bearing it. But perhaps the most serious hardship arose from the practice of taking animals impressed for hire across the Frontier into enemies' country, where the owners could not properly look after them, and where the chances of injury and loss were great. To obviate this cause of hardship we have inserted in this clause sub-clause (iii), which provides that whenever any animal impressed for hire is taken across the Frontier, the owner, unless he consents to its continuing to be on hire, shall be entitled to demand its price from the Government plus 15 per cent. extra, and in order that there may be no delay in determining the price, we have provided in sub-clause (ii) that when animals are being impressed for hire for the use of troops proceeding on active service, their value shall be fixed by a Committee appointed to inspect them at the time of impressment. Under this provision therefore impressment for hire will hold only within the limits of India. All transport taken beyond the Frontier will either be owned by Government or taken on hire with the consent of the owner. It will, I think, be recognized that this limitation of the power of impressment will of itself go far to remedy the abuses to which it has hitherto been liable and to lessen the hardships it has caused. All that is now asked of the owners of animals is that they will aid in the movements of troops by giving their animals for hire on liberal terms to be fixed by Government within the limits of their own country, and by selling them to Government at a fair valuation for use beyond the Border.

"I propose at a future meeting of Council to move that this Bill be taken into consideration and passed."

PUNJAB LAW OF PRE-EMPTION BILL.

The Hon'ble MR. TUPPER moved that the Hon'ble MR. ALEXANDER ANDERSON and the Hon'ble MR. MADAN GOPAL be added to the Select Committee appointed to consider the Bill to amend the law relating to pre-emption in the Punjab. He said: "I wish to endorse all that has been said by my Hon'ble Friend, MR. WILSON, regarding the great loss which we have sustained owing to the death of MR. ROBERT CLARKE, who was a Member of the Select Committee to whom this Bill was referred for consideration. It is to fill the vacancy thus caused that I move that my Hon'ble Friend, MR. ALEXANDER ANDERSON, be appointed a Member of that Committee, and further, as the Bill is one of importance and as we have received a large number of opinions and criticisms which must be carefully considered, I am of opinion that the case is one in which it is most desirable that we should have the aid of a member of the legal profession. It is specially for this reason that I have proposed to add the name of my Hon'ble Friend, MR. MADAN GOPAL, to the list of the Select Committee."

The motion was put and agreed to.

[Mr. Tupper.]

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PUNJAB COURT OF WARDS BILL.

The Hon'ble MR. TUPPER moved for leave to introduce a Bill to consolidate and amend the law relating to the Court of Wards in the Punjab. He said :

" I beg to ask for leave to introduce a Bill to consolidate and amend the law relating to the Court of Wards in the Punjab. If leave be granted I do not think that this Council will be exposed to any charge in this behalf of hasty legislation. The draft before us, bearing date March 20, 1902, is numbered as the fifth draft of the measure, but is in fact the sixth draft, as a draft which was prepared and circulated under the orders of His Honour the President of this Council when Financial Commissioner is not reckoned in this enumeration. The present draft since March last has been amended in one small particular under instructions from the Government of India. The various drafts have been devised or considered or amended by four Financial Commissioners, His Honour SIR CHARLES RIVAZ, MR. THORBURN, the late MR. ROBERT CLARKE, and myself, and by two Legal Remembrancers, MR. E. W. PARKER and MR. H. A. B. RATTIGAN. The final amendment has been made by another Legal Remembrancer, MR. S. M. ROBINSON, under my directions. After consideration by the Local Government drafts were submitted to the Government of India on no less than three occasions ; and on each occasion the Government of India replied with criticism and advice or instructions. On the last occasion the Government of India approved generally of the Bill and sanctioned its introduction in this Council. In 1897 at a stage of the Bill when, following the model of the United Provinces Bill then under consideration, it already contained one important alteration in the law—namely, the substitution of the Financial Commissioner as Court of Wards for the Province for Deputy Commissioners as Courts of Wards for the several districts—selected officers were consulted by the Financial Commissioner. MR. THORBURN again consulted such officers after revising the Bill. Under instructions from the Local Government SIR CHARLES RIVAZ as Financial Commissioner also consulted selected officers on a still more important question of principle arising out of the Bill,—whether the Court of Wards should be empowered to compulsorily assume control of the estates of spendthrifts. The opinions, which were almost unanimous in favour of taking this power, were submitted by MR. THORBURN in March 1898. I may state generally that the deliberations which have culminated in this Bill began in 1895 and that the Bill in one shape or another has been more than five years under discussion. It will, I think, be admitted that this project of law is not laid before the Council without due consideration.

" I propose to briefly recount the further history of the measure up to date and to notice rather more fully than I have just done the principal changes which it is intended to make in the existing law.

" In 1895 the Government of India had under consideration the question of the indebtedness of the agricultural population. They divided the question into two main parts,—first, the indebtedness of cultivators of the soil, and secondly, the indebtedness of the class of large proprietors. So far as this Province is concerned the result of these deliberations on the first question is embodied in the Punjab Alienation of Land Act, 1900. The second question was taken up in connection with the law relating to Courts of Wards in the several Provinces. In the forefront of the discussion the Government of India placed the inquiry whether, when an owner, who is under no legal disability, is mismanaging his estate, Government should have power to place it under the management of the Court of Wards without his consent. In reply SIR DENNIS FITZPATRICK gave the opinion that where there are special political reasons calling for interference, as, for instance, where the holder of the estate belongs to some family or tribe the position and influence of which

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it is desirable to maintain, such power ought to be conferred. The answer of the Government of India practically threw upon the Local Government the burden of proving that the circumstances of the Punjab justify the acceptance of this view so far as this Province is concerned. At the same time the Government of India suggested that a separate Act should be passed for the regulation of the Punjab Court of Wards, such as exists in Bengal, Assam, Madras, Ajmer and the Central Provinces, and was then, as already mentioned, under consideration for the United Provinces. They forwarded the United Provinces Bill and their orders upon it. Accordingly the Financial Commissioner, then SIR CHARLES RIVAZ, was requested, under date June 25, 1897, to prepare and submit a Court of Wards Bill to take the place of Sections 34 to 38 of the Punjab Laws Act. It was in August of the same year that he was asked to obtain selected opinions on the principle of the compulsory spendthrift clause.

"Such is the origin of the present measure. As I have mentioned, in the draft then circulated to selected officers, the Financial Commissioner was constituted Court of Wards for the Province. In a revised draft submitted to Government by MR. THORBURN in September 1898, the Punjab practice was restored and a Court of Wards established for each district. This arrangement was supported by the Local Government, but negatived by the Government of India on the grounds of experience in other Provinces and the inexpediency of a departure from the fundamental principle of laws in force elsewhere which vested the attributes of the Court of Wards in the controlling revenue authority of the Province. It was added that Commissioners and Deputy Commissioners should receive delegated powers.

"On the important question of the spendthrift clause the Government of India now finally agreed with the Lieutenant-Governor that a provision dispensing with the consent of the landholder would be of the utmost value in the Punjab. As the clause stands in the present draft of the Bill it empowers the Local Government to make an order directing the property of a landholder to be placed under the superintendence of the Court of Wards when it holds him to be incapable of managing or unfitted to manage his affairs owing to his having been convicted of a non-bailable offence and to his vicious habits or bad character, or owing to his having entered upon a wasteful course of extravagance likely to dissipate his property; but this power is subject to the all-important proviso that no such order shall be made on these grounds unless the landholder belongs to a family of political or social importance and the Local Government is satisfied that it is desirable, on grounds of public policy or general interest, that such an order should be made. The late Lieutenant-Governor, SIR MACKWORTH YOUNG, in a letter dated November 1, 1900, undertook during the progress of the Bill to pay special regard to any decided expression of opinion on the part of the landed classes with reference to these provisions. I may be permitted to add that in my opinion a compulsory spendthrift clause is much wanted in the Punjab where we still need leaders of the people, but an aristocracy evolved under conditions of chronic warfare and sometimes of anarchy inevitably tends to decadence in times of settled Government and internal peace.

"When agreeing in June 1899 to a compulsory spendthrift clause the Government of India suggested that regard should be had to the fortunes of the United Provinces Bill. This suggestion was acted upon, and it was arranged that the completion of our Bill should await the final settlement of the Bill then pending in the United Provinces.

"That Bill was passed into law as Act III of 1899 and received the assent of the Governor-General on January 3, 1900. Our Bill may be described as a version of the United Provinces Act adapted to the circumstances of the Punjab.

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"The law heretofore in force in the Punjab, though not unjustly described as rudimentary, has, with certain very important exceptions to be noted presently, in my opinion worked well. I propose to deal with the altered situation in a conservative spirit and in applying the proposed law, if enacted, to make as few changes as possible in existing arrangements. I invite attention to clause 4 of the Bill which provides that the Court of Wards may exercise its powers either direct or through the Commissioner or Deputy Commissioner or other appointed persons, and may, with the sanction of the Local Government, delegate its powers. These provisions are a satisfactory safeguard against overcentralisation, an evil which, as Financial Commissioner and therefore Court of Wards, I shall do my best to avoid.

"The chief defect in the existing law is that it does not give the Court of Wards adequate powers of assuming the management in cases where it is politically expedient to save families of high standing from ruin and disgrace. Not only is compulsion disallowed even in cases of wasteful extravagance, but where the landholder himself is anxious to avail himself of the aid of the Court we are compelled to resort to what is often an inconvenient and humiliating fiction by declaring him on his own application unfitted to manage his estate. All this is remedied by the Bill. It contains, in addition to the spendthrift clause which I have already described, clause 5 (1), which enables the Local Government, if it considers it expedient in the public interests so to do, to order the property of a landholder, on his application, to be placed under the superintendence of the Court of Wards; but it will no longer be necessary for the applicant to confess that he is unfitted to manage his affairs or for the Local Government to declare that he is so. I think this will tend to save the honour and good name of men of good family who have become involved in debt perhaps by no fault of their own.

"Another defect in the law is that while efforts are being made by the Court of Wards to extricate an estate from pecuniary entanglements it is not practicable to prevent a ward, whose only disability is that he has been declared unfitted to manage his estate, from incurring fresh debts and thus stultifying the action taken for his deliverance. This defect is removed by clauses 15 and 16, which impose the needful disabilities on wards of all classes while under the superintendence of the Court and continue certain disabilities in the cases where this is deemed necessary after the superintendence has ceased.

"The present law is also extremely unsatisfactory on the subject of joint properties. It is not lawful at present for the Court to take charge of an estate, in which more persons than one have a joint undivided interest, unless all such persons are so circumstanced as to be subject to the Court of Wards. And similar difficulties arise in the release of estates. Where several brothers have come under the Court as minors and one attains his majority it is probably unlawful for the Court of Wards as such to retain the management of any part of the estate. The absurd consequences which might ensue have usually been avoided in practice by various expedients and notably by recourse to the Guardians and Wards Act, VIII of 1890; but the subject has now been dealt with in clauses 8 and 47 in a manner which I hope will be generally approved.

"The only other clause I need specially notice is clause 46. When a ward dies or ceases to be under legal incapacity and his property is still encumbered with debts, the Court of Wards may, under this clause, with the previous sanction of Government, keep the property under its superintendence until the debts are discharged. This is a new provision and to my mind a most valuable one. It is exactly what is required to enable the Court of Wards to raise loans in the open market in order to consolidate the liabilities of indebted estates and arrange a reduction of interest. The credit of the Court obviously depends upon the duration of its superintendence until the loan is repaid.

PUNJAB COURT OF WARDS BILL, THE DELHI DARBAR BILL. 7

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"I think I have said enough to show that in certain points legislation is much needed. For the rest I hope the Bill as a consolidating measure of a comprehensive kind founded on the latest epitome of extra-provincial experience as contained in the United Provinces Act will prove a serviceable implement of administration.

"Under the rules of business it will be published in the Gazette with the Statement of Objects and Reasons. It is intended to circulate the Bill anew for the opinions of selected officers.

"With these remarks I beg for leave to introduce the Bill."

The motion was put and agreed to. The Hon'ble MR. TUPPER introduced the Bill and moved that it be referred to a Select Committee consisting of the Hon'ble MR. ALEXANDER ANDERSON, the Hon'ble MR. MADAN GOPAL, the Hon'ble COLONEL J. B. HUTCHINSON and the Mover. The motion was put and agreed to.

The Hon'ble MR. TUPPER moved that the Bill be published in the Punjab Gazette in English and Urdu.

The motion was put and agreed to.

THE DELHI DARBAR BILL.

The Hon'ble MR. ALEXANDER ANDERSON moved for leave to introduce a Bill to make special and temporary provision for the administration of the area occupied by or adjacent to the various Camps at the Coronation Darbár to be held at Delhi. He said: "I have to ask permission to introduce a Bill to provide for the administration of the area occupied by and adjacent to the various Camps at the Coronation Darbár to be held at Delhi."

"In a few weeks the whole country for miles round Delhi will be converted into a huge city and cantonment, and it is necessary to provide for the security, peace, health and comfort of the people who will assemble there from all parts. These objects could, at least in part, be secured by the existing general and special laws extended where possible by orders of the Local Government: but this would be an inconvenient and cumbrous procedure, and moreover as the Camps are mostly outside the limits of any cantonment and municipal town, it is only by special legislation that provision can be made for the prevention and punishment of numerous petty acts, most of which would be offences, if committed in a town or cantonment. This is the principal object with which this Delhi Darbár Bill has been prepared, and I move that permission be given to introduce it."

The motion was put and agreed to. The Hon'ble MR. ALEXANDER ANDERSON introduced the Bill. He said: "I shall now explain shortly the principal provisions of the Bill to introduce which permission has been given.

"In the first place it provides for the definition of the areas to which it will apply. This will be effected by means of orders of the Local Government, published by public notice at conspicuous places within the local limits to which the orders relate. This procedure is likely to be more effective than publication in the Gazette, and is appropriate for an enactment the operation of which is to be so limited in place and in time.

[Mr. Anderson.]

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"There are two penal sections which are largely based on the Police and the Cantonment Acts. They provide for what would in most cases be offences if done in areas to which these Acts applied. Section 2 declares to be offences certain acts, committed anywhere within the notified area, which tend to cause obstruction, annoyance, risk, danger or damage to the public or to any individual. The principal subjects with which this section deals are—

Nuisances, pollution and waste of the water-supply, the sale of food or drink unfit for human consumption, failure to give timely information of infectious or contagious disease, loitering with intent to commit an offence, and disobedience of lawful authority.

"Section 3 provides for acts done in any street, road, or other public place. Under this section, the authorities will be able to regulate the traffic, and to prevent or punish rash and negligent riding or driving, also begging, drunkenness, brawls, and gambling.

"The maximum punishment for any offence under the Act is 8 days' imprisonment or 50 rupees fine. Magistrates need not proceed under the Act if they consider that any case will be disposed of more appropriately under the ordinary law.

"The Act will generally be enforced by the Police, but it will probably be found convenient and even necessary for certain purposes to empower other persons to exercise some of the powers of the Police: and for this the Act provides. They will all have power to arrest without warrant any person committing in their sight an offence punishable under the Act: if the offender gives his name and address he will not be detained: otherwise he is to be taken at once before a Magistrate. It is understood that under powers with which the Local Government is already invested, one Magistrate with summary jurisdiction will be appointed for each Camp: and there will therefore be no delay in disposing of all cases.

"Provision is also made for defining the limits of Police Stations, and the Local Government is authorized by Section 7 to make rules for the guidance of officers and generally to carry out the provisions of the Act.

"The Act is intended to provide for temporary and altogether exceptional conditions, and will cease to be operative on the issue of a notification as soon as the special necessity for it ceases to exist."

The Hon'ble MR. ALEXANDER ANDERSON moved that the Bill be referred to a Select Committee consisting of the Hon'ble COLONEL HUTCHINSON, the Hon'ble MR. MADAN GOPAL and the Mover, with instructions to report within a fortnight. He said: "The Bill has been already published in the *Punjab Gazette* in English and in Urdu: and as it is desirable that the Bill become law as soon as possible, I beg to move that the Bill be referred to a Select Committee consisting of the Hon'ble COLONEL HUTCHINSON, the Hon'ble MR. MADAN GOPAL and the Mover, with instructions to report within a fortnight."

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned to Monday, the 24th November 1902.

LAHORE:

H. A. B. RATTIGAN,

The 10th November 1902. }

Secretary, Legislative Council.

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at the Council Chamber, Government House, Lahore, on Monday, the 24th November 1902.

PRESENT :

His Honour Sir CHARLES MONTGOMERY RIVAZ, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Mr. D. P. MASSON, C.I.E.

The Hon'ble Colonel J. B. HUTCHINSON.

The Hon'ble Mr. J. WILSON, C.S.I., M.A., I.C.S.

The Hon'ble Rái Bahádúr MADAN GOPAL, M.A., Bar.-at-Law.

The Hon'ble Mr. C. L. TUPPER, C.S.I., I.C.S.

The Hon'ble Mr. ALEXANDER ANDERSON, C.I.E., I.C.S.

THE DELHI DARBAR BILL.

The Hon'ble MR. ALEXANDER ANDERSON presented the Report of the Select Committee on the Bill to make special and temporary provision for the administration of the area occupied by or adjacent to the various Camps at the Coronation Darbár to be held at Delhi. He said: "I have to present the Report of the Select Committee on the Bill to provide for the administration of the area occupied by and adjacent to the various Camps at the Coronation Darbár at Delhi, together with the Bill as amended by us.

"We have added in the heading and elsewhere in the Bill words that will make it clear that the Local Government may include within the scope of the Act any part of the Municipal area which it may be considered desirable to include, even though it may not be exactly adjacent to the Camps.

"The word 'such' has by mistake been omitted in clause 1, sub-clause (2).

"We think the title 'Delhi Darbár Police Act' is more accurately descriptive of the nature and object of the Bill.

"Two important changes have been made in clause 2. In the first sentence we have omitted the words 'or any individual' after the words 'the public'. The Bill is intended primarily for the benefit of the general public, and an Act that is offensive or dangerous to the individual only may be left to be dealt with under the ordinary law.

"On the other hand there are some acts which, we think, should in the special circumstances be regarded as offences apart from any question of 'obstruction, inconvenience, annoyance, risk, danger or damage' to the public, and we have accordingly divided the clause into two sub-clauses, the first dealing with acts which are punishable only if and when they are offensive to the public: and the second sub-clause providing for acts that should be absolutely prohibited.

"In clause 2, sub-clause (1) (a), the words 'without permission' have been omitted as too indefinite and also because it is necessary to consider only whether the act in question is likely to cause inconvenience, danger or damage to the public.

[Mr. Anderson.]

[10TH NOVEMBER 1902]

"There are two penal sections which are largely based on the Police and the Cantonment Acts. They provide for what would in most cases be offences if done in areas to which these Acts applied. Section 2 declares to be offences certain acts, committed anywhere within the notified area, which tend to cause obstruction, annoyance, risk, danger or damage to the public or to any individual. The principal subjects with which this section deals are—

Nuisances, pollution and waste of the water-supply, the sale of food or drink unfit for human consumption, failure to give timely information of infectious or contagious disease, loitering with intent to commit an offence, and disobedience of lawful authority.

"Section 3 provides for acts done in any street, road, or other public place. Under this section, the authorities will be able to regulate the traffic, and to prevent or punish rash and negligent riding or driving, also begging, drunkenness, brawls, and gambling.

"The maximum punishment for any offence under the Act is 8 days' imprisonment or 50 rupees fine. Magistrates need not proceed under the Act if they consider that any case will be disposed of more appropriately under the ordinary law.

"The Act will generally be enforced by the Police, but it will probably be found convenient and even necessary for certain purposes to empower other persons to exercise some of the powers of the Police: and for this the Act provides. They will all have power to arrest without warrant any person committing in their sight an offence punishable under the Act: if the offender gives his name and address he will not be detained: otherwise he is to be taken at once before a Magistrate. It is understood that under powers with which the Local Government is already invested, one Magistrate with summary jurisdiction will be appointed for each Camp: and there will therefore be no delay in disposing of all cases.

"Provision is also made for defining the limits of Police Stations, and the Local Government is authorized by Section 7 to make rules for the guidance of officers and generally to carry out the provisions of the Act.

"The Act is intended to provide for temporary and altogether exceptional conditions, and will cease to be operative on the issue of a notification as soon as the special necessity for it ceases to exist."

The Hon'ble MR. ALEXANDER ANDERSON moved that the Bill be referred to a Select Committee consisting of the Hon'ble COLONEL HUTCHINSON, the Hon'ble MR. MADAN GOPAL and the Mover, with instructions to report within a fortnight. He said: "The Bill has been already published in the *Punjab Gazette* in English and in Urdu: and as it is desirable that the Bill become law as soon as possible, I beg to move that the Bill be referred to a Select Committee consisting of the Hon'ble COLONEL HUTCHINSON, the Hon'ble MR. MADAN GOPAL and the Mover, with instructions to report within a fortnight."

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned to Monday, the 24th November 1902.

LAHORE:

H. A. B. RATTIGAN,

The 10th November 1902. }

Secretary, Legislative Council.

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at the Council Chamber, Government House, Lahore, on Monday, the 22nd December 1902.

PRESENT:

His Honour Sir CHARLES MONTGOMERY RIVAZ, K C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Mr. D. P. MASSON, C.I.E.

The Hon'ble Colonel J. B. HUTCHINSON.

The Hon'ble Mr. J. WILSON, C.S.I., M.A., I. C. S.

The Hon'ble Rái Bahádúr MADAN GOPAL, M.A., Bar-at-Law.

The Hon'ble Mr. C. L. TUPPER, C.S.I., I. C. S.

The Hon'ble Mr. ALEXANDER ANDERSON, C.I.E., I. C. S.

PUNJAB MILITARY TRANSPORT BILL.

The Hon'ble MR. WILSON moved that the report of the Select Committee on the Bill to provide for the periodical enumeration and registration of animals in the Punjab fit, or ordinarily used, for the purposes of military transport, and for the compulsory acquisition of such animals in time of war, and for impressment of the same for hire for purposes of military transport at any time, be taken into consideration. He said: "In moving that the report of the Select Committee on the Punjab Military Transport Animals Bill be taken into consideration, I have little to add to the remarks I have already made on the Bill. It is perhaps desirable to explain more fully the reasons for the amendment made in the definition of 'animal' in clause 2. It had been pointed out in some of the criticisms on the Bill that if all bullocks were made liable to impressment, agricultural operations might be brought to a standstill. One answer to this objection is that the Local Government will have full power, whether by notification under clause 11 or by executive instructions to the officers empowered by it under the Act, to exempt from acquisition or impressment any class of animals, and that it might be trusted to see that an undue proportion of plough-bullocks is not taken from any district. Moreover, as it is often very necessary that bullocks should be made available for the purposes of military transport, we considered it impossible to exempt all bullocks from the operation of the Act, or even all plough-bullocks, as most bullocks that are used in carts are also used in the plough. There are, however, a large number of bullocks, especially in the south-west of the Province, which have never been trained to draw a cart or carry a load, and which would therefore be useless for the purposes of transport, and there would be no advantage in registering or impressing such animals, and on this ground we amended the definition so as to exclude them from the operation of the Act. The Act, however, will still apply, as the wording of the definition shows, to all bullocks which have been trained to carry loads or draw carts, even although they may be also used for

ploughing or other agricultural processes. It has been objected to this distinction that it necessitates an enquiry into whether the bullock has been so trained or not; but in any case this enquiry would be necessary in all cases of doubt, as no bullock not so trained would be of any use for transport purposes, and in the comparatively few cases of doubt it will be easy to ascertain by experiment whether the bullock has or has not been trained to draw a cart or carry a load."

The motion was put and agreed to.

The Hon'ble MR. ALEXANDER ANDERSON moved to propose the amendments of which he had given notice and which had been duly circulated to Members. He said: "In the case of urgency when under section 19 the Collector or other person authorized has taken possession of animals before an award under section 14 has been made, it is laid down in the second part of the section as drafted in the Bill now under consideration that as soon as may be an award shall be made in conformity with the conditions of section 14.

"In such emergencies, however, it may not always be practicable for the Committee to comply in all respects with section 14. For instance, it may not be possible in extreme cases to bring up the animals for the inspection of the Committee. As far as possible the procedure of section 14 should be followed: but to meet such cases as I have mentioned I move the amendment that—

"in clause 19 (2) for the words 'under section 14' be substituted the words 'as far as may be, in accordance with the provisions of section 14'.

The Hon'ble MR. WILSON supported the amendment, and said that it would be an improvement.

The motion was put and agreed to.

The Hon'ble MR. ALEX. ANDERSON said: "Section 26 provides for the acquisition and the impressment for hire of vehicles, but not for their registration. An enumeration of carts suitable for military transport is already being carried on in certain places, and it is obviously desirable that the Government should have authority to arrange for registration also. When carts are required, the acquisition and impressment will be facilitated, and the burden on the people lessened if the Collector has at hand information that will enable him to distribute the demand in a fair manner, I therefore move the amendment standing in my name that—

"in clause 26,

"(1) after the words 'relating to the' in line 2, the word 'registration' be inserted, and

"(2) after the words 'gear and equipment of animals' the words 'and to the registration of vehicles' be added."

The Hon'ble MR. WILSON said: "I beg to support these amendments."

The motion was put and agreed to.

The Hon'ble MR. WILSON moved that the Bill as amended be passed. He said: "I have now to move that the Punjab Military Transport Animals Bill as amended be passed.

"This Act will strengthen the hands of Government in making preparation for war, and enable it to collect transport more promptly than hitherto, when troops have to be mobilised; and this result alone is important enough to justify the legislation proposed. But to my mind this is not its main justification. I think that the Province, even more than the Government, is to be congratulated on the passing of this Act. It is admitted on all hands that it is necessary that

the Government should in time of war impress into its service the animals required for the mobilisation of troops, and there can be no doubt that when another campaign has to be undertaken, impressment would have been found necessary, even had this Act not been passed. Without the Act it would have been impossible to distribute the burden fairly, and the old evils would have recurred. Now it will be possible for the Officers of Government to distribute the demand for transport animals equitably over all owners of such animals and to reduce to a minimum, so far as this burden is concerned, the hardships that inevitably accompany a state of war. More especially are the owners of animals to be congratulated on the provision that an animal is not to be taken on hire across the Frontier without the consent of its owner. In other directions also, as I pointed out in my speech introducing the Bill, the Government, profiting by the experience of recent expeditions, have introduced reforms calculated to greatly reduce the evils of impressment. Light railways have been pushed forward to different points on the Frontier. Camels, bullocks and mules have been purchased and formed into Transport corps; and in addition to these several large bodies of camels have been raised on a permanent footing by means of special grants on the Chenab Canal or by enlistment on the Silladari system; so that the Army is less dependent than it used to be, on transport hurriedly got together. "Arrangements are also being made to enable the owners of hired transport to receive payment of part of the hire at their homes. Altogether we may confidently hope that whenever troops have again to be sent across the Frontier, not only will the necessary transport be got together with much greater despatch than before, but the owners of animals will find that the old hardships which accompanied its collection have been much diminished, and that any losses they may suffer will be made up to them at the expense of the State. For this they have mainly to thank the executive officers who so strongly advocated these reforms, and not least Mr. Thorburn, late Financial Commissioner, who took an active part in the enquiries held on the question, and who lost no opportunity of calling attention to the hardships caused by the old want of system and of urging the need for legislation on the lines of this Act, which I now ask the Council to pass into law."

The Hon'ble MR. ALEXANDER ANDERSON in supporting the motion said: "As an officer who have spent the whole of my service in purely district work, involving the impressment of transport on several occasions, and as such being in a manner representative of those who will in the future have to carry out the provisions of this Bill, I may be permitted to express my satisfaction that it is now so soon to become law."

"The Bill which has been immensely improved in Select Committee provides for the registration, compulsory sale, and compulsory hire of animals and vehicles for military transport. I do not regard the scheme for branding animals as being an essential or even an important part of the Bill. It will not in my opinion meet with much favour from the people, and it will not, I fear, solve the problem of the voluntary supply of transport in time of war."

"To the district officers the most important part of the Bill is the provision for registration of all suitable animals. This enables the Local Government and the Collectors to fix in times of peace and of comparative leisure the transport possibilities of each district, tahsil and zail, in fair proportion to the resources and capabilities of each area. On mobilization, the Collector will be in a position at once to distribute in an equitable manner the demand made upon his district, and to withdraw without disorganizing the local conditions of agriculture a sufficient number of animals for the requirements of the army."

"This systematic selection will, as compared with the confusion of the past, be a great boon to the people: and though it will not entirely remove, it will most materially mitigate, the hardships which have characterized in the past the almost indiscriminate seizure of transport animals."

"The regulation of the acquisition of animals by purchase will also be a vast improvement on the want of system that has hitherto prevailed: but perhaps the part of the Bill that will appeal most of all to the people of the Punjab is the provision that in future no animals impressed for hire may be taken beyond the limits of India without the owner's consent, and that if hired animals must be taken across the Frontier, they shall become absolutely the property of Government, and shall be paid for at the price fixed at the time of impressment. This is not merely a protection of the property of the owners, but also ensures that no man need now cross the Frontier in unwilling service.

"The Act will, I believe, be welcomed as an assurance that the Government is resolved to mitigate as far as the necessities of war will admit the hardships that must be shared by all classes of the community."

The Hon'ble COLONEL HUTCHINSON said: "I feel that it would not be right for me to record a silent vote on this Bill, as from the time of the Kabul War (1879) as a District Officer, as Transport Officer on special duty, and as a member of the Transport Committee of 1898 I have been closely connected with all questions connected with the collection of transport in the time of war and for more than 20 years have urged the necessity for legislation.

"As District Officer I have realised the difficulties lying in the way of officials who have been suddenly called upon to collect animals, and I have also seen the hardships which have resulted to the people who have been forced to provide for the requirements of Government. At all times, by high rates for hire and in other ways, Government has done what was possible to mitigate these hardships, but much more was required, and it is with much pleasure that I now welcome the passing of this Bill which will I hope remedy the evils which have existed in the past.

"The Act will prevent the wholesale collection of utterly useless animals for inspection when transport is required, and the consequent hardships on the owners who used to be frequently kept days at the tahsils. It will prevent transport being taken across the Frontier on service without consent of the owner, and it arranges that a fair price will be paid if the animals are purchased for work beyond the Frontier.

"As regards officials, the Act renders legal acts which have always been necessary but were technically illegal and have often been questioned. The District Officer will now have a fair idea of where transport is to be found, and he will be able to fairly distribute his demand over the villages and towns in his district. He will also have a guarantee that the necessities of Government are met in a way as little oppressive as possible to the people.

"Everything that is possible has been done to assist the District Officer, and Transport Department, and at the same time every possible precaution has been taken to prevent unnecessary hardships on the people and to compensate them for loss that must ensue from the seizure of animals and carts."

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned *sine die*.

LAHORE:

H. A. B. RATTIGAN,

The 22nd December 1902. } Secretary to the Legislative Council of the Punjab.

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PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at the Council Chamber, Government House, Lahore, on Monday, the 11th May 1903.

PRESENT :

His Honour Sir CHARLES MONTGOMERY RIVAZ, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.
The Hon'ble Kanwar Sir HARNAM SINGH, K.C.I.E.
The Hon'ble Mr. D. P. MASSON, C.I.E.
The Hon'ble Colonel J. B. HUTCHINSON.
The Hon'ble Mr. J. WILSON, C.S.I., M.A., I.C.S.
The Hon'ble Rai Bahadur MADAN GOPAL, M.A. Bar-at-Law.
The Hon'ble Sir LEWIS TUPPER, K C.I.E., C.S.I., I.C.S.
The Hon'ble Mr. ALEXANDER ANDERSON, C.I.E., I.C.S.

PUNJAB COURT OF WARDS BILL.

The Hon'ble SIR LEWIS TUPPER presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Court of Wards in the Punjab.

The Hon'ble SIR LEWIS TUPPER moved that the Report of the Select Committee be taken into consideration. He said:—"When I introduced this Bill on the 10th November last I gave a full account of its origin and of its history up to date ; and I will therefore limit my present remarks to subsequent proceedings.

"The Bill was circulated for the opinions of selected officers, and I am glad to say that it was well received. Several officers, including two Commissioners, simply expressed full concurrence in the Bill and had no amendments to suggest. The criticisms of others were directed almost exclusively to matters of detail, and in the correspondence no fresh question was raised of any importance or difficulty. I am sorry to say that the opinions of three of the Hon'ble Judges of the Chief Court and of two Divisional Judges were received too late for consideration by the Select Committee ; but this is a point to which I shall have to refer again at a later stage of to-day's proceedings. As regards the other opinions I may say that the objects of the Bill being admitted, the few criticisms which we received amount to suggestions for the better attainment of those objects.

[*Sir Lewis Tupper.*]

[11TH MAY

"It follows that several of the amendments which we have made in the Bill are self-explanatory. Putting these aside, our amendments fall into two classes: first, we have distinguished throughout the Bill between wards and persons whose property is under the superintendence of the Court of Wards, though they are not themselves disqualified; and secondly, we have endeavoured to make Chapter VI, relating to the ascertainment and liquidation of the liabilities of wards, a clearer and more consistent enactment than it was in the previous draft of the measure.

"As regards amendments of the first class, we may, under this Bill, undertake the superintendence or management of the whole of a joint-estate when one or more of the joint-proprietors are not themselves disqualified. Similarly, when a disqualification ceases by a minor coming of age or otherwise, we may nevertheless retain the superintendence or management of the whole of the joint-estate, notwithstanding this alteration in the circumstances. This being so, it is natural to ask whether a person who has legally ceased to be disqualified is nevertheless to remain subject to the personal disqualifications of a ward? In substance that question had already been answered by the Government of India in the negative when a previous draft of the Bill was under consideration. They distinguished between legal superintendence and management, and pointed out that where the joint-proprietor was not disqualified and his property was taken under the Court of Wards merely because he was joint with a disqualified person, a power of management only was required. Both in this case and where a share of joint-property is retained after one or more of the wards have ceased to be disqualified, the person who is not disqualified should clearly receive the surplus income of his share; and it is obvious that we should not assume or retain the guardianship of his person. In the Bill as circulated an attempt had been made to give effect to these views, but some of the criticisms received showed that it was not entirely successful. We have now so revised the Bill throughout as to make certain that it does all that is necessary in this behalf. Where the superintendence is assumed it will extend only to management and that will not include power of sale or mortgage. Where it is continued the authority of the Court of Wards must necessarily be wider, but still it has been strictly limited in the sense required.

"The case of Chapter VI is somewhat similar. There is no change as regards the general intention of the chapter; but I confess that I think it would have received more close attention at an earlier stage of the Bill had it not been somewhat thrown into the shade by the very important proposal of the Local Government to enact a Chapter VII, which has no place in the measure before us, having been disallowed by the Government of India. The rejected Chapter VII dealt with incumbered estates and gave the Court of Wards an insolvency jurisdiction. It was limited to wards belonging to families of political or social importance, and in such cases gave power to prepare a scheme of liquidation, scaling down the debts, which would have been binding on all creditors, suits and proceedings against the ward being barred. Had this chapter been carried, Chapter VI would have had a very minor importance. With the rejection of the old Chapter VII the importance of Chapter VI is much increased.

"In the Bill as circulated Chapter VI was drawn from several sources,—the United Provinces Act, the Central Provinces Act, and the Sindh Incumbered Estates Act. The provision taken from the last named enactment as to ranking debts in order of proposed payment seemed to us to be especially embarrassing and indeed impracticable where there would be no authority to deal finally with the debts themselves; and it appeared further that one or two of the provisions of the chapter were not altogether consistent with each other.

"These considerations led us to examine it anew, and though the changes made are not great they are, we think, sufficient to make the law in this behalf consistent and workable.

1903.]

[Sir Lewis Tupper; Mr. Madan Gopal.]

"The scheme is really a simple one. When superintendence is assumed the Deputy Commissioner calls on creditors to notify their claims. Subject to reasonable excuses and exceptions the claim of a creditor who does not notify it within six months is extinguished. The Deputy Commissioner may not disallow a claim founded on a decree, but he may disallow any other claim in whole or in part. If the Deputy Commissioner disallows a claim in whole or part the claimant may sue to enforce it. The order of a Deputy Commissioner disallowing interest as agreed upon would be considered to be the disallowance of a part of the claim. Until the creditor has duly notified his claim to the Deputy Commissioner and can produce a certificate of having done so he is debarred from proceedings in Court against the ward or property under superintendence. The periods during which proceedings are thus barred are excluded in computing periods of limitation. I think that these provisions, which are largely due to the care and sagacity of my Hon'ble Friend, MR. ALEX. ANDERSON, will work justly and smoothly, and I shall be glad to see them pass into law.

"I have only to add that when the Government of India disallowed the original Chapter VII they further observed that if any special procedure for dealing with incumbered estates were really required in the Punjab it should form the subject of a separate enactment and should not be included in a Court of Wards Act.

"With these remarks I beg to move that the Report of the Select Committee be taken into consideration."

The Hon'ble MR. MADAN GOPAL in supporting the motion said :—"In all countries and systems of law the Ruling Power is recognised to be the supreme guardian of minors, lunatics and idiots—that power being vested in the courts of law and capable of being exercised in the case of every minor or lunatic. But there are certain minors, lunatics and persons similarly situated who by reason of their circumstances are peculiarly under the protection of the State, and the institution of Courts of Wards has been devised for the purpose of vesting in Revenue and Executive authorities the power to protect the properties and persons of such disqualified individuals. The peculiarity that claims this special protection is the possession and proprietorship of landed property. Critics of Government measures usually characterise the legislation which aims at regulating measures for such protection as grandmotherly, and they specially call in question the wisdom of protecting prodigal or spendthrift proprietors, who are one of the many objects of the paternal solicitude of Government. Their objections usually are that it is useless to save people from the consequences of their own imprudence, that to protect them has the effect of offering a premium to the continuance of vicious habits which led to embarrassment, that it is to the interest of society that property should pass from the hands of imprudent proprietors to those who are likely to be better able to take care of it, that the system of keeping the prodigal under tutelage is unduly interfering with individual liberty and with the vested rights of creditors.*

"But these objections are outweighed by political and socialistic considerations† England has always been the country where individual liberty has been respected more than anywhere else, but during the last 30 years the tendency of legislation even there has been to interfere with individual liberty in a way which would have made Mill and philosophers of his stamp exclaim in surprise. Modern science and the current of modern thought have led legislators more and more to consider the danger to society from giving to the individual absolute liberty. If therefore danger arises to the State or to the individual from not restraining individual liberty the State ought to be prepared to do so. The prodigal is not looked upon as an individual standing by

* A writer in the Madras Law Journal.

† Law Quarterly Review.

[Mr. Madan Gopal.]

[11TH MAY

himself. His property is considered as not entirely his own, but also belonging to his family and relations, whom it is considered unwise to expose to want because of his recklessness. The intention is to protect property which is really common property from the extravagance of the person who actually has possession; in other words, to protect the rights of innocent third parties. Looking to old communities, the preservation of the family estate was dear to the heart of a Roman lawyer. Property which a member of the Gens had was inalienable and hereditary, and all the members of the Gens had an interest in it. Similar notions prevail in our Customary Law. Here also anything which tends to dissipate such property is viewed with disfavour. The State, interested as it is in the preservation of the family and the tribe, cannot admit that the rights of property consist in the right of an owner to ruin his family in satisfying his miserable whims and fancies or shameful caprices. Government considers it inexpedient to let the class of great landlords and scions of aristocracy die out and their capital dissipated in unprofitable expense. They think that there are substantial advantages which accrue to the State from the maintenance of a wealthy landlord class and grave evils likely to result from their disappearance. The landed aristocracy is the class most interested in the stability of Government and in the maintenance of peace and order. Their authority and influence are factors which prevent any violent upheaval of the existing order of things. This was experienced in Oudh in the Mutiny of 1857 and led to Lord Canning's recognition of the status and position of the Oudh Taluqdars. Apart from this the hereditary feelings of attachment between the landlord and the ryot are likely to bring about a more generous and liberal treatment of the latter than is likely to be accorded by persons who own no ancient ties with peasants. The interest of the latter is to take the maximum out of the land, no money is spent in permanent improvements, and the tenants have a landlord who does not care about their welfare. The spendthrift will thus have caused injury and suffering to a large number of people if he were allowed full liberty to alienate, and the State cannot look upon such misery with disregard. Besides, a spendthrift is a moral danger to all persons who come into contact with him, and public order suffers from his presence. There are numerous other reasons why a wealthy landlord class can prove itself useful to the public, and these are the considerations which have led to the relief of incumbered estates and the inclusion of spendthrifts in the legislation connected with minors and lunatics. In fact, a prodigal is considered to be akin to an insane person, and in Roman Law the State interfered with his property on the same grounds as it protected the estate of minors and lunatics. This was as early as the law of the Twelve Tables, where agnates and men of his Gens were given power over him and his money.

"In addition to spendthrifts, from very early times protection has been accorded to females. In Roman as in Hindu Law, a woman never had legal independence. If she was not under *potestas*, she was under *manus* or *tutela*: women were never their own masters. The aged and the infirm are another class calling for protection. These then are the various classes for whom the present measure is intended. It has my hearty support so far as it goes, but I wish it had gone a little further. It provides for a land-owner applying that his property be taken under the superintendence of the Court. Now unless there be a command from above, *i.e.*, from the Commissioner or his Deputy, the cases must be very rare indeed where a man will come forward and confess that he is unfit and that he wants protection. Those harpies who surround a rich land-owner will never allow him to realize the truth of his position, but will on the contrary glorify his capability and the possibilities that are within his reach. As the object is to save estates, I think if a provision had been inserted enabling the wife, children or other relations of a proprietor also to apply that his estate be taken under superintendence, it would have proved salutary. Such provisions find place in the laws of other countries.

PUNJAB COURT OF WARDS BILL.

1903.]

[Mr. Madan Gopal.]

"But as the Bill is framed there is no bar to their doing so and to the Court considering their application, though no explicit provision is made on the point.

"Another point which I would have liked to find inserted in this Bill is a provision similar to Sections 39 and 40 of the Madras Court of Wards Act, 1893. These sections provide that if the property of the ward, whole or part, be in the possession of a mortgagee or lessee, the Collector may, as representative of the Court, require such mortgagee or lessee to deliver up possession of the same at the end of the then current year, and if such incumbrancer refuses or neglects to obey such order, the Collector may without resorting to the Civil Court enter upon the property and summarily evict therefrom the said incumbrancer, and in the case of a lease, if the Collector finds that the consideration paid was inadequate, call upon the lessee to pay such additional consideration as he considers reasonable; the lease being determined if such additional consideration be not paid. In either case, it being left to the dissatisfied party to resort to the Civil Court for establishment of his rights, but the position being altered, he being the claimant or plaintiff and not defendant as he should ordinarily be and the onus being on him, the Court of Wards enjoying the benefit of being defendant, *beati possidentis*.

"I have no doubt this would appear to lawyers as a very revolutionary proposal coming from one of their cloth, but my excuse is my sad experience of the way in which prodigals are taken advantage of by unscrupulous persons who deal with them. I have at present in my hands a case in which the zamindar was lamentably weak and entirely in the hands and under the persuasion of certain black-guardly servants who made him drunk and sign any documents at their sweet pleasure without his receiving the slightest consideration. Now in cases like these, I feel justified in saying that a paternal Government ought to, and is bound to, come to the rescue of the weak and the oppressed, and it is not at all wrong that the oppressor should first be dispossessed of the property fraudulently obtained and then to seek remedy if he so feels inclined, the onus of showing the transaction to be fair and above board being on him. Inasmuch as this provision finds place in the Court of Wards Act of Madras, I suggested its inclusion in this Bill. The Hon'ble the Member in charge and His Honour the President have however pointed out that if this were done, the passing of the Bill would be considerably delayed, as the amended Bill would have to be sent up to the Government of India for approval, and it is very desirable that the present Bill should be passed with as little delay as practicable. As I have been assured that the suggestion will be noted and that the Financial Commissioner will call for opinions on the same, I am content with simply mentioning it here instead of moving an amendment as I originally intended doing.

"There are one or two provisions to which also I would like to draw attention. The power to retain superintendence of property of the ward after his death or ceasing to be disqualified where all the debts have not been paid off is very essential, as otherwise the whole scheme of liquidation would become infructuous. Similarly, where there are several wards and one or more become competent, while others remain disqualified, the interests of the latter will be jeopardised were the Court to relinquish charge altogether. This power has therefore been retained, the exempted or qualified ward retaining the same power over his share of the income as if he were originally not disqualified. A provision taken from the English Act for the relief of infants has also my hearty support. It provides that no suit shall be brought whereby to charge any person upon any promise made after he has ceased to be a ward to pay any debt contracted during infancy, or upon any ratification made after attaining majority of a promise made during infancy. The position of a person who has just attained majority and for some time after is such that he is entirely under the thumb and influence of designing persons, and a continuance of his

[Mr. Madan Gopal ; Sir Lewis Tupper.]

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disqualification is absolutely necessary. Another provision proposes to enact that orders made by the Court of Wards assuming superintendence shall be final and shall not be called in question in any Court of Law. This means that the decision as to who is and who is not a disqualified person whose estate may be taken under superintendence will rest with the Executive authorities and not with Courts. In European countries the rule is that no body can be declared a ward of Court unless the judiciary have first decided on admissible evidence that he is disqualified. The circumstances of this country are, however, so different that a similar provision would work havoc here. There are no family councils competent and ready to move the Courts. Again, wives and children, although unhappily affected by extravagance, may not have the means or be in the position of meeting the spendthrift on an equal footing so far as judicial inquiry and the expenses attendant thereon go, and while the inquiry is going on, the spendthrift may squander the whole of the property, the dilatory work of the Civil Courts and the right of appeal and revision affording him sufficient time in which to do so. Again, many respectable people living in the neighbourhood or acquainted with the doings of the spendthrift may be willing to give information if sought, but reluctant to face a cross-examiner who may brow beat and insult. These and many other considerations of a similar character make our position in this country different to Europe and necessitate that the power to take over superintendence should vest in the executive without question. It is not at all likely that they will ever abuse their position or authority; indeed in Provinces where they have enjoyed this power for long no case of abuse of authority has ever come to notice. I would now beg leave to conclude, trusting that this measure will prove of incalculable benefit to the landed class and a source of strength and satisfaction to the State."

The Hon'ble SIR LEWIS TUPPER said:—"I have listened with great attention to the able and learned address of my Hon'ble Friend MR. MADAN GOPAL, and I may be allowed to say that I was specially interested in his remarks on the analogy between the early Roman Law and our Hindu and Customary Law and some of the provisions that we are about to enact. There are, however, in the body of his speech only two points on which I need specially remark. First, in regard to the suggestion that the Bill might have provided for applications by members of a family praying that a prodigal member should be brought under the superintendence of the Court of Wards, my Hon'ble Friend has himself supplied the answer. There is nothing in the Bill to prevent the wives or other relatives from petitioning, and if they do, no doubt enquiry will be made and proper action taken. The Bill gives the Local Government very wide powers of dealing with cases where a person is disqualified without any application of his own—powers quite as wide, I think, as any Government would care to assume. The Local Government can cause the property of a landholder to be placed under the superintendence of the Court of Wards when it finds that he is incapable of managing or unfitted to manage his affairs 'owing to any physical or mental defect or infirmity' or 'owing to his having entered on a course of wasteful extravagance likely to dissipate his property.' The mental defect here in view is, I would point out, something different from and less than unsoundness of mind, for which provision is made in another section; and as my Hon'ble Friend has himself pointed out, under Section 10 of the Bill, the order of the Court of Wards assuming superintendence is final and cannot be called in question in any Court of Law. While I am entirely with my Hon'ble Friend in desiring the preservation of our prominent families, I believe that these provisions will be found in practice quite sufficient to meet the cases which he has in view."

"As to his other point that we might have adopted the Madras provisions by taking power to eject a mortgagee in possession and to deal with lessees in the manner proposed, I am sorry that the matter was not brought to notice at an earlier stage of the measure. It deserves full consideration, and personally I

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should have been in favour of the proposal relating to the mortgagee, seeing that I had myself proposed the far more drastic Chapter VII, since discarded; which gave insolvency powers to the Court of Wards. That was the difficulty however. The Government of India had rejected that chapter, and could we insert the somewhat strong provisions affecting the rights of third parties which are favoured by my Hon'ble Friend without further reference to that authority? I thought not, and the Select Committee agreed with me; and we also agreed that, although MR. MADAN GOPAL'S proposed provisions might be valuable, it was not worth while to delay the Bill in order to obtain them. The Bill is really very urgently required, and these provisions can wait for some later opportunity. I had, however, no hesitation in giving the promise to which the Hon'ble MR. MADAN GOPAL has referred, and I will certainly call attention to the matter in connection with the working of the Bill, so that we may accumulate experience to show whether such provisions as he suggests should be enacted for the Punjab."

The motion was put and agreed to.

The Hon'ble SIR LEWIS TUPPER:—"Before moving that the Bill be passed as amended by the Select Committee there is one small amendment I should like to propose if no objection is raised to my doing so at this late stage and without notice to Members.

"I mentioned that the opinions of certain Judicial Officers arrived too late for consideration by the Select Committee. As a fact I got them only on Saturday morning, but I have myself considered them, and I am able to state that generally the criticisms which they contain relate either to matters of principle already settled between the Local and Supreme Governments before the Bill was introduced, or to matters of detail either actually considered by the Select Committee or substantially disposed of in its proceedings. There is, however, one small exception. Clause 47 (1) of the Bill is to the effect that when the Court of Wards releases a minor from its superintendence it may appoint a guardian for him or his property. Section 49, however, says that whenever the Court of Wards releases the property of any person from its superintendence, it shall deliver to such person all documents of title and all papers and accounts (other than Government records) relating to such property. In substance Mr. D. C. Johnstone, Divisional Judge of Sialkot, asked us—'Do you mean in the case above set out to make over these important documents to the minor?' Of course the answer is no, and I therefore propose as an amendment that in clause 49 after the words 'it shall deliver to such person' we insert the words 'or if it has appointed a guardian under section 47 (1), to such guardian.' This will, I think, sufficiently meet the inconsistency pointed out by the Divisional Judge."

No objection being raised the Hon'ble SIR LEWIS TUPPER moved the following amendment:—

"That after the word '*person*' in the 5th line of clause 49 the words '*or if it has appointed a guardian under sub-section (1) of section 47, to such guardian*' be inserted."

The motion was put and agreed to.

The Hon'ble SIR LEWIS TUPPER moved that the Bill as amended by the Select Committee, and as now amended, be passed.

The Hon'ble MR. WILSON, in supporting the motion, said:—"Having had some experience as a Court of Wards, I wish to say a few words in support of the motion. The last thirty years have shown that the few sections in the Punjab Laws Act, under the authority of which the Court of Wards has hitherto carried on its beneficent work, are not sufficient for present-day needs, and the time has come for the enactment of a measure such as that now before the Council defining more clearly the powers and duties of the Court, both as regards its wards and as regards other persons who have relations towards them and their properties. This Bill embodies the results of our Punjab experience, and has also benefited from the experience gained in other Provinces, and will be found a much more efficient instrument than the law it supersedes."

[*Mr. Wilson : Kanwar Sir Harnam Singh ; His Honour the President.*]

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"Among the more useful improvements introduced by this Bill I may mention the provisions making it possible for the Local Government to place the property of any landholder under the Court of Wards, without his having to make, in so many words, the humiliating admission that he is unfitted to manage his estate, and to place under the Court the property of a landholder who is dissipating the family estate by a course of wasteful extravagance; the authority now given to the Court of Wards to assume the superintendence of a joint undivided property in which a minor owns a share; the procedure prescribed under which the liabilities of a ward may be quickly ascertained and settled; the clear definition of the disabilities of a ward, more especially as regards creating any charge on his estate; and the definition of the powers and duties of guardians and managers.

"I believe that the large land-owning families of the Province look upon the Court of Wards as one of the best means of safeguarding their permanent interests, and will welcome this Act as calculated to strengthen the hands of Government in its endeavour to save their properties from serious injury when the representative of the family for the time being is too young or too weak to manage the family estate properly."

The Hon'ble KANWAR SIR HARNAM SINGH said:—"Your Honour,—I had no intention of making any speech on this occasion, but instead of a silent vote a few words may not be considered inappropriate.

"This Bill, I think, is on the whole of a similar nature to and based on the same principles as the United Provinces, Oudh and Madras Bills, which passed into law some time ago in their respective Councils. In these Councils, you are aware, Sir, that the measures were contested."

"It would be useless for me to take up all the arguments that were then put forward by the different Members.

"The Members of this Council, I presume, are aware of the controversial nature of the discussion.

"It is true that the Bill places more power into the hands of the Executive authorities than the old law, but no one can deny the good intentions of the Government in this measure.

"The object of the Government is to secure the old families from ruin, and I do not see how this result can otherwise be achieved.

"My own experience of the Court of Wards in Oudh, which extended over many years, was that considerable difficulties arose, whenever the Government wished to bring an estate under the Act with the intention of saving it from ruin.

"It frequently happened that the estates, brought under the Court of Wards, were released by the Civil Courts on the plea that the owner was not of unsound mind, while that very person was well known to the public as being quite incapable of the management of his affairs. The new law will, I think, help to remove such defects.

"Considering, however, that this Bill gives additional powers to the Executive authorities, I trust that the Government officers will use these powers with caution and discretion, and that the Bill, when it becomes law, will tend to improve and maintain the status of those families for whom it is intended and thereby, I may add, indirectly be beneficial to the general public.

"With these remarks, Sir, I vote for the passing of the Bill."

His Honour the PRESIDENT said:—"I welcome this Act as a very useful addition to our Provincial Statute Book. The administration by official agency of the estates of persons who are unfit on account of minority, or sex, or some other manifest disqualification, to manage them themselves, is one of the most important duties and responsibilities which devolve upon Government. The

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PUNJAB COURT OF WARDS BILL
AND PUNJAB LOANS LIMITATION BILL.

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present law on the subject, as contained in the Punjab Laws Act, has been found by practical experience to be incomplete and defective on several material points, and the object of the present enactment is to remedy these deficiencies and to strengthen the hands of Government both as regards assuming the management of an estate in cases where it is clearly desirable to do so in the interests of the family concerned, and properly administering it when taken over. The principles and details of the Bill now under consideration have been very carefully determined and elaborated, and I trust that its provisions will be found to work satisfactorily.

"As regards the points which have been noticed by the Hon'ble MR. MADAN GOPAL, I agree with SIR LEWIS TUPPER that the question of empowering the Court of Wards to deal with a mortgagee in the manner proposed by the Hon'ble Member is one which well merits consideration, but I also agree with SIR LEWIS TUPPER that, for the reasons he has given, the present time is not an opportune one for dealing with this matter, and that it had better be reserved for future consideration after the working of the provisions of the Act as they now stand has been tested in practice."

The motion was put and agreed to.

PUNJAB LOANS LIMITATION BILL.

The Hon'ble SIR LEWIS TUPPER moved for leave to introduce a Bill to amend the law relating to the limitation of suits for the recovery of money due on account of money lent or advanced, or on an account stated, or in respect of goods supplied. He said:—"The Bill I ask leave to introduce is a very short and simple one, consisting of four sections and a brief schedule; but it deals with a matter of every day importance to all classes of the community. The proposal is in the case of suits for what may be generally described as money claims, and when the agreement is not registered, to extend the period of limitation from three to six years. We shall then have one and the same period of limitation for such suits whether the agreements are registered or not; and we shall secure the commercial advantage that the law here will be assimilated to that of England."

"Simple as the Bill is, it represents, so far as it affects the rural population, another move in that comprehensive scheme of policy by which the Government is endeavouring to deal with the great evil of agrarian indebtedness. There is the Punjab Alienation of Land Act, which, I venture to say, is succeeding beyond our expectations, and is already being copied in another Province. There is the Pre-emption Bill—a necessary consequence of the Alienation of Land Act—which, during this cold weather, has been discussed at numerous and prolonged meetings of the Select Committee, and will soon be in the hands of Government in a revised form. There is the Court of Wards Act which we have passed to-day; for the Government of India, while instituting, on behalf of the indebted peasantry, the proceedings which led to the passing of the Alienation of Land Act, held that the indebtedness of what I may perhaps call the landed gentry might be dealt with by the revision of the law relating to Courts of Wards. No doubt a certain amount of relief can be given in some cases by Court of Wards authority, though I am not myself satisfied that in the Punjab we have as yet done all we should do in this behalf. Then there are numerous and far-reaching executive measures; such as improvements in the *takavi* system and in the assessment, collection and remission of land revenue, and the extension of canal irrigation to famine tracts—all measures designed to enable the poorer peasantry to withstand more successfully the vicissitudes of season and to avoid more often than in the past the crushing burdens of penury and debt. And lastly there is the present Bill which, though affecting alike the rural community and every one in the Punjab who takes a receipt for money paid, had its origin in the self-same circumstances that produced the Punjab Alienation of Land Act. It is as

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though we had planned a group of halls and habitations for some common purpose—say for the purposes of a University—and then asked you to sanction a particular building, harmonised with the rest in position and design, but intended to serve not only the special purpose in view, but also perhaps some needs of the public. That is our position with reference to this Bill. The principle of it was originally advocated for the benefit of agricultural debtors and creditors; but we hope it may be useful for the community at large and we specially desire to be favoured with opinions upon it from the commercial community.

"I am glad to think that it is part of the work of the Council to bring to the point of final enactment Punjab measures which have been in contemplation for many years. The present Bill is a case in point. As affecting the rural community, a very similar proposal was made by Sir James Lyall as Lieutenant-Governor in 1891. He proposed legislation on the lines of the Dekkhan Agriculturist Relief Act, and intended to appoint a Committee of Punjab officers to draft a Bill in accordance with his views. Originally we had a 12 years' term, then a 6 years' term, and this was reduced in 1859 to the 3 years' term which now obtains. Sir James Lyall remembered the last change and that both *sahukars* and peasant proprietors complained that the 3 years' period was too short for their dealings and dislocated their old business relations. The arguments that limitation can be saved by acknowledgments in writing or part payment, and that interest is determined by the market rate and the security, were not, he thought, worth much in the particular connection. They implied, in his opinion, commercial conditions which do not exist as between village money-lenders and illiterate peasant proprietors.

"The practice," wrote Sir James Lyall, 'of demanding and agreeing to pay much more interest than you expect to get or intend to pay is ingrained among them, but when the lender has got his stamped bond or has launched his suit in court he is disposed to hold to the letter in the matter. So again the ordinary money-lender's ignorance of all but the broadest points of the law, and knowledge of the suspicion of fraud, perjury and forgery which pervades the courts, induce him to be with good reason very shy of any but the simplest methods of securing himself against his claims being barred by limitation. Hence frequent bonds and frequent suits in court.'

"To the letter which conveyed these views to the Government of India no final official reply was ever made. First of all the report of the Dekkhan Commission was awaited. Then the Punjab Government changed hands, and Sir Dennis Fitzpatrick was consulted on the proposals of his predecessor. Next there came an abortive proposal to depute Sir Edward Buck to discuss with Local Governments the question of agricultural indebtedness; and finally the letter was swept into the mass of records which formed the grist of that slowly grinding mill out of which we have the Punjab Alienation of Land Act as the first fruits.

"In addition to the arguments which I have quoted from Sir James Lyall there are others—some his and some those of other officers—which seem to me to make with much force for a longer term than three years in rural money suits. It was he who quoted the common saying that the *miyad* (period of limitation) was one of those things that had ruined the *samindars*. The frequent writing of bonds for balances turns interest quickly into principal and deprives the debtor of remission of interest which he might otherwise have obtained. It has been well pointed out by my Hon'ble Friend MR. WILSON that it is foreign to the ideas of both creditors and debtors in this country that a short period of delay in recovering a debt should of itself operate to extinguish it. The possibility of such immunity demoralises the *samindar* and forces into Court the village money-lender, who cannot trust his clients not to take the fullest advantage of their position. Hence the law precludes

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that consideration for his clients which under other circumstances even a village *bania* may often be expected to show. I do not myself believe that the average village *bania* eagerly desires to go into Court. He wants no doubt at some time or other to recover his money, but he is willing to wait if he does not do so at the peril of total loss; and he would prefer to recover without going into Court if that were possible. A longer term in many cases gives him a better chance because in parts of the Punjab harvests are so precarious that for three years together the *samindar* might not have crops that would enable him to pay his debts. In six years, if the skies are not too persistently unpropitious, there is a better prospect that some good harvests will occur.

"As to the connection of this Bill with the policy of the Punjab Alienation of Land Act, I do not argue that this Bill is a vital or inevitable part of that policy, but it is in harmony with it; and it is my conviction that the three years' term has done much to embitter the relations between agricultural borrowers and lenders; while anything that would improve their relations may well form part of the readjustments of methods of business which must follow upon that Act. As I have explained in the proposals for a Punjab Bill made by Sir James Lyall in 1891 the present proposal had its place; and Sir James Lyall's scheme has been merged in and superseded by our recent land legislation. It remains to hear what the *banias* will say, but I anticipate that they will not raise objections to the extension of the term. If so, this is an advantage, for there is no doubt that their objections to the Alienation of Land Act were and continue to be strong. It has indeed been suggested that we are mistaken in supposing that we are here doing a good turn to the *samindars*. The longer the term the more difficult is it for them to prove fraud or want of consideration; interest mounts up till the burden becomes impossible; and the *bania* sees the accumulation with glee because it will enable him in the end to acquire the land. I admit some force in these objections, but much of it is lost now that mortgages by conditional sale are abolished and we have a positive rule of law that no land belonging to a member of an agricultural tribe notified as such under the Alienation of Land Act shall be sold in execution of decree. There will be opportunities for *bania samindars*, that is members of agricultural tribes, who turn money-lenders; and for 'agriculturists' in the curious and technical sense of the expression used in the Alienation of Land Act. But the ordinary village money-lender will now, if I am not mistaken, have to leave the trade of land-grabber to some one else. The danger that a long period of limitation is the *bania's* opportunity to secure the land has sensibly diminished. The longer period is better suited than the shorter one to the traditional relations between *banias* and *samindars* and the actual circumstances under which they do business with each other in this Province. And then there is the other point of view that credit based on land being now restricted we should enlarge credit based on personal security; that for the mass of the peasant proprietors the principal item of property which will from year to year support such security is the crop; and that in six years you are more likely to have a sufficiency of good harvests to enable the borrower to discharge his debt than in three. On the whole, though I am well aware that there is a good deal to be said against extending the term of limitation, I am convinced that the balance of argument is very decidedly in favour of the course that I am asking the Council to pursue.

"So far I have discussed the matter from the point of view of the rural community. It remains to explain how other classes came to be brought in. If we were to make the measure a purely agrarian one, how were we to define the classes concerned? One suggestion was that the longer term should apply only in suits brought against 'agriculturists' as defined for certain purposes in the Alienation of Land Act—a class which includes many men who are merely *banias* and not true agriculturists at all. Would it do then to define the class as members of agricultural tribes? This would exclude large numbers

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of the agricultural community who, though for various reasons not brought within the protection of the Alienation of Land Act, might well have the benefit of the longer period proposed. Moreover, member of an agricultural tribe is an expression which may vary in its comprehensiveness. Even now we have the list of such tribes under consideration; we shall certainly revise it before long; and a list which may vary from time to time at the discretion of the Local Government is not a very suitable basis for a limitation law. Finally, we discussed the idea of accepting a much wider definition of 'agriculturist' proposed by the Government of India in connection with the revision of the Code of Civil Procedure. That was so wide a definition that it would probably have protected all whom we desired to protect. But we should have had two different definitions of 'agriculturist' on the Statute Book—a misfortune which may yet befall us when the Bill to amend the Civil Procedure Code passes into law unless indeed, by some future amendment, the so-called 'agriculturist' disappears from the Act relating to the Alienation of Land. And apart from this, there is always uncertainty about the interpretation which the Courts will put upon such definitions, and litigation upon points of limitation might and probably would be longer, more elaborate and more expensive than ever if the issue is to be complicated in every case by the question whether the defendant is or is not an agriculturist, however defined. We were thus led to propose a clear, simple uniform rule applicable to all classes. This is in accordance with the advice given us by Sir W. O. Clark, the Chief Judge, at an early stage of the discussion; it assimilates our law, as already said, to the law of England; and it avoids class legislation—a thing doubtless necessary in certain cases, but which should, without strong necessity, be disallowed.

"For the above reasons I beg to move for leave to introduce the Bill."

The motion was put and agreed to.

The Hon'ble SIR LEWIS TUPPER introduced the Bill.

The Hon'ble SIR LEWIS TUPPER moved that the Bill be referred to a Select Committee consisting of the Hon'ble MR. ALEX. ANDERSON, the Hon'ble MR. MASSON, the Hon'ble MR. MADAN GOPAL and the Mover, and that the Bill be circulated for the purpose of eliciting opinion thereon.

The motions were put and agreed to.

ADJOURNMENT.

THE Council adjourned *sine die*.

LAHORE :

The 11th May 1903.

H. A. B. RATTIGAN,

Secretary, Legislative Council, Punjab.

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PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at the Council Chamber, Government House, Lahore, on Wednesday, the 23rd December 1903.

PRESENT :

His Honour Sir CHARLES MONTGOMERY RIVAZ, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Colonel J. B. HUTCHINSON,

The Hon'ble Sir LEWIS TUPPER, K.C.I.E., C.S.I., I.C.S.

The Hon'ble Mr. ALEXANDER ANDERSON, C.I.E., I.C.S.

The Hon'ble Mian MUHAMMAD SHAH DIN, Bar-at-Law. ✓

The Hon'ble Mr. J. MCC. DOUIE, I.C.S.

The Hon'ble Mr. J. BENTON, C.I.E., M.I.C.E.

The Hon'ble Mr. D. P. MASSON, C.I.E.

The Hon'ble Kanwár Sir RANBIR SINGH, K.C.S.I.

New Members.

The Hon'ble Mian MUHAMMAD SHAH DIN, the Hon'ble Mr. J. MCC. DOUIE, the Hon'ble Mr. J. BENTON, the Hon'ble Mr. D. P. MASSON, the Hon'ble Kanwár Sir RANBIR SINGH took their seats in Council.

PUNJAB LAW OF PRE-EMPTION BILL.

The Hon'ble Sir LEWIS TUPPER moved for leave to withdraw the Bill to amend the law relating to pre-emption in force in the Punjab, introduced by him in Council on the 17th January 1902. He said:—"In January 1902 I had the honour to introduce in this Council a Bill to amend the law relating to pre-emption in the Punjab. The Bill was circulated for opinions, and when they were received it was found necessary to modify it a good deal, and more particularly on two important matters of principle. *First*, it was thought desirable to restore in great measure the jurisdiction of the Civil Courts, which, so far as regards rural pre-emption, had been wholly excluded in the Bill as introduced; and, *secondly*, it was resolved to largely amend the law relating to pre-emption in towns which the Bill as introduced had simply re-enacted. The Select Committee, to whom the Bill and the opinions were referred, held many long meetings during last cold weather; and the result of their labours was a Bill which has been described—and I think quite justly—as an entirely new one. Some of the provisions in this new or revised Bill are purely tentative; and it is admitted by the Select Committee itself, and others concerned, that we cannot proceed further without a fresh call for opinions. Under these circumstances it has been decided to withdraw the original Bill; to circulate the revised Bill drafted by the Select Committee with a sufficient explanation of its objects and reasons; and, when opinions have been received and the points upon which the Select Committee is in doubt have been decided, to take the further steps which will then be necessary to bring a new Bill before Council. Our Rules of Business admit of this course, and in accordance with Rule 32 I beg to move for leave to withdraw the Bill to amend the law relating to pre-emption in force in the Punjab which was introduced by me in Council on the 17th January 1902."

The motion was put and agreed to, and the Bill was withdrawn.

[*Sir Lewis Tupper.*]

[23RD DECEMBER

SIND SAGAR DOAB COLONIZATION ACT AMENDMENT BILL.

The Hon'ble SIR LEWIS TUPPER moved for leave to introduce a Bill to amend the Sind Sagar Doab Colonization Act, 1902. He said:—
 "The Bill which I now have to mention to the Council stands in marked contrast to the Bill which I have just obtained leave to withdraw. Its purpose is to amend the Sind Sagar Doab Colonisation Act of 1902, and it does not, I believe, raise any important question of principle and is not, I hope, of a character to give rise to much discussion.

"Taking the amendments proposed to be made in the order in which they occur in the Bill, the first is due to the separation of the North-West Frontier Province from the Punjab. The Act extends to the Sind Sagar Doab, and in defining such extent reference was made to the Bannu and Dera Ismail Khan Districts amongst others. This was correct when the Bill was passed by this Council on October 7th, 1901. But by the time the Act received the assent of the Governor General the tracts still retaining the names of the Bannu and Dera Ismail Khan Districts had ceased to form part of the Punjab and the new Mianwali District had been constituted. Hence the necessity for substituting Mianwali for Bannu and Dera Ismail Khan.

"The second amendment is of a less formal character. After the Act of 1902 had been passed doubts arose whether we had sufficiently safeguarded the rights of mortgagees. The principle of the Act is that, from the date on which the excavation of a perennial canal from the Indus to irrigate the Sind Sagar Doab shall begin, the Government shall acquire from the permanent holders rights over lands of which three-fourths will be retained by Government for purposes of colonisation, and one-fourth, immensely improved in value by being made irrigable, will be restored to the original owners. We did not include mortgagees in the agreements to be made in pursuance of this arrangement because we held that their rights would be maintained in the one-fourth restored, their security being thus actually improved. It was, however, pointed out that such rights would be preserved only in so far as the whole or part of the specific area originally mortgaged might be handed back to the mortgagee or his representative or assign. The reply to this objection was that so far we had dealt only with village common lands and probably should deal with no others, the specific area subject to mortgage thus being eventually restored; and that if we did deal with other lands, we had inserted in the agreements with the original owners a clause binding them to the continuance of the rights in their lands enjoyed by other persons at the time of surrender. The Officiating Legal Remembrancer, however, advised that the mortgagees being no parties to these agreements and having received no consideration from their mortgagors, would be powerless to enforce their rights. It was admitted that the case might occur of the acquisition of rights in lands from individual proprietors and the restoration of rights over an area not identical with that which was the subject of the mortgage. Hence the provisions of the Bill which enable the Deputy Commissioner on a restoration of rights to make an order declaring that the rights restored shall be subject to such encumbrances or so much thereof as existed at the time of the surrender on the whole or any portion of the area originally surrendered, and as may seem to him to be just and reasonable. The rest of clause 3 of the Bill is intended to make this provision effective and workable and to provide for the decision of complicated cases by the Civil Courts where necessary.

"Thirdly and lastly, work went on under the Act, as it had gone on before, notwithstanding the want of jurisdiction because no reference had been made to the Mianwali District in which a great part of the Sind Sagar Doab is com-

SIND SAGAR DOAB COLONIZATION ACT AMENDMENT BILL. 3
PUNJAB MINOR CANALS BILL.

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prised. Numerous agreements to surrender rights over lands were taken in the Thal by Mr. Hailey; and it is obviously necessary to validate all that has been done up to date. This is effected by the final clause of the Bill.

"With this explanation I beg to move for leave to introduce a Bill to amend the Sind Sagar Doab Colonisation Act, 1902."

The motion was put and agreed to.

As the above motion was carried, the Hon'ble SIR LEWIS TUPPER introduced the Bill.

The Hon'ble SIR LEWIS TUPPER moved that the Bill be referred to a Select Committee consisting of the Hon'ble MR. J. BENTON, the Hon'ble MR. J. MCC. DOUIE, the Hon'ble Kanwár SIR RANBIR SINGH and the Mover.

The motion was put and agreed to.

PUNJAB MINOR CANALS BILL.

The Hon'ble SIR LEWIS TUPPER moved for leave to introduce a Bill to make better provision for the control and management of minor canals in the Punjab. He said:—"Since this Council was constituted it has been so fortunate as to clear off, if I may so express the matter, a great deal of our legislative arrears by passing measures which had remained under discussion for years merely as projects of law. That was the case, for instance, with the Punjab Riverain Boundaries Act and with the more recent Court of Wards Act. The Bill to which I am now about to refer is another instance of the same process. The necessity for legislation in connection with our minor canals was suggested by the Government of India in 1881; and the first draft of the measure, which I propose to ask leave to introduce, was framed by the late Colonel Wace and the late Colonel Robert Home in 1886. There have been many subsequent drafts, but I need not follow the history of the Bill in any detail. The principle that the Northern India Canal and Drainage Act of 1873 is not entirely suitable to our minor canals has been accepted from the first; and some of the most urgently needed provisions were embodied in the Peshawar Canals Regulation, 1898, which can be extended by the Chief Commissioner to other districts in the North-West Frontier Province. In this way Government has met the needs arising out of one of the great groups of minor canals—the Frontier minor canals—with which we are not now concerned, although of course we were concerned with them till quite a late stage in the consideration of our measure.

"The other great groups of canals to which I may allude are, *first*, the canals of the Southern Punjab, *secondly*, the Shahpur canals, and, *thirdly*, the canals now known as the Grey Canals—from the name of their great promoter Colonel Grey—in the Ferozepore District. Each of these groups has a different history, and one reason why I mention all these canals is that their history illustrates what has happened elsewhere in the Punjab, although on a smaller scale. In certain points all three groups are alike. The canals are inundation canals depending upon the vagaries of the rivers and thus requiring prompt and energetic management, as rivers alter their course or threaten embankments with destruction by floods. In all these canals either the peasantry or well-to-do private land-holders have had a varying share in original construction. Everywhere there is need of some vigorous but sympathetic local authority to enforce the systems of management which have grown up, to settle disputes between irrigators and others interested, and to prevent the evils of waste of water and waterlogging by an adequate control of the irrigation. In Dera Ghāzi Khan, Muzaffargarh and Mooltan the canal system dates from before our day. The canals were for the most part constructed by the unpaid labour of the zamindārs and their dependants, the rulers supplying direction and driving power and sometimes some paid labour and perhaps also sometimes feeding gangs of unpaid labourers. In all these districts maintenance was originally secured by *chher* labour; that is to quote Sir James Lyall's description of it, the system by which the irrigators supply in proportion to their irrigation the labour required for their

[*Sir Lewis Tupper.*]

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annual repairs or clearances, paying a cash commutation in case of default. In the Dera Ghāzi Khan District Dīwān Sāwan Mal abolished *chher* and took a tax in lieu of it; and we have followed his example in the late settlements of Mooltan and Muzaffargarh. In the Shahpur District the present canals were constructed between 1860 and 1870 under the encouragement of British officers mainly by private individuals with private capital; and as regards such of them as are private property there is at present no adequate legal provision for their control. The Ferozepore canals were made when Colonel Grey was the Deputy Commissioner by his initiative and with all his well known capacity to get the people to combine in their own interests, the cost being provided by the irrigators or in some cases by the Mamdot Estate. We have had ever since an official system of management for very many years under the capable charge of Rāi Bahādur Maya Dās who has only now retired from service.

"In several other districts also, besides those I have referred to, there are irrigation works in respect to which we should have to consider whether they should be scheduled under the Bill. I do not suppose the framers of the Canal Act of Northern India thought at all of our numerous minor irrigation works in which the people are often owners; and hitherto we have carried on in the best way we could partly by applying the Act, though we felt it was not very suitable, partly by taking special agreements from the irrigators themselves, partly by maintaining absolutely necessary rules as conditions of the settlement arrangements, and very largely by the mere influence and word of command of our officers both of the Revenue and the Canal Departments, supported by the good sense of the people who knew well enough that more or less professional guidance and authoritative decisions and the sort of leading which induces them to combine are absolutely essential and have thus acquiesced in the situation.

"The time, however, has certainly come when we should supply a suitable legal basis for what we have been in the habit of doing and must continue to do.

"The Bill gives us the legal basis required, but leaves the Local Government to select the canals to which it shall be applied. Moreover, in frame the Bill differs very materially from the Peshāwar Canals Regulation, although, as I have explained, it has historically the same origin. Like the Bill the Regulation supplements the Canal Act, but does so in a different way. The Regulation except so far as it conflicts with the Canal Act, it leaves that to its operation. The Bill before me, on the other hand, is a self-contained enactment. Where it operates the Canal Act will not operate at all; but equally with the Peshāwar Regulation it is a supplement to that Act, because it repeats with the necessary modifications all the provisions of that enactment which we require for our minor canals. I confess that I myself greatly prefer this method of enactment. Our officers will have before them in one place all they need; and there is less risk of unintended conflict and accidental legal complications if all the necessary provisions are included in a single draft.

"It follows from the frame of our enactment that so much of it as merely repeats with incidental alterations portions of Act VIII of 1873 does not need any explanation. These are provisions which have been found to work well and are considered suitable to our minor canals. In some cases, however, we have inserted provisions which would, we think, be good amendments in the principal Act. But these are necessarily limited here to our minor canals because the Act of 1873 applies to the United Provinces and the Central Provinces as well as to the Punjab; and if it were to be amended, the amendment would have to be undertaken in the Council of the Governor-General.

"As to the supplementary provisions which are specially required for our minor canals and therefore stand as the principal justification of the measure, while all are at present believed to be necessary, I will briefly mention some few which have struck me as being the best illustrations of the necessity for the Bill.

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"Its plan is to deal separately on the one hand with canals, whether the property of Government or not, which are under the management of Government officers or District Boards; and on the other hand with canals under private management, though needing control from the position of the owners as monopolists. In Chapters I, II and V of the Bill are enacted such provisions as are necessary for canals of both classes.

"Part of Chapter II regulates construction, and, in the case of canals intended to be supplied from waters notified in this behalf, secures the first element of control by making permission necessary.

"Another very important clause in Chapter II, which has only lately been settled after prolonged correspondence, refers to water dues. It has been held throughout by the Punjab authorities that the rights of the State in respect of the waters of rivers, streams and lakes are not the same in the Punjab as in England; and so long ago as 1864 it was recorded by Sir Donald McLeod that 'where private parties or corporations are allowed to construct canals, they should be required to pay to Government, as lord of the rivers, a tax or seigniorage on the water taken by them at the head of their canal.' It will be observed that while clause 7 asserts the principle that Government may make a charge for the use of water supplied to a canal, the operation of this principle is very carefully limited to classes of cases where its justice cannot, I think, be reasonably impugned.

"Clause 9 in Chapter III applicable to canals under public management is a most important one. It gives the Collector or Canal Officer, who may be empowered as a Collector (*vide* clause 56), those wide powers of management which in one way or another he has hitherto been often compelled to assume.

"Another noticeable and much needed clause in the same chapter is clause 13 which legalises the practice, hitherto common without legal sanction, of occupying land adjacent to the canal for depositing soil dug out in clearances and for excavating earth for repairs to the canal banks.

"Clauses 21, 22 and 24 enable the Collector or Canal Officer duly empowered to construct sluices, outlets and water-courses and recover the cost from the persons benefited; also—a most useful power—to unite long straggling wasteful water-courses and fix the shares in which the water shall be enjoyed.

"In Chapter IV applicable to canals under private management I single out as the leading provision clause 38 empowering the Local Government to issue orders fixing the limits of irrigation, and the amount, character and conditions of the water-rates, and regulating the supply and distribution of water. These are wide powers, but necessary and guarded by provisions for compensation except where the canal-owner has forfeited his claim to it by conduct of an arbitrary or inequitable kind.

"In Chapter V applicable to all canals to which the Bill relates clauses 42 to 45 are important as empowering Government to acquire any canal on payment of compensation. Clause 47 most usefully extends the power of dealing with obstructions in channels given by Act VIII of 1873 to their prevention in addition to their removal and to creeks as defined in the Bill—practically arms of rivers—as well as to rivers themselves. Clause 49 gives valuable powers as to the construction and maintenance of works; and lastly, I may mention clause 63 which is the outcome of voluminous correspondence with the Bahawalpur and Sind authorities. Under this clause the Local Government has discretion to apply within the Punjab any part of the Act to canals, rivers, creeks, water-courses or subsidiary works situated partly in Punjab and partly in Bahawalpur or Sind territory. It is intended to afford the authorities of Sind and the Bahawalpur State an opportunity of considering the Bill and I venture to express the hope that this clause will be found entirely satisfactory to them.

**'PUNJAB MINOR CANALS BILL.
PUNJAB LOANS LIMITATION BILL.**

[*Sir Lewis Tupper.*] [23RD DECEMBER 1903.]

"I do not think I need say more in justification of this long-debated measure for which proposals were first made more than 20 years ago, and of which the first draft that I have been able to find was framed some 17 years ago. I beg to move for leave to introduce a Bill to make better provision for the control and management of the minor canals in the Punjab.

The motion was put and agreed to, and the Hon'ble SIR LEWIS TUPPER introduced the Bill.

The Hon'ble SIR LEWIS TUPPER moved—

- (a) that the Bill be referred to a Select Committee consisting of the Hon'ble MIAN MUHAMMAD SHAH DIN, the Hon'ble MR. J. BENTON, the Hon'ble MR. J. MCC. DOUIE and the Mover ;
- (b) that the Bill be circulated for the purpose of eliciting opinion thereon.

The motions were put and agreed to.

PUNJAB LOANS LIMITATION BILL.

The Hon'ble SIR LEWIS TUPPER presented the Report of the Select Committee on the Bill to amend the law relating to the limitation of suits for the recovery of money due on account of money lent or advanced, or on an account stated, or in respect of goods supplied.

ADJOURNMENT.

The Council adjourned *sine die*.

LAHORE :

The 23rd December 1903. }

H. A. B. RATTIGAN,

Secretary, Legislative Council.

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at the Council Chamber, Government House Lahore, on Monday, the 25th April 1904.

PRESENT:

His Honour Sir CHARLES MONTGOMERY RIVAZ, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Sir LEWIS TUPPER, K.C.I.E., C.S.I., I.C.S.

The Hon'ble Mr. ALEXANDER ANDERSON, C.I.E., I.C.S.

The Hon'ble Mian MUHAMMAD SHAH DIN, Bar-at-Law.

The Hon'ble Mr. J. MCC. DOUIE, I.C.S.

The Hon'ble Mr. J. BENTON, C.I.E., M.I.C.E.

The Hon'ble Mr. D. P. MASSON, C.I.E.

The Hon'ble Kanwár Sir RANBIR SINGH, K.C.S.I.

The Hon'ble Colonel J. B. HUTCHINSON,

The Hon'ble Major Raja JAI CHAND, of Lambagraon.

New Members.

The Hon'ble Colonel J. B. HUTCHINSON and the Hon'ble Major Raja JAI CHAND of Lambagraon took their seats in Council.

PUNJAB LOANS LIMITATION BILL.

The Hon'ble Sir LEWIS TUPPER moved that the Report of the Select Committee on the Bill to amend the law relating to the limitation of suits for the recovery of money due on account of money lent or advanced, or on an account stated, or in respect of goods supplied, be taken into consideration. He said:—
“The changes which were made by the Select Committee in this Bill were not important and do not call for much remark.

“We slightly altered the frame of the Bill so as to adapt it with greater precision to the provisions of the Limitation Act, and we considered, one by one, every relevant article in the Second Schedule of that Act and revised our own Schedule in accordance with the principle of the measure and the convenience, as we understood it, of the European mercantile community. We thought it would prevent mistakes and save trouble and time to the Courts and the public to set out in full every article in respect of which we propose to extend the period of limitation. Our Schedule is therefore now intelligible without reference to the principal Act instead of being, as it originally was, a mere list of numbers. In revising our Schedule we were greatly aided by the long commercial experience of our Hon'ble Colleague MR. D. P. MASSON, and as Member in charge of the Bill I may perhaps be permitted to specially acknowledge his very valuable

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advice. Our Hon'ble Colleague MR. MADAN GOPAL was not persuaded of the necessity for the Bill and left on record a minute of dissent to which I shall return at a later stage of to-day's proceedings.

"It has been acknowledged from the first that opinions were likely to be divided on this Bill, and therefore, instead of proceeding to pass it when the Report of the Select Committee was presented in December last, a period of more than three months was allowed to elapse for the purpose of seeing whether the dissent recorded by MR. MADAN GOPAL would give rise to public discussion. The newspapers, English and Vernacular, have been carefully watched, but no such discussion has been observed.

"I will reserve any further remarks I may have to offer till other Members have discussed the Bill."

The motion was put and agreed to.

The Hon'ble MR. D. P. MASSON then, with the permission of the Hon'ble the President, moved that in the preamble to the Bill after the words "goods supplied" the following words be added, *viz.*, "or on a bond, bill of exchange or promissory note."

The motion was put and agreed to.

The Hon'ble SIR LEWIS TUPPER moved that the Bill as amended by the Select Committee and as now further amended be passed.

The Hon'ble MR. D. P. MASSON said:—"On behalf of the European commercial community I cannot say that the passing of this Bill would evoke general enthusiasm: indeed, the Bill has raised a warm spirit of opposition on the part of a considerable proportion of the Trades Association of the Province. The view of these is that the passing of the Bill would greatly aggravate the evils of the existing system of credit, which in India is already most prejudicial to tradesmen. Irresponsible debtors consider that they are entitled to three years' credit, and that prices are framed accordingly, and they are ready to taboo any tradesman who sues—or even unduly presses—them in the meantime: in these circumstances the tradesman is thankful when the period of limitation approaches, and he can fairly claim his own. The members of the trades who are opposed to the Bill are further of opinion that an extension of the period of limitation from three to six years would greatly aggravate the evils of this position; that it would be bad alike for the tradesman and for his customer—for the latter as he would be enabled to increase his credit still further, to his ultimate embarrassment, and for the former in that his outstanding debts would greatly increase, and that an even larger proportion of these than at present would have to be written off, year by year, as bad debts. The less wealthy firms holding these views regard the change with alarm: they fear, not without logical reason, that they would be overwhelmed by the wealthier firms who, with their greater command of capital, could well afford to give the required extended credit. On the other hand, a large portion of the Trades are warmly in favour of the Bill. In Lahore these appeared to be in the minority; but I learn from Simla that at a meeting of the Punjab Trades Association, just held there, the majority, after full discussion, were in favour of the extension to six years, and they wished me to state this fact at to-day's Meeting of the Council. Those in favour of the Bill believe that it would have an effect contrary to that which I have expressed on behalf of their fellow-tradesmen. They remember especially that there are two classes of outstanding debts that they have the greatest difficulty in collecting,—these are, first, comparatively small debts, of from Rs. 25 to Rs. 50; and, secondly, the debts of persons who are transferred to other Provinces, or to outlying stations in our own Province. In the aggregate the

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former amount to a very considerable sum in the course of each year, yet tradesmen are averse to adopting extreme measures for their collection, both on account of the comparatively heavy legal expenses and the odium of many petty suits. The tradesmen of whom I am now speaking believe they would have a far better chance of collecting the first class of debts, by the usual method of persuasion, within six years than within three: also that the second class of debtor would be more likely to come within effective distance to be attacked within six years than within three. They remember, further, that the position of their debtors would in all probability improve greatly within six years, for it is generally the young and thoughtless who run up irresponsible bills with their tradesmen; and, so far from agreeing with their brother tradesmen that greater facilities for running up bills would be given, under the extended period of limitation, they believe that persons dealing with them would be less likely to ask even for the present limit of credit, on account of the increased facilities for collection which I have just mentioned. I have dwelt perhaps at undue length on the tradesmen's case: but I have had many representations, from both sides, which I feel it my duty thus to epitomize.

"From the general mercantile community, apart from the trades, I have heard of no opposition to this Bill: generally, so far as my enquiries go, there is warm or qualified approval or indifference. As the Manager of one of the Mofussil Banks, the measure has my personal support, for I know of cases—exceptional cases, certainly—where safe but careless debtors had to be sued just because they would not take the trouble to examine and confirm their accounts in the manner mentioned in the Hon'ble MR. MADAN GOPAL'S note. They seemed to regard such confirmation with suspicion, lest they should be making themselves responsible for more than they owed: and I may suggest, incidentally, that when this is the case occasionally amongst Europeans, it must be much more common amongst ignorant and procrastinating *samindār* debtors. The Managers of the Branches of the Presidency and Exchange Banks in this Province take little interest in the Bill, the bulk of their advances being made for comparatively short periods: still, I can conceive cases where the change would be of benefit to them. I took the opportunity of ascertaining the views of one or two of the merchants of Karáchi, as the port of our Province, having large commercial dealings with us, and I know they approve the Bill generally. I am aware that this Bill is primarily intended in the interests of the *samindār*, and that its provisions are extended to general mercantile transactions only for the sake of uniformity and to avoid class legislation. As a representative of the commercial community on this Council, I feel that I can, with the general approval of my constituency, support the Bill."

The Hon'ble MR. J. M. DOUIE said:—"My Hon'ble friend, MR. MASSON, has dealt with this bill as regards its effects on commercial transactions. It will therefore be appropriate if I confine my remarks to its bearings on the relations of agricultural debtors and their creditors. Whatever defects characterise Indian legislation, I do not think any one can say with truth that it is precipitate. The matter which we are discussing to-day has been on the anvil since 1884, and I am unpleasantly reminded of the fact that I am officially growing old by finding that I gave a strong opinion on it nineteen years ago. It is time that a decision were made one way or another, and I hope the Council will to-day remove the question from the region of debate into that of actual experiment.

"No one will probably deny that under the system which gradually, and in part inevitably, grew up after annexation, the relations between the *samundars* and the village money-lenders changed for the worse. The old mutual confidence disappeared. While the *sahikár* depended on the landowners for protection he

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made no exorbitant demands. On the other hand, the repudiation of just debts, so common now-a-days, was, I fancy, rare, and would have been rebuked by public opinion. Honest dealing is perfectly possible where only one of the parties keeps accounts. The Powinda traders from across the border deposit their money year by year with Hindu bankers in Dera Ismail Khan, and, I believe, take no receipts, but a denial of a claim to refund is practically unknown, and would create much scandal. I fear no astonishment would be felt at dishonesty on one side or the other in ordinary transactions between a *samindar* and a *sahukar*. Such dealings often end in a long and bitter contest, in which the debtor is every whit as unscrupulous as the creditor. The object of this measure is to assist in the restoration of easier relations between the two classes, and it is because I think it will in some degree serve that end that I support it. Even now most debtors and creditors are prepared to do business on fair terms, and the change in the law will make far fewer resorts to our Courts with all the trouble, expense, and ill-feeling which litigation breeds. The lender's position in face of a dishonest or doubtful borrower is in no way weakened. There is nothing in this Bill to compel him to give a day's more grace than he thinks prudent.

"Whatever else the Bill may be, it is emphatically not a piece of class legislation. It would not have been so, in any objectionable sense, had it remained in its earlier, and perhaps better, form, and dealt only with agricultural debtors. It is clear that *sahukars* see no danger in its provisions, and it is notorious that, rightly or wrongly, the landowners have long made the shortness of the period of limitation a ground of complaint. Other measures are required if matters are to be put on a sound footing, including a revival in some form of the old Hindu law of interest (*dām dupat*) and some surer and simpler procedure for the recovery of their just debts by *sahukars*. The extent to which money decrees are infructuous at present is little short of scandalous. "When he introduced the Bill a year ago my Hon'ble Friend, SIR LEWIS TUPPER, described it by an apt metaphor. It was, he said, one of a group of buildings which Government has planned for a common purpose, and is gradually completing. I do not pretend to believe that it is one of the most important of these structures. It is less so than it would have been had it come into existence twenty years ago. For one thing the bold attack on the evil of agricultural indebtedness embodied in the Alienation of Land Act has made palliatives of less importance. I admit that the measure is, and in the nature of things must be, experimental. But if we believe in the soundness of its object, and think there is a reasonable hope of that object being attained, the fact that it is experimental is no ground for rejecting it. So on a much more important scale was the Alienation of Land Act itself. And nothing is more curious than the way in which that great measure has so far disappointed the apprehensions expressed by its foes, and shared in a degree by some of its best friends."

The Hon'ble Mr. SHAH DIN said :—"I very much regret that I am not able to agree either in the principle or in the details of this Bill. The primary and main intention of the Bill is, as the Select Committee say in their report, to extend the period of limitation in respect of those monetary transactions which more particularly concern the agricultural classes of the Punjab. The period of three years allowed under the existing law in respect of such transactions is, it is considered, unduly short, and in practice gives rise to two unfortunate results,—namely, increased litigation and the consequent bad feeling between the indebted agriculturist and the village money-lender. By extending the period of limitation to six years these results will, it is thought, be avoided, as creditors will not in that case be forced, as it is said they are at present, to put their debtors into Court in order to prevent their claims from being barred by limitation, and will be encouraged to allow them further time for payment. Now, I yield to none in

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my desire to see litigation among agricultural classes decrease, as I am convinced that petty litigation, combined with certain other causes, is in part responsible for agricultural indebtedness in this part of the country. Nor am I less anxious than any of my Hon'ble Colleagues at this table to place the relations between the village money-lender and the agriculturist on a footing of mutual friendliness and good feeling, as I consider that the existence of harmonious relations between them is essential to the prosperity of both, and powerfully contributes, under existing conditions, to all economic advance in our village communities. But after giving my very best consideration to this Bill and to the alleged shortcomings of the present law of limitation with special reference to the requirements of the Punjab *samindars*, I regret I am unable to perceive the need for this legislative measure, nor am I satisfied that if passed into law, it will compass the very commendable objects which the Hon'ble Member in charge of the Bill has in view.

"The Council will observe that though the Bill is primarily intended to benefit the agricultural classes, because of the unsuitability of the existing law to their needs, its provisions are not confined to them, but will apply to all classes of the community, the object being, as the Select Committee point out, to secure, as far as possible, uniformity of the law. This has led to two important, and, if I may be allowed to say so, unforeseen results—

"First, because mercantile classes have to be brought within the purview of the Bill with a view to secure uniformity of the law, the scope of the Bill has been extended by the Select Committee as regards classes of transactions as well, and in order to make the Bill a complete piece of legislation, as far it can go, it has been made to cover many transactions which are to all intents and purposes peculiar to non-agricultural classes.

"Secondly, the main object of the Bill which was primarily intended to be a measure directed towards protecting the interests of a special class, has been largely departed from, and very nearly all kinds of monetary transactions arising principally out of commercial dealings which were originally outside the proper scope of the Bill have now been included within it. Now, I think I am not far wrong in assuming that if it had not been for the idea that the rural classes in this Province stood in need of a legislative measure such as this Bill, the introduction of it in this Council would have been thought both unnecessary and undesirable,—unnecessary because the mercantile communities in towns have never expressed dissatisfaction with the existing law on the subject, and undesirable because, so far as they are concerned, a special law of limitation for the Punjab at variance with the law in force in the other Provinces of India, is likely, to give rise to confusion and legal complications. If I am right in this view, I think it follows that either the provisions of this Bill should have been confined to agricultural classes, or if that was considered for any reason impracticable, then only that class of transactions should have been brought within its purview which have the most real connection with the rural population. If special legislation is needed in the interests of a special class, its benefits should, in my opinion, be confined to that class; and if for any cause such restriction affects other classes prejudicially, the reasons in support of such class legislation lose much of their force. The conclusion, therefore, that I have arrived at is that, so far as the mercantile classes in this Province are concerned, the extension of the period of limitation from three to six years is certainly not called for, and that so long as the present law of limitation remains in force in all other parts of India, a disturbance of the *status quo* such as is involved in the proposed extension is, at any rate from the standpoint of contractual equilibrium, open to objection. If, as is observed in the Statement of Objects and Reasons, the proposed change in the law is desirable because, among other things, it

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possesses the commercial advantage of assimilating the rule observed here with that which is already prescribed by the law of England, is it not equally desirable, in the interests of Indian commerce, that there should be one uniform law of limitation throughout British India, and that, in the absence of very cogent reasons to the contrary, commercial concerns in the Punjab should continue to be regulated by the law which has been in operation here with satisfactory results ever since 1867? If, as I venture to suggest, the mercantile classes be excluded from the provisions of the Bill, a number of articles included in the Schedule to the Bill which describe transactions almost unknown to agriculturists, but which bear materially upon commerce at large, will have to be struck out, with the result that the Bill will be very much simplified, and will depart as little as possible from the Indian Limitation Act of 1877.

"I now come to the consideration of the far more important question as to whether the Bill is needed in the interests of the agricultural population in this Province. I regret that, after giving my most anxious thought to this question, I am constrained to answer it in the negative.

"My reasons for this conclusion are briefly as follows:—

"(1) The tendency of legislation in India, as in almost all other countries, has been towards shortening the period of limitation in respect of suits based upon contract. Section 14 of Regulation III of 1793, which governed Mofassil Courts in Bengal, prescribed a limitation of 12 years for suits arising out of monetary claims. The same rule of limitation was adopted in Bombay Regulation I of 1800 and in Madras Regulation II of 1802. Subsequently Bombay Regulation V of 1827 reduced the period of limitation from 12 years to 6 years in regard to all suits for debts not founded upon or supported by an acknowledgment in writing.

"These regulations, as is well known, did not apply to Non-Regulation Provinces. The Punjab Code modified Bengal Regulation III of 1793 (Section 14), and reduced the limitation of actions for debt or based upon contract, excepting partnership accounts, from 12 to 6 years. The first Act of Limitation, Act XIV of 1859, provided, with certain exceptions, one uniform law of limitation for all the Courts in British India. It shortened the periods of limitation allowed by the Regulations, which governed the Mofassil Courts in Regulation Provinces, and by the Statute of James I (21 James I, C. 16) which governed the three Supreme Courts in the three Presidency Towns. The general periods adopted were 12 years for suits relating to immoveable property and 6 years for other personal demands. The shorter period of 3 years was adopted in respect of suits for money lent, for breaches of unregistered contracts, for rents, and for hire. Ten years later a more carefully drawn and more symmetrical statute of limitation was passed in the shape of Act IX of 1871, which, while amending the Act of 1859 in certain very important particulars, left intact its provisions as to the limitation of suits arising out of loans and breaches of unregistered contracts. Act IX of 1871 was shortly afterwards replaced by Act XV of 1877 which is the present law on the subject. This Act, which is a considerably improved edition of the Act of 1871, retains the period of 3 years prescribed by its predecessors, but in respect of suits for money

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payable on demand it practically *reduces* the prescribed period by providing that time will run from the date of the *transaction* instead of from the date of the *demand*, as laid down by Act IX of 1871 (Articles 59 and 73, Schedule II).

" From what I have said above the Hon'ble Members will see that the rule of three years' limitation, which is sought to be amended by this Bill, has been in force in British India ever since the first Limitation Act (Act XIV of 1859) was passed. This Act was extended to the Punjab in December 1866, and our agricultural classes have, therefore, been governed by the law in question for the last 37 years. Unless, therefore, the Council is fully convinced that this law has worked to the detriment of these classes, and that the proposed extension will confer material benefits upon them, we shall hardly be justified in altering the law so late in the day and thus adopting a position of isolation with respect to the rest of India.

" (2) I am not prepared to believe that the proposed change in the law will directly tend to decrease litigation among the agricultural classes, and to improve the relations between them and the money-lending community. The village creditor whose chief object is to allow interest to accumulate ordinarily does his utmost to induce his debtor to defer payment by striking a balance or giving a fresh bond; and it is only when the debtor who is unable to pay will not agree to this (which, as a matter of fact, happens very rarely) that the creditor puts him into Court. The proposed extension of limitation will not affect this state of things; in fact, it will result in the interest on the principal running to a larger amount than is the case now, and in enhancing, in the majority of cases, the debtor's difficulties in the way of payment. As a further consequence, it will simply postpone the institution of suits, engendering, when suits are instituted, bad feelings as at present; and the volume of litigation will remain very much what it is now. My own experience is that if an agriculturist is honestly anxious to pay the debt due, and wants further time for payment, the law of limitation does not ordinarily stand in his way, as the village money-lender is equally, if not more, desirous of allowing further time, and the two generally agree to an arrangement which saves limitation.

" (3) Under the existing law, the debtor gets a periodical reminder at an interval of at most three years that he owes a debt which he must pay. The ordinary Punjab *samindār* whose one prominent characteristic is his pernicious habit of sleeping over his liabilities sorely needs such a reminder, and the shorter the interval of time the better for him and his family. The extended limitation may help a very small minority of villagers who are frugal in their habits and judicious in the use of their opportunities, and who know how to husband their resources to meet their seasonal wants. But as regards the vast majority of *samindārs*, it will probably result in making them more oblivious of the demands against them, and less able to meet those demands when they come to be enforced.

" (4) The proposed law will very probably increase the power of the village money-lender over his clientele. The superior tactics and the practical business habits of the former enable him gener-

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ally to hoodwink and to exercise undue influence over the latter, whose ignorance of the most elementary things in money matters is as profound as it is surprising. The longer the period of limitation the longer the book accounts, which the debtor will not care to examine or verify, and the opportunities for fraud and forgery will proportionately multiply. The balance will be struck leisurely enough, perhaps once in six years, and then the unfortunate debtor will suddenly wake up to the grim reality of a heavy debt far beyond his means of immediate payment. The astute money-lender will, if the debtor's credit is sound, agree after some demur to take a bond for the amount, assuring the debtor of his good will towards him, and the book account thereafter will have another smooth run of six years. Surely, such a state of things is least likely to minimise the evil of agricultural indebtedness in the Punjab.

"(5) I agree in the opinion of some of the Judicial Officers who have been consulted that the proposed law will add to the difficulties of the Courts in deciding as to the justice of a claim or of a defence in ordinary money suits. At present there are no safeguards against false accounts being prepared by village money-lenders, who seldom keep a regular set of account books, and as forgery and fraud are not uncommon in villages where the means of detection are almost non-existent, the risk of the Courts accepting entries in account books without properly scrutinising them becomes all the greater the longer the period allowed for the institution of suits. False evidence will also be used more frequently as an instrument of proof, and the chances of a miscarriage of justice will be greater. The powerful money-lender will generally succeed in enforcing stale demands and the weak agriculturist will go to the wall.

"(6) At present whenever an extension of time for payment is necessary, the creditor and the debtor in rural areas, in the absence of exceptional circumstances, generally take advantage of the provisions of Section 19 and Section 20 of the Indian Limitation Act to extend the period of limitation. These provisions appear in practice sufficient to meet the requirements of the agricultural population; and therefore the present Bill which in a way only places within the reach of the debtors the same facilities as the above provisions are meant to provide, but which in practical working will entail certain serious disadvantages, appears to me to be uncalled for."

"I shall now say a few words as to the details of the Bill. If the Hon'ble Members are disposed to agree in the principle of the Bill, I would ask them to adhere to its main intention, and to carry it out in such a manner as to avoid confusion on the one hand and needless complications on the other. Considered from this standpoint, the Schedule to the Bill is, I am inclined to think, open to criticism, as it appears to me to be imperfect in some respects and to go beyond the primary object of the Bill in others. It seems to me that the exclusion from the Schedule of Articles 51 and 55 of the Second Schedule of the Indian Limitation Act is not based upon good grounds, and that a shorter period of limitation in the case of transactions covered by these articles is likely to perplex the rural classes. I shall illustrate my meaning by giving an example as to each article.

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"Article 51.—Suppose a money-lender advances money to an agriculturist in payment of 100 maunds of wheat agreed to be delivered within a fixed time, and suppose the agriculturist commits a breach of the contract because of a succession of bad seasons. Under Article 51, the money-lender must sue for the balance of the money advanced by him within three years from the date on which the wheat should have been delivered. And yet, under the present Bill (Article 52), if wheat is sold and delivered by the same money-lender to the same agriculturist, the former has six years within which to sue the latter for the price of the wheat sold. I need hardly say that though to the mind of a lawyer there may be a distinction between the two cases, the simple villagers will not recognise any such distinction, and that in practice the difference in the periods of limitation prescribed in the two cases will be embarrassing both to the money-lender and the agriculturist.

"Article 55.—Suppose *A* sells growing crops to *B*. Under Article 55 *A* must sue *B* for recovery of the price of the crops within three years from the date of the sale. If, however, *A* cuts the crops himself and then sells them to *B*, he will be allowed (under Article 52) six years from the date of the sale within which to institute his suit against *B*.

"The ordinary Punjab *zamindār* will perceive no distinction between the sale of growing crops and that of crops cut by himself, and he will hardly be to blame if he does not realise why he should sue sooner in the latter case than in the former.

"For the foregoing reasons I venture to suggest that Articles 51 and 55 should be included in the Schedule to the Bill. On the other hand, I consider that Articles 69 to 80 of the Second Schedule of the Limitation Act should be excluded from the Schedule to the Bill, as the transactions described in these articles are practically unknown to *zamindārs* in the Punjab and are peculiar to mercantile classes who, as I have shown above, do not need a change in the law at all. But if these articles are retained, then I see no reason why Articles 58 and 85 should be excluded from the Schedule. The Select Committee have struck out these articles on the ground that the transactions covered by them are foreign to the ordinary Punjab *zamindār*. But, with all deference, it seems to me that such transactions are not foreign to the ordinary *zamindār* any more than those described in Articles 69 to 80 of the Limitation Act. In the interests of consistency, therefore, either the latter group of articles should be excluded from the Schedule or Articles 58 and 85 should be included therein. It also appears to me that a *rukka* for a sum of money from one money-lender to another may in the hands of a *zamindār* have, under conceivable circumstances, the same legal incidents attached to it as a cheque, and in view of such cases the exclusion of Article 58 from the Schedule is likely to give rise to much confusion. Moreover, so far as the mercantile classes are concerned, the exclusion of Articles 58 and 85 will be a glaring anomaly."

The Hon'ble MR. ALEX. ANDERSON said :—"I regret that it is impossible for me to let this Bill become law without putting on record my reasons for thinking that it will not secure the good results claimed for it. If I could have agreed with Mr. MacLagan that this legislation would not have any marked effect one way or another, I might have recorded a silent vote, though such a doubtful position would hardly justify any, much less so important a change in the law as this Bill proposes to make. But my belief is that it will not improve the relations between money-lenders and *zamindārs*: it will not reduce the ultimate amount of litigation: it will induce reckless extravagance on the part of the people: it will encourage delay in the payment of debts, and so will increase the amount of agricultural indebtedness: and it will cause positive harm to the classes it is intended to benefit.

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" Holding this belief, I feel that it is my duty to declare that in my opinion this Bill is not merely unnecessary, but is harmful.

" In the literature on this subject we are often reminded that before our limitation law there was mutual confidence between the *shāh* and the *assāmī*, no excessive demands, no repudiation of just claims, no perjury, no forgery : and it is alleged that the demoralization of to-day is the direct result of the three years' limitation. It is argued that the remedy is a return to or at least a backward movement towards the good old times of no limitation, with accounts running on indefinitely and interest limited by the rule of *dām dora jins dūna*.

" This degeneration in the moral condition of the people cannot be laid entirely at the door of the Limitation Act. That Act was not in harmony with the ideas and economic conditions of the time, any more than was our legal system generally. The law of contract, enforced at one time and modified at another by equity and good conscience, has had much more to say to the present attitude of borrowers and lenders than the law of limitation. To secure even a very partial return to the past we must repeal the Civil Procedure Code, the Contract and Evidence Acts, and above all the fatal gift of proprietary right must be recalled. But we cannot now put the clock back, and even if we could, I doubt if we would. We cannot ignore the past half century, and we must legislate for the present and not for the past.

" One of the most important of the arguments in favour of the Bill is that there is apparently a practically unanimous desire on the part of both borrowers and lenders for an extension of the period. It is argued that some concession should be made to the wishes of the classes chiefly concerned : that the *samindār* who urges that he has been ruined by the *miād* should know best what is good for him. This argument has added a long list of great names to the supporters of the Bill.

" What the people want is not a six years' period, but no limitation at all, no day of reckoning. When they are reminded that it is necessary to consider the matter from the *bāniā's* point of view, they are not quite so sure of their position, and many of them have told me that a long period is no gain unless the *tāniā* is prevented from striking balances and adding interest to interest as at present : and in this they show their common sense.

" The desire for a long period is not so unanimous as it may appear, and in any case its existence is not a matter of much wonder, and can easily be explained by causes that scarcely commend themselves as the basis of legislation. The people who want a long period are mostly reckless improvident spendthrifts, whose natural wish is to put the day of payment as far off as possible. The few who are comparatively prudent are outnumbered by their extravagant brethren and are not heard. Those who now want 6 years will soon clamour for 12. Mr. Edward O'Brien who knew the people well wrote—

" The *miād* was the complement of the gift of property in land. The extension of a man's credit was sweet, the *miād* was bitter, and therefore we hear so much about the unpleasantness of the *miād* that we certainly take an exaggerated view of it and think that it has really an injurious effect. Nobody ever tells us what a fine thing it is to be able to borrow up to the value of the land."

" It is not the limitation, but the credit that is the cause of agricultural indebtedness and of the strained relations between the *sāhtikārs* and the land-owners. The outcry against the *miād* is based on ignorance and on misunderstanding, and it is dangerous to appeal to such an outcry as a justification for legislation.

" But as a fact we now hear more complaints against *vakils* than against limitation. There is at present no demand for this change in the law, and even if it did exist, it would not justify this Bill.

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"As for the *bánia* he of course has no objection to a six years' period. He may still bring his suit whenever he wishes to do so. The *samindárs* vainly imagine that they will not be worried for payment for two or three years more, or as on old Settlement official told me they think they will be able to go to sleep for three years and wake up no worse than they were. But the *bánia* knows better, and so raises no objection to the longer period.

"The argument on which I think the Hon'ble Member in charge of the Bill most relied was that the extension of time gave the debtor a better chance of paying, because in six years there would be more good harvests than in three. This would be an irresistible argument if we were dealing with people possessing even an ordinary amount of prudence. But it is unnecessary to remind those sitting round this table that the *samindárs* will not pay unless great pressure is brought to bear on them. With a long period they will put the *bánia* off: and will trust to something turning up during the years still to run. The Punjab agriculturist has been described as the most pronounced of Micawbers and confirmed believers in the potentialities of the future. Moreover, there is: certain to be a '*shádi*' or a '*ghami*,' and the proceeds of a good harvest which with a short period would have gone to the *sáhhár* will probably be wasted on a big feast or fireworks or a brass band. The longer period leads to delay in payment, it encourages carelessness, and leads to fresh extravagance. This supposed improvement in the credit of the *samindárs* is stultified by their inveterate and constitutional thriftlessness, a condition which cannot be ignored, but which is forgotten by those who argue that an extension of time means an enlargement of credit.

"But further there has been no such contraction of credit from the operation of the Alienation of Land Act as requires that Government should step in to increase it. In the last report on the working of that Act there is the following sentence:—

"The reports generally go to confirm the belief that after a time the usual traditional relations between the village money-lender and his clients will be resumed, but with the difference that rural extravagance on ceremonial occasions will have been greatly checked."

"It is admitted on all hands that an extension of the period tends to heedlessness and to fraud: and with an extension even to six years a risk is beyond doubt run. Why run this risk for a very doubtful credit which is not required? Excessive credit has been the ruin of the *samindárs*: they have still left as much as they require. Matters are moving in the right direction towards curtailment of wasteful expenditure. Why then stop this salutary progress by increasing or attempting to increase credit? I strongly submit that the argument from the enlargement of credit is rebutted by the improvident character of the people: and that in any case the increased credit is unnecessary and is in itself harmful.

"The argument that with a long period there will be less compound interest is based on circumstances and times long past. The money-lender now balances his accounts at least once a year and not unfrequently twice. Bonds are often renewed in periods shorter than three years: in some places they are renewed annually. All this will go on whether the period is long or short. The *bánias* know full well that if their claim includes a large amount of interest, the Courts will reduce it, and so they will not wait for the full six years before renewing the bond, and interest will accumulate just as before. This fact was generally in the minds of those who have expressed an opinion in favour of the longer period, and they often coupled their approval with the necessity for provisions of law limiting the amount of interest that can be decreed, as our Hon'ble Colleague MR. DOUIE has also done to-day. Our late Colleague, MR. J. WIL-

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SON, while strongly advocating the longer period, recorded at the same time that 'the law for the recovery of such debts will always be extremely unsatisfactory so long as accounts, kept in a manner which makes it easy to fabricate them, are received in evidence and given a preference over oral evidence and so long as courts are not allowed to go behind the bond and are compelled to decree exorbitant rates of interest:' and he trusted that the law in these matters would shortly be amended.

"I regret I cannot share his trust that the law in these respects will soon be amended: but I am at one with him in associating the extension of the period of limitation with the necessity for a change in the law of usury and of evidence in debt cases. It would entirely suit my view of the Bill now under consideration that it should be postponed until these amendments in the law are made, if ever.

"There is no reason whatsoever to believe that the money-lenders will get less interest for their money in the future than they have been getting in the past. The new law puts them in a stronger position than before: it is all gain to them. I fail therefore to see why they should be satisfied with less interest; and everything points to their getting the full pound of flesh and even more.

"I agree generally with what MR. MADAN GOPAL has written in regard to the effect of limitation on the amount of litigation. It is not useful for a suit to be instituted merely because the period is expiring. The expense of renewal of a bond is insignificant: a balance in a book costs nothing. The *samindār* is glad to put off the evil day, and, moreover, he often gets a small further advance when making a renewal. The *bānia* will not put a man in Court so long as he is reasonably fair in his dealings and the bargain is a profitable one. The *bānia* goes to court only when there is nothing else for him to do, or when there is some special reason in no way connected with the Limitation Act. When this point is reached he will see whether the period is long or short. After the passing of the Act there will probably be some reduction in litigation for a short time, but it will reach its old figure, and there will ultimately be no gain.

"The sooner cases come into court the better. It will be remembered that we are dealing with thriftless and careless debtors, whose characteristic is to avoid facing a difficulty. It is good for them to be made to understand the state of their affairs, and to be made to do something for themselves. Moreover, it is not unfrequently the salvation of a *samindār* to be brought into court. He often gets instalments: interest is more or less cut down and as a rule no future interest is allowed.

"Further, it is distinctly favourable to justice that such cases should come into court while the facts are still fresh in the memories of the parties and of their witnesses. As has been pointed out, an old bond or an old entry in an account book will be taken as proving itself: no debtor can give satisfactory evidence to rebut the presumption raised in its favour. Courts have already quite enough of trouble in these cases, but with the long period their difficulties will be multiplied many times, and debtors will be still more at the mercy of their creditors. There will be more perjury, forgery and fraud: and the relations between the borrowers and lenders will be more strained than at present.

"There is yet another argument in favour of the Bill, but there is even less force in it than in the arguments that have been already discussed. It is claimed that this legislation will assimilate the law of the Punjab to the law of England. It does not appear that there will be any substantial gain in this. But whatever small gain there may be is discounted many times over by the fact that the law of the Punjab will no longer be the law of India. There is certainly some

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inconvenience in having one law in the Punjab and another in the Provinces that adjoin it. I do not think that the inconvenience will be great, but however small it may be it will be much more than sufficient to counterbalance the advantage of assimilating the law of the Punjab to that of England.

"It is admitted by the Hon'ble Member in charge of the Bill that there is a good deal to be said against extending the period of limitation: there is very little that can be said in its favour, and even that little is of a theoretical nature and is nullified by the character of the people we have to deal with. The necessity for this Bill has not been established, and there is, I submit, no sufficient reason for changing the existing law.

"Fortunately the Alienation of Land Act will prevent the land from passing permanently into the hands of the hereditary money-lenders: but that will after all be no great gain to the people if they have to sell their land to their money-lending brethren, or if they become the tenants-at-will of a succession of mortgagees, and this must, I think, be the result of the long limitation. I trust, however, that my fears as to the effect of this legislation may turn out to be false or at least exaggerated; and that the six years' period may hereafter be claimed as the salvation of the agricultural population with more truth than their ruin is now ascribed to the three years' period."

The Hon'ble SIR LEWIS TUPPER said:—"Before I reply to the arguments which have been advanced against the principle of the Bill, I will briefly answer the concluding portion of the speech of my Hon'ble friend MR. SHAH DIN where he regrets the omission of certain articles of the Second Schedule of the Limitation Act and the inclusion of others. If my Hon'ble Friend had moved any amendments on this behalf, I would have replied in full detail. As he has not done so I do not propose to take up the time of the Council by repeating at length what has already been said in Select Committee. The principle of our action is explained in the report of that Committee. If we thought the transaction to which an article referred was not a usual one between the *bania* and the *samindar* we rejected that article; and it is for this reason that we left out Articles 51, 55, 58 and 85. As to Articles 69 to 80 we fully admit the apparent anomaly and in substance we noted in our report that though our principle was that we were to confine the alterations in the law to transactions which are usual between *banias* and *samindars* we are obliged to make an exception here. It was of course absolutely necessary to include bonds; and on consideration we found that if we included one sort of written promise to pay a sum of money we should have—for the convenience mainly of the English mercantile community—to include all those sorts of such promises which are mentioned in Articles 69 to 80 to which my Hon'ble Friend objects. Amongst the same classes in the same Province and in their usual transactions uniformity is desirable, and that we have endeavoured to secure. But the period of limitation must obviously vary for different transactions; and that it may properly vary under different social conditions for even the same transactions is a conclusion which I shall presently defend.

"Meanwhile I wish to say that my Hon'ble Friend MR. SHAH DIN is entirely right in supposing that this Bill would not have been introduced if it had not been thought to be required in the interests of the rural population. It is a Bill primarily for the benefit of the village *banias* and *samindars*; and if we had not believed that it would be a good thing for them we should never have thought of it. How other classes came to be included I explained fully when I introduced the Bill, and I need not go over the same ground again. I will only say that we wished to avoid class legislation, and that we felt great difficulty about adding another definition of 'agriculturist' to that already in the Statute Book—a definition wholly unsuited for the purpose in view.

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"As to the classes whom we intended to benefit, it is satisfactory to find from the opinions on the Bill that they, at any rate, welcome the measure. So also does the Native mercantile community in towns—if I may judge from the same reports. As to the English mercantile community, I understand from what my Hon'ble Friend MR. MASSON has told us that the attitude of some is one of approval and of many one of acceptance without enthusiasm. The latter class would not have asked for the Bill, but have no particular objection to it. These remarks apply to Bankers and probably also to important mercantile firms. There is an exception in the case of some tradesmen—the Punjab Trades Association chiefly as I understand—who view the measure with much dislike. If they prefer the three years' term because it gives them an earlier excuse for threatening legal proceedings against recalcitrant customers who will not pay their bills, then this argument might be turned into one in favour of the measure as applicable to the rural community because it would imply that under the longer term the village shop-keeper would have rarer opportunities of putting pressure on his peasant clients. But this is not an argument on which I should care to rely. I quite see that under the longer period-careless young Europeans may, so to speak, claim more rope; and that firms who cannot afford to give them long credit may be at some disadvantage as compared with richer firms or firms charging higher prices to whom the date of payment does not matter. To reply to this contention that the remedy is easy, for the creditor can sue whenever he likes is not quite fair; for, in the circumstances of the class, frequent suits would mean unpopularity and loss of custom. One good reply has been given by the Simla branch of the Punjab Trades Association themselves, namely, that there are compensatory advantages in the improved position of customers as they get on in the service and in the opportunities for collecting debts which occur as men return from transfer or leave. And another sound reply is that those whom we mean to benefit are counted by millions—the vast mass of the rural population—and that the class which may find the Bill an obstacle in certain not very important dealings is a very small one, and we regret that we cannot pause on their account.

"There was one argument which I used in introducing the Bill to which, on further reflection, I have ceased to attach any weight. I said we should secure the commercial advantage that the law of the Punjab would be assimilated to that of England. The point that appealed to me was that we, who belong both to India and England, would have one and the same period to keep our receipts. But the object of this legislation is not to confer so petty a benefit on any such numerically small class as ourselves; and I was not at the time aware of the interesting fact brought to my notice in MR. MADAN GOPAL'S minute of dissent that the present tendency in England is to reduce the period of limitation. If that tendency results in a change in the law, the supposed commercial advantage would obviously vanish. I am not at all surprised that there should be such a tendency. My Hon'ble Friend MR. SHAH DIN has favoured us with a very learned review of the history of the law of limitation in this country; and the same tendency is apparent here. The fact is that any law of limitation marks a fairly advanced stage in legal evolution; there is no such law where there are no regular Courts of Justice; and in the primitive state of society, which we began in this part of India fifty years ago to profoundly modify, the idea that a debt need not be paid because it is an old one had no place. At the other extreme we see the intense haste of modern life; the rush for small profits and quick returns; and the enormous multiplicity of transactions which makes it an imperative necessity to close the mass of them quickly and once for all. In the passage between the one stage and the other of social evolution the stringency of a law of limitation, when once established, would naturally increase; but if it is a sound presumption that there is this liability to change, there is a valid ground on which to support the Bill now before Council. I am entirely willing to admit that a short term may suit commercial conditions in England and some commercial centres out

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here. But it does not follow that the same term would suit the primitive conditions of rural life in the Punjab; and it may be only reasonable both to expect and to arrange not uniformity but diversity in the law according to the stage of development which has been reached by the particular society.

"MR. SHAH DIN and MR. MADAN GOPAL and others have asked why we should have a rule for the Punjab which differs from the rule in the rest of India. What I have just been saying indicates the general nature of my reply. I do not say we want this Bill because we have in the Punjab an Alienation of Land Act, but we want it because we have in the Punjab that state of society which has led to the passing of that Act. From the first I have endeavoured to explain that this Bill is part of a policy—not an essential part, not perhaps a very important part,—but still in harmony with all that we have some years been endeavouring to effect in restoring the traditional relations between the *bania* and the *samīndār*. This is a point to which my Hon'ble Friend MR. DOUGLAS has referred, and I am glad he has noticed it and has also reminded the Council that this measure is not isolated, but should be judged in its connection with the policy of which the Alienation of Land Act is the most impressive and successful sign. That is our great experiment,—the greatest social and agrarian experiment which I have seen in my time in this country,—and I say to this Council let us give that great experiment every chance, and therefore pass this small measure which, as I believe, will tend to further it. I observed that one critic of our Bill pleaded for delay for some years till we should know better what effect the Alienation of Land Act would have on the community. We have now had three years' experience of the working of that Act; and more than anything else it is the experience so gained which emboldens me to press the Council to pass this Bill, notwithstanding the fact, which I have never denied, that there are two sides to the case and much to be said against me.

"We are told for instance that we cannot put back the clock; that our measure is a belated one; that it was a mistake to introduce the three years' period when we did; but that the mistake having been made we should resign ourselves to its mischief. Just the same line of argument was used by the opponents of the Land Alienation Act; and I think they must admit now that the disasters which they prophesied have not, at any rate as yet, befallen us; while the advocates of that measure seem justified in maintaining that they gauged the situation sufficiently well. Certainly we cannot, even if we would, reconstitute rural society in the Punjab on the model of its type before British rule. I entirely agree with my Hon'ble Friend that we cannot ignore the last half century. We cannot sweep our principal laws off the statute book. We must accept the existing situation. The problem in Punjab agrarian legislation is always the rather complex one, *viz.*, what rules are suited to a primitive society which has not been left to grow in its own way, but has been profoundly affected by British Courts and laws of British origin. Some of our critics seem to think that the society itself has kept pace with the laws that have been given to it. That is not my view. My view rather is that strong efforts are still required to bring laws of Western origin, laws therefore suited to societies in a later stage of evolution, into harmony with the requirements of our *bantias* and *samīndārs*. The Alienation of Land Act was an immense and, as we now see, an extraordinarily powerful and effective effort in that direction. This Bill is a comparatively insignificant measure, but it is a measure of the same kind.

"As to one argument used in common by MR. MADAN GOPAL and MR. SHAH DIN, I do not think that any appreciable inconvenience will result from a difference in the law as between other Provinces and the Punjab. MR. SHAH DIN refers to confusion and legal complications, but in what I would ask would they consist? Who is injured? Not the creditor certainly.

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who has a longer time to get in his outstandings without being deprived of his right to sue whenever he likes; not the debtor to whom the creditor (the case of certain European shop debts perhaps excepted) can afford to give more time. MR. MADAN GOPAL instanced the case of *res judicata*. Will a suit on a three years' term say at Allahabad bar a suit subsequently brought on the same transaction but under the six years' term at Delhi? MR. MADAN GOPAL says it will; and I entirely agree with him. But if so, what harm is done?

" Yet another argument advanced by MR. SHAH DIN and MR. ANDERSON and many of the opponents of the Bill is that suits will be longer and more difficult to try when the period of limitation is six years instead of three. If there are longer suits I hope that there will be fewer of them; and I observe that my Hon'ble Friend, though he does not admit that the proposed change in the law will directly tend to decrease litigation, does not go so far as to say that there will be no decrease at all. Even if the work of the Courts were somewhat increased in those cases which they will have to try, I should not myself regard that as an important objection. It is worth while to undertake more difficult work if we are moving in a right direction. An overwhelming avalanche of work was prophesied as a result of the Alienation of Land Act, but it has not yet descended upon us.

" I have reserved for final comment the objection to the Bill which appears to me to have most weight and which if admitted is necessarily fatal to it. We are told—especially by the Hon'ble MR. ANDERSON—that we shall do no good to the *samindárs*, that under this Bill the last state of the *samindárs* will be worse than the first, and that we are confirming the improvidence in their improvidence. Of course if that is to be the result of the Bill we shall have entirely missed our aim. As to the utterly thriftless peasant who plunges recklessly into debt far beyond his means of repayment, no legislation can save him. All we can do we have done; and that is to see that his individual loss of his land does not result in its loss to the general body of agricultural tribesmen. On the other hand, MR. SHAH DIN himself admits that the extended period of limitation may help a very small minority of judicious and frugal peasants. I agree that peasants who are ready to make good use of their opportunities will gain an advantage from this Bill; but I hope that the number of such men is less insignificant than is supposed. Anyway I do not admit that we are making any mistake if we are helping those peasants who are able and willing to help themselves. The Hon'ble MR. DOUIE, as I have said, has referred to the restoration of easier relations between *bania* and *samindár*; and the way in which I hope that will come about is that the *bania* will lend on the security of the crop and follow the vicissitudes of the harvests in recovering his loans. The Alienation of Land Act is adjusted to this process, and the present Bill follows suit. I have argued before—and the argument seems to me a strong one—that the peasant, who is willing to pay his debts when he can, will, with reference to the normal vicissitudes of agriculture, find it easier to do so in twelve harvests than in six. When there is a good crop, like our present *rabi*, then there is the opportunity which sensible *samindárs*—who are not so few perhaps as some imagine—may be expected to use. Much has been made of the facilities for extending the period of limitation afforded by Sections 19 and 20 of the Limitation Act, whether by written acknowledgments or part payment of debts. All these facilities are entirely untouched by the Bill, and so far as they tend to keep cases out of Court, they are satisfactory. But their effects we are told, is to pile interest on interest and make the total accumulation utterly crushing at the end. No one, however, proposes to withdraw the facilities. This Bill is not the only measure which has been taken or which can be taken for the relief of the *samindár*. It is quite possible as admitted by the remarks quoted from MR. WILSON, and made by MR. DOUIE and MR.

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ANDERSON that other measures may be hereafter taken in addition to this one. At any rate one consequence of the accumulation of debt—the permanent transfer of the land of the *samindār* to the *bania*—has been avoided. We hoped that the Alienation of Land Act would tend to check recklessness in incurring debt; and so far that hope has not been disappointed. Between the utterly reckless peasant, for whom we can do nothing more, and the frugal and judicious peasant, who perhaps can take good care of himself, there is an immense intermediate class—not so utterly reckless as they are described to be by my Hon'ble Friend MR. ANDERSON, nor indeed very provident but living, as peasants do, better or worse according to the state of the harvests. It is this vast intermediate class that we hope to help; and the criticisms of our opponents, like indeed our own hopes, are only prophecies. We have a recent and most important experience on our side; let us go on without timidity and, trusting to principles which have hitherto stood us in good stead, press forward on the lines of our great experiment."

His Honour the LIEUTENANT-GOVERNOR said :—" The Hon'ble MIYAN SHAH DIN is quite right in saying that the main object of this Bill is to provide a longer period of limitation in respect of such transactions as ordinarily take place between the agricultural classes and money-lenders, but I am unable to agree with him that the proposed extension of limitation will not be really to the advantage of agricultural debtors, but on the contrary prejudicial to their interests." The Hon'ble Member has remarked that the term of limitation for the kind of cases dealt with in the Bill under our consideration was deliberately reduced in this Province from six to three years 37 years ago, and that we are not justified in reverting to the former longer period unless we are fully convinced that the present law has worked to the detriment of the agricultural classes; and that the proposed extension will materially benefit them. I would, however, remind my Hon'ble Friend that the Bill before us is not dealing in this respect with any new matter. The wisdom of shortening the term of limitation for suits relating to the ordinary money transactions between *samindārs* and money-lenders has been constantly called in question by many of the most experienced officers, both Revenue and Judicial, in this Province ever since the change in the former law was made in 1866. Speaking of my own experience, I can say that this question has forced itself on my attention during pretty well my whole time of service in this Province, and my feeling has always been that the reduced period of three years has operated detrimentally to the agriculturist in his dealings with the money-lender, and has been regarded in this light by the agricultural classes generally. In this view I am confirmed by the opinions which we have received on the present Bill, for I think there can be no doubt that the weight of opinion is decidedly in support of the proposed measure, and that it is also shown that the *samindārs* themselves are, as a body, largely favourable towards it. Nor can the Bill be described as in any way hostile to the money-lender, for if he chooses to avail himself of the shorter period of limitation at present in force, there is nothing in the Bill to prevent him from doing so. My own conviction is that the extension of limitation now proposed will be found to operate to the mutual convenience and benefit of both the money-lender, and the agricultural debtor. Then, we have been asked, why not confine the Bill to its avowedly main object of providing a longer period of limitation for suits between agriculturists and money-lenders? The answer to this question is that, firstly, we wish to avoid further class legislation on the subject of agricultural indebtedness, and, secondly, there are very great, if not insuperable, difficulties in the way of defining the term 'agriculturist' for the purposes of this Bill if its scope were thus restricted, for obviously neither the definition of 'agriculturist' nor of member of an 'agricultural tribe' as used in the Land Alienation Act would adequately meet the requirements of the present case. We were therefore confronted practically with two alternatives, either to abandon the Bill altogether or to make it of general application, and as between these

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two courses, we thought it best to adopt the latter. I have listened with much interest to the remarks which have been made by the Hon'ble MR. MASSON, and I am glad to find that, as he is the representative on this Council of the commercial community of this Province, he is generally favourable to our proposals. The Hon'ble MIYAN SHAH DIN'S criticisms on some of the details of the Bill have, I think, been satisfactorily met by the Hon'ble Member in charge of it, and I see no reason why a special law of limitation on some points for the Punjab should cause any such confusion or legal complications as MIYAN SHAH DIN seems to anticipate."

"For the reasons I have given, I am in favour of this Bill becoming law."

The motion was put and agreed to.

SIND-SAGAR DOAB COLONISATION ACT AMENDMENT BILL.

The Hon'ble SIR LEWIS TUPPER presented the Report of the Select Committee on the Bill to amend the Sind-Ságar Doab Colonisation Act, 1902 and moved that it be taken into consideration.

The motion was and agreed to.

The Hon'ble SIR LEWIS TUPPER moved that the Bill as amended by the Select Committee be passed. He said:—"When in December last I introduced the Bill to amend the Sind-Ságar Doab Colonisation Act I did not at all anticipate any controversy in regard to the provisions of the measure. Contrary to my expectations I find that the Punjab Government has been accused of proposing to make in this Bill an undesirable use of its legislative powers and of going out of its way in some future hour of success, when the Sind-Ságar Colonisation scheme comes into operation, to utilise the transaction as an opportunity for hitting the money-lender.

"I should have repudiated these charges with considerable indignation did I not feel that they are due mainly to want of acquaintance with the character of colony work and partly to the spirit of partisanship which has been evoked by the discussions on the Alienation of Land Act—a spirit which perhaps has not lost any of its acerbity by the remarkable success which has so far waited on that most important measure. I would, however, beg the opponents of that policy to be entirely re-assured so far as this small colony Bill is concerned. The Government never had any idea of using this Bill as an additional scourge to lacerate the *bania*. No agrarian question as between *baníás* and *samindárs* was intended to be raised. We have from the first been entirely indifferent as to whether the Sind-Ságar mortgagees were *baníás* or *samindárs*; and from the first our sole anxiety, so far as mortgages are concerned, has been to see that they did not lose their security, while at the same time the Government should have, as it must have, a perfectly free hand in the disposal of colony lands.

"Where the area restored will be part of the area taken, the security of the mortgagee will be improved, 1 acre of canal-irrigated land being worth more than 4 acres of unirrigated land in the Sind-Ságar Doab. This is admitted by our critics, and the admission covers nearly the whole case. Throughout almost the entire area of our operations we have dealt with village common land exclusively. In the Muzaffargarh District only have there been a few cases of the proposed acquisition of lands owned by individuals or by small co-parceners. Where the village common land is acquired the one-fourth restored will come out of it. As regards the few other cases where the area restored will not form part of the area subject to the mortgage, we had endeavoured to save the rights of the mortgagee by agreements between ourselves and the proprietors; and it is only because we were advised that these agreements (which were actually made) could not be enforced that we acquiesced in the advisability of legislation on this particular matter.

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"Now we have been accused of nefarious designs upon the *bania* because in these few cases where we had ineffectually attempted to protect the *bania*'s interests we are putting it in the power of the Revenue Officers to give that protection which our efforts had failed to secure. The main point of the attack is that we are placing the *bania* at the mercy of the Deputy Commissioner by using the word '*may*' instead of '*shall*'. Of course we never intended to allow the Deputy Commissioner to refuse to exercise the powers conferred upon him where the interests of the parties, whether mortgagors or mortgagees, required their exercise. When you give a Deputy Commissioner or other Revenue Officer powers under an Act it is understood that he will exercise them if application is made to him to do so; and in this instance if the Deputy Commissioner or other officer refused to exercise his powers on application made his refusal—under the Bill as originally drafted and as it stands now—would be subject to appeal and revision like any other order of a Revenue Officer under the Revenue law.

"The real misconception, however, lies in want of knowledge of what takes place when a vast tract of Government land is newly brought under canal irrigation and in complete failure to realise what are the duties and functions of a Colonisation Officer. I do not blame our critics for this. No one but a few officers of special experience in the Irrigation and Revenue Departments who have been actually engaged in colony work or its supervision at present knows very much about it. Irrigation develops slowly. One great branch of a new canal may come into work several years before another. When the branch itself and its distributaries, large and small, are constructed, the Colonisation Officer is informed by the Canal Department that such and such a great tract of land is ready for irrigation. Then he has to set to work and make a new country of it—partly by practically making a resettlement of the lands of the old inhabitants whose circumstances have been completely altered and enormously improved, and partly by bringing in settlers from distant districts. For certain obvious reasons which I need not explain we use the word Deputy Commissioner in the Bill; but of course the work would be done by the Colonisation Officer, who would be invested with the powers of a Deputy Commissioner under the Act. I never heard that the Colonisation Officer was the special enemy of the *bania* or of any one else. Well, the Colonisation Officer would take up the business of allotment on one or more distributaries reported to be ready to irrigate, and amongst other matters he would go into this question of the mortgagees. Are we to compel him to investigate every mortgage whether the security be still complete or not? Are we to compel him to go deeply, like a Civil Court, into complicated questions of the existence or validity of the encumbrances? If so, we should surely waste a deal of his precious time without, in the majority of cases, any compensatory benefit. If not, we have to allow him discretion first as to which cases he will take up of his own motion, namely, those of course where the security is not complete; and, secondly, as to whether he will deal with the whole case, as he would naturally do, if it were a simple one, or refer the parties in complicated cases to the Civil Court. It was merely to ensure that he should have this discretion that we used the word *may* instead of *shall*. But besides this we have to allow him a further discretion, namely, to settle the amount justly due on the mortgage; and this is necessary because the advent of a canal in no way stops but rather accelerates the ordinary march of events. In the period between original acquisition and restoration, which may be prolonged for several years, interest may have accumulated or the land may have been in whole or part redeemed. Moreover, the mortgagor will get his 3 acres irrigated land for 4 acres waste, and with the aid of the Colonisation Officer it may be that the redemption of the mortgage can be easily and readily effected from the proceeds of the first few crops on virgin soil. The Colonisation Officer will always be a picked man, and amongst his principal qualifications should be that patience and strength of character which give power

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of conciliation and preponderating influence and lead the people of the new country which he is making to acquiesce in what he does.

"My own view, then, is that we might perfectly safely leave this business of satisfying the mortgagees in the hands of the Colonisation Officer with no greater precautions than were taken in the first draft of the Bill. But I frankly admit that we may learn from the criticisms even of those who attribute to us motives which never entered our heads. In Select Committee therefore we have revised the Bill so as to enact that on application by any person interested the Deputy Commissioner or Colonisation Officer shall exercise the powers conferred upon him. This is no more than we meant, and from the misapprehensions which the Bill has aroused it seems advisable to state our meaning more clearly. We have at the same time been careful not to deprive the Deputy Commissioner or Colonisation Officer of the authority to act on his own motion for which the necessity will have become apparent from the remarks I have already made. In one point we have gone a little further, and have provided that if either party so requires any contested question as to the existence or validity of the encumbrance at the time of the surrender shall—and not merely may—be referred to the Civil Court.

"I think we have thus done all that is necessary to meet what is sound in the criticism with which we have been favoured. I now move that the Bill as amended be passed. The other amendments are not important and have been sufficiently explained in the Report of the Select Committee."

His Honour the **LIEUTENANT-GOVERNOR** said:—"The Hon'ble Member in charge of this Bill has explained its objects so clearly and has met so completely the criticisms to which he has referred that I need add nothing to his remarks."

The motion was put and agreed to.

**BILL TO AMEND THE PUNJAB DISTRICT BOARDS ACT OF 1883
AND THE PUNJAB MUNICIPAL ACT OF 1891.**

The Hon'ble **MR. ALEX. ANDERSON** moved for leave to introduce a Bill to amend certain sections of the Punjab District Boards Act of 1883 and the Punjab Municipal Act of 1891. He said:—"I have the honour to move that leave be given to introduce a Bill to amend certain sections of the Punjab District Boards Act, 1883, and of the Punjab Municipal Act, 1891.

"The Bill consists of four sections, two applicable to District Boards, and two more, almost identical with them, applicable to Municipal Committees: and the object of each set of sections is to authorize the officers and servants of local bodies to establish Provident Funds for themselves and to enable the Boards and Committees, with the previous sanction of Government, to contribute from their own revenues towards such Provident Funds. It is further proposed that Municipal Officers and servants may be permitted to establish Pension Funds, towards which the Committees may contribute, subject to the same conditions as for Provident Funds. Having regard to the limited scope of District Fund operations, it is not considered desirable to provide for the establishment of Pension Funds by District Board officials.

"Under the existing law, Boards and Committees have power to contribute for pension and gratuity from the general revenues for any Government officials lent to them: and in such cases the law is sufficient.

"To an officer or servant of their own, local bodies—

(1) may grant a gratuity if he is not entitled to pension and if his pay is less than Rs. 10 monthly; or,

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(2) with the sanction of Government, may—

(a) subscribe in his behalf for a pension or gratuity under the Civil Service Regulations, or

(b) purchase an annuity for him on his retirement ;

such gratuity, pension or annuity not being in excess of what would be allowed under the regulations for service under the Government.

"Gratuities are now not unfrequently given, and in some cases postal annuities have been purchased : but local bodies have not hitherto been permitted to subscribe for pensions or gratuities from Government. Before such permission can be given the regulations require that the bills for establishment must be subject to the audit of the Accountant-General. At present this is not the case, and so the Government has not been in a position to grant the necessary sanction. Moreover, it is doubtful whether local bodies are able to bear the cost of the purchase of pensions for all their servants. The consequence is that as an almost universal rule no provision is made for District Board and Municipal officials on retirement.

"Municipal Committees have at various times applied for permission to establish Provident Funds and to contribute towards them, and quite recently the Municipality of Lahore made a proposal in the interests of its servants somewhat on the lines of the Railway Provident Fund. Under the existing law, local bodies have no authority to contribute from their income to any Pension or Provident Fund established by their servants, and it is to provide them with this authority that the Bill to introduce which leave is now asked has been drafted.

"It is unnecessary to discuss at length the desirability of enabling the servants of local bodies to make some provision for old age. Provident Funds are a great success in other countries ; a boon to the thrifty and an object-lesson to the improvident. In this country there may not be the same necessity for them as elsewhere, for here each family may be considered a provident institution for the benefit of its members. The ties that bind families together are still remarkably strong, but they are, it is feared, becoming weaker : and even if it were not so, it is desirable to encourage among our servants habits of thrift and self-help. I move therefore for leave to introduce the Bill."

The motion was put and agreed to and the HON'BLE MR. ANDERSON introduced the Bill.

The Hon'ble MR. ALEX. ANDERSON moved that the Bill be referred to a Select Committee consisting of the Hon'ble COLONEL HUTCHINSON, the Hon'ble MIYAN MUHAMMAD SHAH DIN, and the Mover. He said :—"The Bill has been introduced to meet a want felt by local bodies, but it is altogether an enabling Bill and imposes no burden or responsibility on Boards or Committees until they of their own motion determine to take action under it. It seems unnecessary therefore to circulate the Bill for opinion : and I move that it be referred to a Select Committee."

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned *sine die*.

LAHORE :

H. A. B. RATTIGAN,

The 25th April 1904. }

Secretary to Legislative Council, Punjab.

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at the Lawrence Hall, Lahore, on Saturday, the 19th November 1904, at 12 noon.

PRESENT :

His Honour Sir CHARLES MONTGOMERY RIVAZ, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Miyán MUHAMMAD SHAH DIN, Bar.-at-Law. ✓

The Hon'ble Mr. J. MCC. DOUIE, I.C.S.

The Hon'ble Kanwar Sir RANBIR SINGH, K.C.S.I.

The Hon'ble Colonel J. B. HUTCHINSON, C.S.I.

The Hon'ble Major Rāja JAI CHAND, of Lambagraon.

The Hon'ble Colonel J. A. L. MONTGOMERY, C.S.I.

The Hon'ble Mr. ALEXANDER ANDERSON, C.I.E.

New Members.

The Hon'ble Colonel J. A. L. MONTGOMERY and the Hon'ble Mr. ALEXANDER ANDERSON took their seats in Council.

BILL TO AMEND THE PUNJAB DISTRICT BOARDS ACT OF 1883
AND THE PUNJAB MUNICIPAL ACT OF 1901.

The Hon'ble MR. ALEX. ANDERSON presented the Report of the Select Committee on the Bill to amend certain sections of the Punjab District Boards Act of 1883 and the Punjab Municipal Act of 1891, and moved that it be taken into consideration. He said :—"The Select Committee have proposed only one change in the Bill. It was originally intended to authorize the officers and servants of Municipal Committees to establish Pension Funds to which the Committees might contribute from their own funds to supplement the premia paid by its servants and so increase the pensions available. But, after consideration, the Committee could see no sufficient reason for differentiating between Municipal Boards and District Boards. In both cases the number of employes concerned is too limited to justify the establishment of a Pension Fund on a safe financial basis: and they therefore proposed that provision should be made only for Provident Funds in the case of Municipal Boards as of District Boards."

The motion was put and agreed to.

The Hon'ble MR. ALEX. ANDERSON moved that the Bill as amended by the Select Committee be passed. He said :—"I have nothing to add to the remarks made by me when introducing the Bill."

The motion was put and agreed to.

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PUNJAB PRE-EMPTION BILL.

The Hon'ble MR. ALEX. ANDERSON moved for leave to introduce a Bill to amend the law relating to pre-emption in the Punjab. He said :—" A law on custom of pre-emption has existed in the Punjab before and since annexation, and it is unnecessary to occupy the time of the Council in explaining why the custom arose or in justifying its continuance. It was based on a natural desire to keep strangers out of the village community and to prevent interference with the privacy of the family in towns, and these are to-day the principal considerations and aims in framing a law of pre-emption.

" The necessity for a change in the law as contained in the Punjab Laws Act of 1872 and in its amending Acts was disclosed in the discussions that preceded the passing of the Alienation of Land Act in the end of 1900, and since that time at least five drafts of a Bill to amend the law have been prepared.

" The third was introduced in this Council by SIR LEWIS TUPPER almost three years ago, and circulated for opinion. It was subjected to severe criticism : and the Select Committee to which it had been referred suggested many alterations in it, and in fact prepared an entirely new draft. This, the fourth draft, was never laid before the Council. It differed so materially from the Bill as introduced that it was decided to withdraw the original Bill from the consideration of the Council, and to circulate the Select Committee's draft for fresh opinions. The opinions received disclosed much opposition on the part both of Revenue and of Judicial Officers to some of the main alterations introduced by the Select Committee, and contained criticisms and suggestions in respect of many details. The draft was again considered and very much changed, and the result is the new Bill which I now ask leave to introduce."

The motion was put and agreed to, and the Hon'ble MR. ALEX. ANDERSON introduced the Bill.

The Hon'ble MR. ALEX. ANDERSON moved that the Bill be circulated for the purpose of eliciting opinion thereon. He said :—" The main features of the Bill which has just been introduced as compared with the existing law are—

firstly, it contains provisions to supplement and make effective the alienation of Land Act by withdrawing the right of pre-emption from those to whom freedom of purchase is refused by that Act : and also provisions to ensure strict adherence to the prescriptions of the Alienation Act, and to prevent conflicts between the decisions of Civil Courts and of Revenue Officers in regard to the interpretation of the Act ;

secondly, it provides for the almost complete elimination of all questions of custom in suits relating to property of all kinds (agricultural land and village immoveable property and urban immoveable property) ;

thirdly, a radical change is proposed in the order in which the right of pre-emption in regard to agricultural land and village sites will vest.

" But apart from these great changes, this Council will naturally expect that some comparison should be made between the provisions of this Bill, and of the original Bill and of the Select Committee's draft, and some explanation given of the reasons for the decisions on the numerous controversial points that have arisen.

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"The first Bill limited the right of pre-emption in agricultural land to members of agricultural tribes and to agriculturists under Section 2 (1) of the Alienation Act, and so far as members of agricultural tribes are concerned, this is still adhered to for reasons which at this stage it is unnecessary to discuss. But the statutory agriculturist has been already removed from the Alienation Act as applied to the North-West Frontier Province by Regulation No. 1 of 1904, and it is believed that an early opportunity will be taken to amend the law in the Punjab in the same way. The present Bill therefore makes no reference to the 'agriculturist' under that name. His case is provided for by the proviso to clause 11. It prescribes that when the vendor is not a member of an agricultural tribe, the right of pre-emption may be exercised not by members of agricultural tribes only, but also by the members of the same tribe as the vendor, provided the pre-emptor or his ancestors in the male line have owned land in the estate for 20 years. This is a most important change, and meets several objections made to the former draft. The agnates and co-sharers of the vendor will have priority over the members of agricultural tribes, and thus members of unnotified tribes will be able to retain in their own tribe all land that is now in their possession in the village, and will not be liable to be gradually ousted by members of notified tribes. This will protect the menial classes, and it is also more in accordance with the policy of the Alienation Act than the former draft.

"This policy is further maintained by an important change in the order in which the right shall vest among persons claiming pre-emption. The existing law gives the co-sharer, who may be an outsider, precedence over the relations of the vendor, and thus it perpetuates conditions which the Pre-emption and the Alienation Acts are intended to prevent. Moreover, the order of devolution of the right should follow the principles governing the succession to land: and the present Bill following the Select Committee's draft provides that the agnates of the vendor shall stand first, and among agnates, co-sharers if there are any; and that mere co-sharers shall be postponed to all agnates. This proposal brings the law into consonance with the feelings of the agricultural community, and also with the true principles on which the law of agricultural pre-emption was originally based.

"The elimination of custom is an important feature of the Bill. It is proposed, as in the draft of the Select Committee, that the existence of the right of pre-emption shall be conclusively presumed in the case of agricultural land and of village sites. The devolution of the right is to be the same in both cases, and the only difference between them is that in village immoveable property the right of pre-emption is not limited to members of agricultural tribes as in agricultural land. No question of custom can arise in regard to agricultural land and village sites. We have not been equally successful in respect of urban immoveable property. It has not been found possible to frame a general definition to distinguish towns from villages: and the issue whether a particular place is a town or a village has been left to the Courts, which have hitherto been able to dispose of this question in a satisfactory manner: but, in order to narrow the field for dispute, power is to be given to the Local Government to declare by notification that a specified place is a town. The Government may also declare that the right of pre-emption exists in certain towns and subdivisions of towns: but as this list would not be exhaustive, the Courts may decide that the right exists, in towns not included in the notified list; when a custom is proved to have been in existence at the time of passing the Act. This is the only place where it has been found necessary to admit the element of custom. The order of devolution of the right in towns, a subject which has given rise to so much waste of time and money, is now provided for by definite rules embodied in the Bill. It is thus seen that a very considerable step has been taken towards the complete elimination of

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custom, an ideal put before by SIR LEWIS TUPPER in his speech introducing the original Bill. Lists showing in what towns pre-emption exists and in what towns it does not exist will in no long time leave little uncertainty on the point.

" In none of the previous drafts was it proposed to make any change in the pre-emption law affecting transfers of occupancy rights. It was then understood that the Alienation of Land Act did not apply to such rights. It has, however, been recently decided by the Chief Court that occupancy rights fall within the definition of 'land,' and that transfers of such rights must comply with the restrictions of the Act. Whatever may have been the intention of the legislature when passing the Act, it is now considered desirable that it should apply to the alienations of occupancy rights, and the ruling of the Chief Court that it is applicable has been accepted, as the existing law. In the North-West Frontier Province Regulation No. 1 of 1904 all uncertainty as to the law has been removed by declaring that the term 'land' shall include rights of occupancy acquired under the Punjab Tenancy Act, 1887. Similarly clause 3 (1) of this Bill defines 'agricultural land' as including all rights of occupancy. As between landlord and tenant, the existing law in regard to sales of occupancy rights is saved by clause 2 of the Bill. It is only after the landlord has failed to exercise the option conferred on him by Section 53 of the Tenancy Act that the provisions of the Pre-emption Act will become operative in favour of the agnates and co-sharers of the tenant.

" The most difficult and the most interesting, though perhaps not the most important, question that has arisen is whether the Civil or the Revenue Courts should have jurisdiction in cases relating to agricultural land. Under existing law the Civil Courts alone are competent to dispose of pre-emption suits of all classes: but from the first it was considered desirable to make a change so far as agricultural land was concerned, and in the first Bill introduced in Council it was proposed to transfer to the Revenue Officers and Courts the disposal of all questions, whether of title or otherwise arising in cases concerning agricultural land. The Select Committee, however, saw no sufficient reason for completely ousting the jurisdiction of the Civil Courts, and they provided that with two very large exceptions these Courts should be competent to hear and decide all suits. It was made a condition precedent to the entertainment of a suit by a Civil Court that the pre-emptor should produce with his plaint a certificate from the Deputy Commissioner that would dispose of all issues under the Alienation of Land Act, such as whether the property was land within the meaning of the Act, whether the pre-emptor was an agriculturist or a member of an agricultural tribe, or whether the alienation was valid under the Act. The Bill also provided the machinery for the issue of notices and for the enquiry necessary to enable the Deputy Commissioner to grant the certificate. In all issues under the Alienation Act the jurisdiction of the Civil Courts was barred. In the next place it was proposed that when the parties could not agree as to the price to be paid by a pre-emptor, the Civil Court should refer the issue to the Deputy Commissioner who was to fix the fair market value of the land, and by this valuation the original Civil Court was to be bound, subject to an appeal to the Divisional Court. This compromise involving the production of a certificate from and a reference to the Revenue Officer pleased nobody: and the proposed division of jurisdiction was an admitted defect in the Select Committee's Bill. Setting it aside, there were two alternatives: to adhere to the policy of the Bill as introduced and transfer the jurisdiction in its entirety to Revenue Courts, or to retain the existing law and leave pre-emption cases in the hands of the Civil Courts. It has been decided to adopt the latter course. The most cogent arguments in favour of this conclusion are—first, that many issues must arise in pre-emption cases that should be disposed of only by Civil Courts, and further that the Alienation Act does not bar the jurisdiction of Civil Courts in questions under

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that Act. These Courts are competent to dispose in all other cases of issues affecting the status of parties and the validity of sales; and it was considered that there was no sufficient reason for withdrawing their jurisdiction in pre-emption cases only. It was, therefore, decided to depart from the certificate and reference procedure: and with that the preliminary enquiry which that procedure involved. The result is that the Bill now introduced maintains the existing law in regard to pre-emption cases of all kinds, and leaves with the Civil Courts the issue of notices and the disposal of suits. But to prevent mistakes relating to the Alienation of Land Act, arising from the inadvertence of the lower Courts, or the collusion of the parties, it has been considered necessary to insert in the Bill three precautionary provisions—

- (a) the Courts are required to enquire into and decide certain issues of their own motion, whether the facts involved therein be admitted or not: and to dismiss the suit if the original sale was made in contravention of the Alienation Act, or if the pre-emptor's claim is barred under the provisions of the Pre-emption Act owing to his not being a member of an agricultural tribe, nor of the same tribe as the vendor, and therefore not entitled to claim pre-emption under clause 11;
- (b) if the pre-emptor, though a member of an agricultural tribe, may not purchase without the sanction of the Deputy Commissioner, he will not be given possession of the land until such sanction has been granted; and
- (c) the Court is required to send to the Deputy Commissioner a copy of every decree granting pre-emption, and the Deputy Commissioner is authorized to apply to the appellate Court for revision in any case when he considers the requirements of the Alienation Act have been contravened.

"These provisions will, it is believed, ensure strict compliance with the Alienation Act; while at the same time they avoid all references from the Civil to the Revenue Courts during the hearing of the case, and they will also prevent all conflicts as to jurisdiction.

"In the Bill as introduced, the old law fixing the nature of the alienations affected by pre-emption, *vis.*, sales and foreclosures, was retained. The Select Committee, however, extended their Bill to practically every alienation of a more or less permanent character, such as gifts, wills, exchanges and usufructuary mortgages for a period exceeding 20 years. The object was to assimilate the provisions of the Pre-emption Bill to those of the Alienation Act, and to prevent the law of pre-emption being defeated by colourable mortgages for long periods which were really sales. The present Bill practically retains the existing law and limits pre-emption to sales which are defined to include foreclosures which may still exist in regard to village and urban property. The general is against pre-emption in cases of gifts and wills which are permitted by custom: and economic considerations justify the exclusion of exchanges from the Bill. It is only in regard to usufructuary mortgages for unfixed periods or for periods exceeding 20 years that a serious doubt exists. Such mortgages cannot be executed by members of agricultural tribes except in favour of persons belonging to such tribes: and thus land cannot be transferred away from the members of agricultural tribes. It is impossible therefore to effect a sale to a non-agriculturist under the guise of a long mortgage, and the Pre-emption Act cannot be defeated. No doubt if this Bill becomes law, pre-emption as among members of agricultural tribes may be defeated by means of a colourable mortgage. But it is not considered necessary to apply the pre-emption law to mort-

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gages merely to prevent this abuse, especially as the parties have a remedy in the law as it stands. The Courts may declare that an alienation purporting to be other than a sale is in effect a sale and subject to the law of pre-emption. This remedy applies also to mortgages of village and urban property. The Bill therefore practically maintains the existing law and limits pre-emption to sales including foreclosures.

" In another respect also the present Bill returns to the existing law. It was proposed to reduce the period of limitation to six months, in the interests of all parties. But in deference to the opinions that the law required no change, we have maintained the period at one year, except in cases falling under Article 120, Schedule II of the Limitation Act, where the period is reduced from six years to one year.

" There are a few out of the many controversial points that have arisen in the discussion. The Objects and Reasons and the notes on clauses give fuller explanations of the reasons that have determined the proposals made in the Bill.

" With these remarks, I may be allowed to express the opinion that the present Bill is a decided improvement on all its predecessors; that it will effect many improvements in the law of pre-emption, and will secure the objects for which the Alienation of Land Act was passed.

" I move that the Bill now introduced be circulated for the purpose of eliciting opinion thereon."

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned to 15th December 1904.

LAHORE :

S. M. ROBINSON,

The 19th November 1904. } *Secretary to the Legislative Council of the Punjab.*

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at the Lawrence Hall, Lahore, on Thursday, the 15th December 1904, at 11 A.M.

PRESENT :

His Honour Sir CHARLES MONTGOMERY RIVAZ, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Miyán MUHAMMAD SHAH DIN, Bar.-at-Law.

The Hon'ble Mr. J. MCC. DOUIE, I.C.S.

The Hon'ble Mr. J. BENTON, C.I.E.

The Hon'ble Sir DAVID PARKES MASSON, Kt., C.I.E.

The Hon'ble Colonel J. B. HUTCHINSON, C.S.I.

The Hon'ble Mr. ALEXANDER ANDERSON, C.I.E.

The Hon'ble Sir LEWIS TUPPER, C.S.I., K.C.I.E.

New Member.

The Hon'ble Sir LEWIS TUPPER took his seat in Council.

PUNJAB PRE-EMPTION BILL.

THE Hon'ble Mr. ALEX. ANDERSON said :—" Before moving the motions that stand in my name I would, with Your Honour's permission, ask the Council to join me in welcoming our Colleague the Hon'ble Sir LEWIS TUPPER back to his seat at the Council Table.

" I now move that the Bill to amend the law relating to pre-emption in the Punjab which was introduced at the last meeting of the Council, and which is now in circulation for the purpose of eliciting opinion thereon, be referred to a Select Committee consisting of the Hon'ble Miyán MUHAMMAD SHAH DIN, the Hon'ble Mr. DOUIE, the Hon'ble Kanwar Sir RANBIR SINGH, the Hon'ble Sir LEWIS TUPPER and the Mover."

The motion was put and agreed to.

PUNJAB MINOR CANALS BILL.

The Hon'ble Mr. ALEX. ANDERSON moved that the Hon'ble Sir LEWIS TUPPER be re-appointed a member of the Select Committee on the Minor Canals Bill.

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned *sine die*.

LAHORE :

H. A. B. RATTIGAN,

The 15th December 1904. } Secretary to the Legislative Council of the Punjab.

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at the Council Chamber, Government House, Lahore, on Tuesday, the 28th March 1905, at 11 A.M.

PRESENT:

His Honour Sir CHARLES MONTGOMERY RIVAZ, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Miyán MUHAMMAD SHAH DIN, Bar-at-Law.

The Hon'ble Mr. J. MCC. DOUIE, I.C.S.

The Hon'ble Mr. J. BENTON, C.I.E.

The Hon'ble Sir DAVID PARKES MASSON, Kt., C.I.E.

The Hon'ble Kanwar Sir RANBIR SINGH, K.C.S.I.

The Hon'ble Colonel J. B. HUTCHINSON, C.S.I.

The Hon'ble Major Rāja JAI CHAND.

The Hon'ble Mr. ALEXANDER ANDERSON, C.I.E.

The Hon'ble Sir LEWIS TUPPER, C.S.I., K.C.I.E.

PUNJAB MINOR CANALS BILL.

The Hon'ble Sir LEWIS TUPPER presented the Report of the Select Committee on the Bill to make better provision for the control and management of Minor Canals in the Punjab, and moved that it be taken into consideration. He said:—"In bringing before the Council the motions which stand in my name, I propose in the case of each of the two Bills mentioned in the list of business to offer, when I move that the Report of the Select Committee be taken into consideration, such explanations as may seem necessary to supplement that Report, and, when I move that the Bill as amended be passed, such remarks on its history and policy as may seem appropriate on the present occasion.

"In the remarks of the Committee on clause 3 (ii) of the Bill it is said that provision is made for the application of the Bill to the system of controlling the irrigation from creeks of the Indus by means of dams which obtains in the Bhakkar and Leiah Tahsils of the Mianwali District. The reason why there is no reference to this system in Schedule I of the Bill is that though we have been in correspondence with Captain O'Brien, the Deputy Commissioner, we have not yet been able to devise for the purposes of the Schedule a description of the system which shall be sufficiently explicit and not too detailed. I mention the point because it should receive early attention as soon as the Bill becomes law. The irrigation from these Indus creeks is extensive and important, and the needful addition should be made to Schedule I as soon as a satisfactory description of the irrigation works can be framed.

PUNJAB MINOR CANALS BILL.

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“ Clause 6 which empowers the Collector, subject to some important restrictions, to construct a canal from a notified source of supply will, I hope, encourage the sort of enterprise which many years ago gave us the Grey Canals in the Ferozepore District and has since given us some useful local works in other parts of the country. It will be observed that the powers of the Collector may be exercised only subject to such sanction as the Local Government may prescribe and in accordance with rules to be made under the enactment. We should be altogether over-sanguine if we supposed that the very remarkable skill and capacity in devising and executing minor irrigation works for which Colonel Grey is so well known were common gifts amongst our Deputy Commissioners; but while we need not at all despair of the occasional occurrence of similar aptitude, it is most necessary that works—which I may I think without offence—describe as amateur irrigation works, should not be carried out in such a way as to produce or incur the danger of floods or water-logging or so as to interfere with projects that the Canal Department may have on hand. Accordingly I suggest for future consideration that the rules to be framed with reference to clause 6 should provide that the Chief Engineer of the Irrigation Branch of the Department Public Works shall be consulted before sanction is accorded to any minor irrigation project proposed by a Collector under the Bill.

“ I invite attention to the great simplicity with which we have dealt in the Bill with the subject of owners and occupiers' rates; about which it is hardly an exaggeration to say that volumes of revenue literature have accumulated. Clause 29, sub-clauses (1) and (3), read with clause 3, sub-clause (xiv), distinguish charges made for canal water from canal advantage land revenue, and enable the Local Government in the case of irrigation works under Schedule I to fix the rates and define the persons, deriving benefit from the water, who shall pay them. The rates can thus be adapted with precision to the varying circumstances of particular localities and works, the Local Government having a free hand. Local officers should note that an order of the Local Government is necessary. In the case of irrigation works under Schedule II the needful power of regulation is taken by clause 39 (b). Where the term water-rate would be a misnomer, but payments should be made for the protection of land from sand or flood, rules can be framed by the Local Government to impose a rate under clause 74 (2).

“ In contrast to the subject of owners and occupiers' rates, which is as old as the Act of 1873, are the novel provisions which deal with canals situated or which may become situated partly inside and partly outside Punjab territory. These are the result of prolonged correspondence with the Baháwalpur and Sind authorities, and I hope that we shall be found to have proposed an adequate solution of an extremely difficult problem. The Baháwalpur Canals may be regarded as private canals inasmuch as we have no financial interest in them and take no part in their management; and as public property inasmuch as they belong to the Baháwalpur State. Neither Schedule I nor Schedule II is in every respect suitable to them, though, as one of the provisions of clause 2 implies, Schedule I is the better suited to the case. Accordingly—vide clause 69 and the opening words of clauses 9 and 33—when any Baháwalpur Canal is or becomes situated partly in Punjab and partly in Baháwalpur territory the Local Government has the whole Act at its command irrespective of the Schedules, and is free to apply to so much of any such canal as is within Punjab territory any of the sections of the Act that it deems suitable. This provision—vide clause 69—was framed at a time when it was intended to limit Baháwalpur strictly to certain named provisions. But it was subsequently represented with great force that the most urgent need of the State had not been met. By reason of floods or changes in the course of the river new head works or repairs to head works may be most urgently required and the Baháwalpur authorities naturally desired freedom to act even when the new or old head works would be in British

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territory. This difficulty is met by clause 70. On the passing of the Act the Local Government can invite proposals from the Baháwalpur authorities as to the canals, wholly or partly situated in Baháwalpur territory, in respect of which access to head works in Punjab territory or access to Punjab territory in order to make new head works may, in certain contingencies, be urgently required. The Local Government can then publish an approved list of such canals and can give the needful powers under clause 54—to be exercised of course in Punjab territory—to a Punjab officer or a Baháwalpur officer or an officer of its own lent to the Baháwalpur State. I think these provisions, which have been devised to meet the views of His Honour the Lieutenant-Governor, have been actuated by a liberal spirit; and I hope that the care which we have evinced for Baháwalpur interests will be appreciated by the authorities of the Baháwalpur State.

"In other respects the Report of the Select Committee is very full, and I need not make any further remarks on the detailed provisions of the Bill."

The motion was put and agreed to.

The Hon'ble SIR LEWIS TUPPER moved that the Punjab Minor Canals Bill as amended be passed. He said:—"When I introduced this Bill in December 1903 I referred to its history—some of it, indeed, may now be described as, for official purposes, ancient history, seeing that it dates from 1881—and I mentioned some of its chief objects. The Bill when circulated for opinions was well received; and though we have had the advantage of many very useful suggestions for its improvement, I am glad to say that no controversies arose.

"The effect of these suggestions and of the work of the Committee itself has been, I think, to draw more sharply and accurately the line between major irrigation works—which we desire to leave under Act VIII of 1873 and to the administration of the Canal Department—and minor irrigation works, the proper subject of the Bill. These latter works will be managed or controlled by Deputy Commissioners. The Bill framed by the late Colonel Wace in 1887 was intended to altogether supersede the Canal Act. It applied to all Punjab Canals. Sir James Lyall objected to its sweeping provisions and preferred a Bill revising the Canal Act and adding chapters relating to inundation canals and private canals. Various Bills followed, but I need mention none till I come to a Bill of 1900 which left the Multan, Muzaffargarh and Dera Ghazi Khan Canals under Act VIII of 1873, but proposed to make certain additions to that enactment. The Government of India objected to the amendment of Act VIII of 1873 in the Local Council inasmuch as it applies to other Provinces besides the Punjab. In other criticisms which were made at that time the Punjab canals were not considered geographically or with reference to the distinction between perennial and inundation canals, but an intention was shown to confine the Bill to minor works in the ordinary acceptance of the term. I think it may be taken that from the date of the letter I refer to, *viz.*, September 1901, the great groups of inundation canals under Act VIII of 1873 in the Southern Punjab should have been excluded from the scope of the proposed legislation. This, however, has never till now been explicitly done, Schedules being referred to from time to time, but not filled in. In the course of our consultations we found it necessary to ask instructions from the Lieutenant-Governor; and the result of our request is noted in our Report. The Bill will not be applied to the great groups of canals which I have mentioned, but this decision does not prevent the Local Government from bringing under the Bill particular minor works in any part of the Punjab which may now be under Act VIII of 1873 and administered by the Canal Department. To works brought under the Bill Act VIII would cease to apply, and if in the charge of the Irrigation Department, they probably would, on being brought under the Bill, be transferred to the charge of District Officers.

"The Bill is not a Bill to afford the Canal Department greater facilities in the working of Act VIII of 1873. If some of the clauses of the Bill would be useful, as I venture to think, for this purpose, separate proposals to add them to

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that Act must be made hereafter. The Bill is a Deputy Commissioner's Bill to aid local officers in the management and control of the minor irrigation works which they have hitherto controlled without legal sanction or under legal provisions which do not altogether meet the case, or which may come into existence in consequence of the stimulus to local enterprise which I hope the favourable provisions of this measure will apply.

"Regarding the measure in this light we have been at great pains to make it as efficient for its purpose as our abilities would allow. We have therefore enlarged the definition of 'canal' so as to include the various kinds of petty works which we have in view: and throughout the Bill, while we have carefully provided that persons interested shall be heard and that local officers shall be under the usual control of appeal and sanction, we have given Collectors all the powers that we think they can reasonably want to enable them to manage their small local works efficiently. In this connection I would ask Hon'ble Members to consider particularly clause 51 of the Bill which gives the Collector power to regulate the flow of water in any river, creek or natural channel or line of natural drainage notified in this behalf, and to remove obstructions to such flow. This most useful section will be inoperative till the Local Government frames rules to give effect to it. I call attention to this point because one of the first things to be done when the Bill has become law is to invite proposals for rules to be framed in accordance with clause 51 in the case of those localities where it may be intended to invest the Collector with the powers here proposed for him.

"I will now only venture to congratulate the Council on having reached at last the end of a very long lane; and to express the hope that the measure will prove useful to District Officers and will conduce to the furtherance of local enterprise, to the better management of minor irrigation works and to extensions of the irrigated area which, if of no great magnitude in any one place, will, taken in the aggregate, yield, it may be hoped, after some years some substantial addition to prosperity."

His Honour the PRESIDENT said:—"The Bill which we have been considering is the final outcome of deliberations and discussions which have extended over more than 20 years, and in the shape which it has eventually assumed I hope it will prove to be one of the most useful legislative measures that our Provincial Council has dealt with since its establishment. The detailed provisions of the enactment have been so fully explained by the Hon'ble Member in charge of the Bill that I need not add anything to his careful and lucid exposition. The main object of the Bill is to provide adequate means, the present want of which is a long felt and serious administrative difficulty, for controlling and regulating the management of the smaller but important irrigation works of all kinds throughout the Punjab which are managed by District Officers or Local Bodies or which are owned and managed by private individuals. It is not intended to bring within the operation of the Bill any of the large perennial and inundation canals which are administered by the Irrigation Department under the Northern India Canal Act of 1873, but provision has been made in the Bill for extending its application from time to time, should it be found desirable to do so, to any minor irrigation works which are of the nature of those which are ordinarily managed by the District Officer or a Local Body, but which, for the sake of convenience, have been made over to the management of the Canal Officers. The only other point I need mention is that provision has been made in the Bill for adequately safeguarding the interests and dealing with the needs of inundation canals, especially those of the Bahawalpur State, which are situate either partly or wholly outside the limits of this Province, but whose source of supply from the river is, or may at any time by river action come to be, within such limits."

The motion was put and agreed to.

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PUNJAB PRE-EMPTION BILL.

The Hon'ble SIR LEWIS TUPPER presented the Report of the Select Committee on the Bill to amend the law relating to Pre-emption in the Punjab, and moved that it be taken into consideration. He said:—"This Bill is really very little changed since it left the hands of my Hon'ble Friend MR. ALEX. ANDERSON'S Committee of last summer. It may appear to be a good deal amended if you look merely to the proportion of passages in large type in the Gazette. But many of these passages are due to the single circumstance that my Hon'ble Friend's Committee did not sufficiently distinguish, especially in the procedure sections, between foreclosures and sales. Foreclosures have now ceased in the peasant's cases in which Revenue Officers are most interested, so perhaps the oversight was not unnatural. We owe the correction of this defect to the care and thought which my Hon'ble Friend MR. SHAH DIN, one of the Select Committee, has given to this Bill.

"After the last meeting of the Select Committee, but before they had signed the Report, a telegram was received from the Secretary of State directing the omission of clause 6 (a) of the Bill as introduced. The clause provided that a right of pre-emption shall exist in respect of urban immoveable property in any town or sub-division of a town, when a notification has been issued by the Local Government declaring that a right of pre-emption exists in such town or sub-division. We do not yet know the reasons for this omission which has, of course, been made as directed; but it involved also a formal alteration of clause 7 of the Bill as it then stood. The matter of Cantonment areas, explained in our Report, is not, I think, material here, and I need not go into it. The rest of clause 7 of the Bill as introduced provided just the converse of the clause which the Secretary of State has desired us to omit, namely, that the right of pre-emption shall not exist within any local area other than a Cantonment which the Local Government may by notification specify. At my instance the Select Committee had agreed to solve a doubt and accentuate the character of clause 7 as the supplement to clause 6 (a) by empowering the Local Government to declare that the right of pre-emption shall not exist in any specified town or sub-division of a town or other specified local area. I wished to see this addition made because it is constantly urged as an objection to legislation founded on custom that it stereotypes some ancient rule, keeping it, when it has fulfilled its purpose, still mischievously alive to haunt the statute book and harass society. In legal progress the early restrictions on transfers of property tend to disappear; and my own view is that it is a salutary thing and one consistent with the known lines of social advance to provide a means of euthanasia for pre-emption in towns. My idea was, and is, that as it becomes known that the inhabitants of a town or sub-division of a town either never had or no longer desire to have rights of pre-emption, future litigation concerning such rights should be precluded by a public notification. But I am bound to say that this was not the explanation of clause 7 which was before the Secretary of State when he let it pass without comment while at the same time condemning clause 6 (a). The note which explains clause 7 of the Bill as introduced says that the power given to the Local Government by this clause is specially intended to be exercised with a view to exempt from pre-emption land which it finds to be *bona fide* required by private persons or companies for industrial purposes, such as factories, or agricultural land within Municipal limits. Under these circumstances the clause has been restored to the form it wore when before the Secretary of State. Even so the language remains quite wide enough to admit of that use of the clause which I was anxious to emphasize. Under the clause as settled the Local Government is enabled to exercise its discretion either within the restricted lines indicated in the note on the Bill as introduced, or with some wider scope, according to the policy, at present unknown to us, of the Secretary of State in the matter.

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"The Bill as introduced provided in clause 8 that a right of pre-emption shall not exist in respect of any sale made within a tenancy held by any tenant of Government. This provision had regard in particular to the colonies, and I understand that it was due mainly to the feeling that in a new country like a colony an old-world rule such as that of pre-emption would be out of place; and that although elsewhere such a rule was needed to protect the peasantry from expropriation, that necessity was already met by the Government Tenants Act of 1893 which makes transfers of their rights by such tenants void unless duly sanctioned by authority. My Hon'ble Friend MR. DOUGIE, however, represented in Select Committee that a colony—if, on his behalf, I may borrow a phrase from a recent public address delivered in London by Sir Mackworth Young—a colony should be a miniature Punjab, and that as we have aimed in the colonies at the reproduction of the village and tribal settlement which has taken place in the Province at large, so we should also allow our settlers to bring with them from their old homes old customs to which they might be attached. This appeared to us to be a very weighty reason for postponing the regulation of pre-emption in the colonies until the Colony Bill, which is already before the Secretary of State, is about to be introduced.

"Clause 10 which exempts a sum deposited by a pre-emptor from attachment has been a good deal criticised—I think by those who have no real sympathy with the main object of the Bill. So far as the peasantry are concerned, I have held from the first that the law of pre-emption is our second line of defence against the expropriation of the old agricultural tribes, our first line of defence being now very surely and strongly laid in the Alienation of Land Act. Notwithstanding the arguments from restraint of trade and the maintenance, beyond their due time, of archaic institutions, it is, I think, politically desirable to encourage resort to pre-emption where the exercise of the right will tend to keep the land of a peasant which is being alienated in the hands of one of his own tribe. It is for this reason, and because when a pre-emption suit is launched it is the interest of all that it should be decided quickly, that clause 10 gives the privilege of security to deposits in pre-emption suits. If asked—why then do you apply the rule to urban pre-emption, my reply is—for the sake of simplicity; the rule is mainly required for the vast majority, for the agricultural population; it is not worth while to complicate our enactment by having a different rule for towns, even if that were desirable, which probably it is not, for the attachment of deposits would greatly delay decisions.

"The apparent disappearance from the Bill of any separate clause corresponding to the provisions of the present law relating to *chakdars* requires a few words of explanation. A *chakdār* is so called from *chak*, the wood work of the well, and he is found in the Multán and Muzaffargarh Districts. He is a settler brought in, by the State in Diwán Sāwan Mal's time, or by the original land-owner to make a well and cultivate the land or get it cultivated by tenants; and he holds it in proprietary right subject to the payment of a quit rent to the original land-owner. That is to say, the *chakdars* and their patrons become respectively inferior and superior proprietors, and they have been so treated in the settlement proceedings. In the law as it stands the *chakdār* in the exercise of his right of pre-emption is preferred to land-owners in the estate having no share in the well; this preference is preserved to him by the provision now introduced in the Bill relating to inferior and superior proprietors (clause 12 (c), the first). We thus maintain with a variation of language the existing law. Clause 12 (2) of the Bill as introduced was a novelty; and on full consideration we have rejected it for the reasons given in our report.

"Clause 11 of the Bill provides that no person other than a member of an agricultural tribe notified as such under the Alienation of Land Act shall have a right of pre-emption in respect of agricultural land, but the

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pre-emption rights of village shop-keepers and money-lenders, of village servants, and of tribes of mixed avocations not yet notified as agricultural tribes, such as Brahmans and Labánás, and some divisions of the very miscellaneous class of Sheikhs, are saved as between the members of those classes and tribes amongst themselves. This, I think, is very just and proper, the change in the law necessary to exclude the intruder who has become a land-owner by purchase being effected in such a way as to maintain rights which do not threaten the expropriation of agricultural tribes. It is a remarkable thing that while this Bill has been under consideration, the Chief Court has in substance decided that the exclusion of the intruder has already been effected by the Alienation of Land Act which this Bill is designed to supplement. In No. 15, *Punjab Record* (Civil Judgments), 1905, in a case where a member of an agricultural tribe sold his share in a joint holding to a non-proprietor of the village belonging to the same agricultural group as the vendor, and one of the co-sharers in the land sold, who was not a member of an agricultural tribe, sued for pre-emption, the Chief Court held that the plaintiff's right of pre-emption which he had possessed under the Punjab Laws Act had been abrogated by the Punjab Alienation of Land Act by reason of his being neither an 'agriculturist' in the village nor a member of an agricultural tribe. We may, therefore, claim on this high authority that the exclusion which the Bill very definitely makes for economic and political reasons is in accordance with the existing law as judicially declared."

The motion was put and agreed to.

The Hon'ble SIR LEWIS TUPPER moved that the Pre-emption Bill as amended be passed. He said:—"When I introduced a Pre-emption Bill more than three years ago and when my Hon'ble Friend MR. ALEX. ANDERSON introduced the present Bill last November a good deal was said by him and by myself on the history and objects of these several measures and by him on the relation of the Bill before us to its various predecessors. Accordingly my remarks on the present occasion can be much briefer than they must have been had it been my duty to lay before the Council any exhaustive account of the situation as it exists.

"When I introduced that Bill which I subsequently withdrew, I said that the policy of the Bill and of the Alienation of Land Act was one and the same, and that the working of that Act was one of the secrets of futurity. The policy of the present Bill is still the same. On this material point we have never wavered. The extensive changes made have related to the manner in which that policy shall be enforced. But at the time when I introduced my Bill the Alienation of Land Act had not yet been in force for a whole year. The secret of its working has been disclosed more quickly than I anticipated. I do not hesitate to say that from the point of view of those who approve its policy it has been a great success. It has not widely depreciated the price of land, if indeed it has by this time depreciated it at all. It has not unduly limited credit or freedom of sale, though it has prevented extravagance. It has not increased, it has, perhaps on the whole diminished, the burden of official work; and it has stopped the expropriation of the lands of agricultural tribes which was its great object. Now that the working of the Alienation of Land Act is assured, I can freely confess that persistence in our original intention of confining the jurisdiction in rural pre-emption cases to the Revenue Courts no longer appears to me essential to the maintenance of our policy.

"I was not in the Punjab when the first Tenancy Act was passed in 1863, but the echoes of the controversy over that measure had not yet died out when I joined the Punjab Commission three years later; and I have often pored over the pages of the Blue Book then produced. I think I may safely say that from that time to this no official controversy has been known in the Punjab which has reached the height of the controversy which has occurred in respect of this

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Bill. My original Bill and the draft prepared by the Select Committee on that Bill have both sunk in the storm. A new craft has been built on lines ably laid by the Committee over which my Hon'ble Friend MR. ALEX. ANDERSON presided last summer. The business was done when I was on leave, and I can claim none of the credit. That belongs to my Hon'ble Friend and the officers who were associated with him, namely, Mr. S. M. Robinson, Mr. Fenton, Major Beadon, Diwán Narendra Náth and Mr. MacLagan, who was Secretary to the Committee. I wish to say that I entirely concur in the view of my Hon'ble Friend that this Bill is a great improvement on all of its predecessors—alike, I would add, in substance and in simplicity. This draft has so far weathered the storm; it was well received by official critics both in the Judicial and in the Revenue Departments; and I hope before we rise to-day we shall see it safe into port. One flag it flies has cheered me very particularly. Clause 27 provides for the transmission of pre-emption decrees in the great majority of cases to the Deputy Commissioner, and enables him to apply for revision if he considers that the decision of the Court of first instance is contrary to the provisions of the Alienation of Land Act. This affords a great security that the policy of the Act, so far as it is adequately expressed in the law, will not be overridden by the errors of subordinate Courts; and I regard this novel and able clause with much approbation.

"The greatest heat of controversy has clung to this question of jurisdiction, and this solution, in contrast to a former compromise which, as my Hon'ble Friend said, pleased no body, has been very generally accepted. I hope and think it will work well.

"Of the much more important substantive provisions of the Bill relating to pre-emption in the case of agricultural land, I need only say that I believe them to be in entire accord with the policy of the Alienation of Land Act—a policy which, as I have somewhere said before, requires a good many convergent and consistent measures of a subsidiary kind to confirm its successful issue.

"Although our craft may have weathered the official storm, it has before it the perils of the long voyage of its operation. To some it may possibly seem the unit of a squadron that is inimical to all the world. I myself believe that it is so framed and adjusted as to be under satisfactory and sufficient control; that it will ride safely amid such bombardment of hostile criticism as may still await it; and that it will do credit to its authors, of whom only one, namely, my Hon'ble Friend MR. ALEX. ANDERSON, has been a member of our Committee."

His Honour the PRESIDENT said:—"The Bill now before us is, like the other measure which we have passed to-day into law, the product of prolonged discussions and most careful deliberations, and in its present final form every endeavour has been made, so far as was possible consistently with maintaining the main principle of the Bill, to meet the objections which were raised against several of the provisions of the original Pre-emption Bill which was introduced in this Council three years ago but subsequently withdrawn, and also against some of the proposed amendments of that Bill by the Select Committee which considered it. The main principle of this Bill is that it is intended to be a complement of the Land Alienation Act, and whereas the chief object of the Alienation Act is to prevent agricultural land passing permanently out of the hands of the old established agricultural classes of this Province, that of the Pre-emption Bill is to afford facilities for preserving the possession of such land, when a member of an agricultural tribe desires to sell, within the family or tribe to which the vendor belongs, and when a member of a non-agricultural tribe sells land which he happens to have acquired, to provide a means of its ordinarily reverting to the possession of some member of an agricultural tribe. The opportunity has at the same time been taken to simplify and make more precise the present law of pre-emption in regard to urban immoveable property, but in the main the Bill we are considering is a highly important measure of agrarian legislation which is intended

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to supplement the aims and objects of the Land Alienation Act, and I trust that it will tend to enhance the striking success which, as far as present indications show, is attending the working of that Act.

"I think we may with good reason congratulate ourselves in having added to our provincial statute book during our present legislative session two such important and valuable enactments as the Minor Canals Bill and the Pre-emption Bill."

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned *sine die*.

LAHORE :

The 28th March 1905.

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H. A. B. RATTIGAN,

Secretary, Legislative Council, Punjab.

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at Barnes Court, Simla, on Saturday, the 29th of July 1905, at 11 A.M.

PRESENT:

His Honour Sir DENZIL CHARLES JELF IBBETSON, K.C.S.I., Officiating Lieutenant-Governor of the Punjab, *Presiding*.

The Hon'ble Miyán MUHAMMAD SHAH DIN, Barrister-at-Law.

The Hon'ble Mr. J. MCC. DOUIE, I.C.S.

The Hon'ble Kanwár Sir RANBIR SINGH, K.C.S.I.

The Hon'ble Mr. T. GORDON WALKER, C.S.I., I.C.S.

New Member.

The Hon'ble Mr. T. GORDON WALKER took his seat in Council.

PUNJAB LAND PRESERVATION (CHOS) ACT AMENDMENT BILL.

The Hon'ble MR. GORDON WALKER moved for leave to introduce a Bill to amend Punjab Act II of 1900, the Punjab Land Preservation (Chos) Act. He said:—"The Bill which I now desire to ask leave of the Council to introduce is one of very small dimensions, but it affects to a very appreciable degree the working of a measure of considerable, though local, importance. I will briefly explain the circumstances which have brought to light the necessity of the amendment.

"The Punjab Land Preservation (Chos) Act, 1900, is a very useful measure of limited local extent, which has for its object the protection, principally by reboisement or by the prevention of further deboisement, of the villages adjoining the Siwálik Range from the ravages of hill torrents known locally as *chos*. Sections 3 to 5 of the Act, which are the only portions that we are now concerned with, provide for this object in the following manner. Section 3 gives the Local Government the power of applying by notification the provisions of the Act to areas specified in the notification. Section 4 gives the Local Government the power to regulate, restrict or prohibit by general or special order, within the areas so notified, certain acts, such as the clearing or breaking up of new land, the herding of sheep and goats. Clause (c) of this section in particular gives power to prohibit the cutting of timber or the removal, &c., of 'any forest produce *other than grass* save for *bond fide* domestic or agricultural purposes.' By Section 5 further powers are given to take action by special order of a still more restrictive nature, in respect of selected villages comprised within the areas notified under Section 3. Such action may extend to the restriction or prohibition of existing cultivation, of the pasturing of cattle generally, other than sheep or goats, and in particular of the removal of forest produce *even for bond fide* domestic or agricultural purposes.

"By Punjab Government Notification No. 643, dated 12th December 1902, the provisions of the Act were extended to the areas in the Hoshiarpur District specified in the schedule to that notification, and by Notification No. 644 of the same date action was taken under Section 4 of the Act in respect of the areas specified in the notification under Section 3 (with certain exceptions), the acts specified in clauses (a) to (e) of Section 4 being prohibited. That was the only immediate action taken under the provisions of the Act.

"Two years later (1904) proposals were put forward for taking the further action contemplated by Section 5 of the Act in certain selected villages situated in the perimeters of two of the most destructive *chosh*. In attempting to draft a notification under that section in order to give effect to these proposals, the defect which it is now proposed to remedy came to light for the first time. It is not necessary that I should trouble the Council with the details of the proposals; because we are not in any way concerned with their merits. It is sufficient to say that it was essential to obtain complete control over the very limited area involved, the proprietors being fully compensated for the interference with their rights. The only point with which we are now concerned is that it was discovered that, while we could, by notification under the Act as it stands, prohibit under Section 5 amongst other acts the collection or removal of grass *for bona fide domestic or agricultural purposes*, we could not interfere with collection or removal for sale the only other imaginable purpose for which it could be taken. This on the face of it is an anomalous result, being exactly the opposite of what one would have expected, for it would have been reasonable to allow removal of grass for domestic or agricultural purposes and to prohibit removal for sale. A notification has actually issued in the terms permitted by the Act; but it is self-evident that the prohibition of the removal of grass can have little effect unless we can prevent such removal for sale as well as for domestic or agricultural purposes.

"No satisfactory explanation of the mistake in the wording of the Act—for it is nothing more—can be discovered. The original draft of the section (5) as suggested by the Government of India provided for the prohibition of the removal of forest produce (including grass) 'for any purpose'; and in the draft Bill prepared by the Legal Remembrancer the clause took this form. But in the Bill as introduced in the Legislative Council, and thereafter reported to the Government of India, the clause was worded as it now stands. The Select Committee reported that it had made a few unimportant verbal alterations. It can only be conjectured that, in finally drafting clause (c) of Section 5, the fact was lost sight of that grass had been specifically excepted from the operation of clause (c) of Section 4, and that it was necessary to deal with it generally and not merely with regard to domestic and agricultural purposes. It is now proposed to fulfil the original intention of the framers of the measure by giving power to prohibit under Section 5 the removal of grass for any purpose *even* domestic or agricultural.

"I may add that the Bill has been taken at Simla because the matter is of some urgency as will be apparent from the above remarks. In the absence of the full powers of restriction harm may be done in a few days which it would take years to remedy.

"The Bill with Statement of Objects and Reasons has been published in the *Punjab Gazette* of July 6th, 1905, and has been circulated to Hon'ble Members. No criticisms have been received. As the Bill is entirely non-contentious, and has for its object the removal of a palpable omission due to mistake, I will, if leave is given to introduce it, propose at the next meeting of the Council that the Bill be taken into consideration and be passed.

"With these explanatory remarks I now ask leave to introduce the Bill."

The motion was put and agreed to.

The Hon'ble MR. GORDON WALKER introduced the Bill.

PUNJAB TENANCY ACT, 1887, AMENDMENT BILL.

The Hon'ble MR. GORDON WALKER moved for leave to introduce a Bill to amend certain provisions of the Punjab Tenancy Act, 1887. He said:—
 "The Bill which I will now move for leave to introduce is one to amend Section 30 of the Punjab Tenancy Act (XVI of 1887). I will, as briefly as possible, explain the circumstances under which the necessity for the proposed legislation has arisen.

"Sub-section (4) of Section 30 provides that when 'land revenue payable in respect of any land is remitted or suspended a Revenue Officer may by order remit or suspend the payment of the rent of that land' proportionately to the amount of remission or suspension. Sub-section (5) provides that 'if the landlord collects any rent of which the payment has been remitted, or, before the expiration of the period of suspension, collects any rent of which the payment has been suspended, the whole of the land revenue remitted or suspended in his favour shall become immediately payable by him.'

"The object of these provisions was, generally, to insure that the benefits of the relief granted in times of failure of harvests should reach those primarily entitled to them where the landowner is not himself the cultivator, i.e., the tenants. Experience has, however, shown that the section as it stands is not efficient for producing the desired results. Two prominent defects may be specially noticed.

"Unless the Revenue Officer passes a specific order under sub-section (4) the omission to do so has the result of depriving the tenant of the benefit of the relief, although the landowner gets it. Where suspensions or remissions have to be made on a large scale, as is unfortunately the case frequently in the south-east portion of the Province, such an omission has occurred and is not unlikely to occur again. Again it has been found that rich landlords with occupancy tenants under them are only too glad to pay up the revenue demand, even in seasons of failure, because of the hold that this gives them over the tenants, for, unless the tenant pays up what is due from him as rent, he runs the risk of losing his occupancy rights. The penalty provided by sub-section (5) with a view to deterring the landlord is in such cases of no effect.

"The question of the adequacy of the present tenancy law of the Punjab for securing to tenants a share of the concessions obtained by their landlords, under the rules for the suspension and remission of land revenue, has been receiving a good deal of attention in connection with the general inquiry with regard to the system under which this form of relief is afforded to landowners in bad seasons.

"The present law, it will be observed, makes no distinction between different classes of tenants; and the necessity for such discrimination with reference to (1) whether the tenants have or have not occupancy rights and (2) whether they pay in cash or in kind was brought to notice in examining it for the above purpose. The case of occupancy tenants paying cash rents which are either of fixed amount or bear a fixed proportion to the revenue demand is simple enough. But as regards tenants paying rents in kind the matter is much more complicated.

"It was pointed out that a Revenue Officer might direct the suspension or remission of rent, even if taken in kind in the form of a definite share of the produce, with the result of conceding to the tenant more favourable terms than to the landlord. If for example the tenant's crop in such a case were a complete failure, the landlord would receive nothing from him, and for that reason would be entitled to have the revenue demand suspended or remitted; but as the tenant had given nothing, there would be no reason for extending the relief to him.

Again, in the case of a partial failure of the crop and consequent suspension or remission of a portion of the demand on the landlord, the amount of revenue realized would represent only what the landlord ought to pay out of the share of the produce that he had received, and there would be no reason for extending the relief to the tenant. The provisions should not, therefore, be applicable to rents which are a definite share of the produce, and in the Bill now to be submitted to the Council suspensions and remissions have been limited to tenants paying (1) rent in kind of which the amount is fixed and (2) cash rents.

"As regards occupancy tenants, cases of a landlord being allowed a suspension or remission in which an occupancy tenant holding under him should not be allowed to participate are so very rare that it has been considered preferable that the law should provide automatically for the relief of occupancy tenants instead of, as at present, requiring the Revenue Officer to pass an order to this effect. It is obviously better that the special order of the Revenue Officer should be required only in the very exceptional cases where relief to the landlord does not carry with it corresponding relief to the tenant.

"The case of *tenants-at-will* paying cash rents (or a fixed amount of produce) presents considerable difficulties. The ordinary form of relief to a landlord in a season of failure is suspension of the land revenue demand on him, and the amount so suspended is as a rule realized in subsequent harvests. But if relief is immediately extended to a tenant-at-will in this form it would be extremely difficult for the landlord to realize rent from him when the revenue had to be paid. The tenant might have gone out of reach, and there are other obvious difficulties in the way of the landlord who seeks to realize his share of the demand from one who has been his tenant but is so no longer. It is proposed in cases of this class to leave it to the discretion of the Revenue Officer to determine in each instance, and with reference to the special circumstances of the tenancy, whether the tenant should participate in the relief, this being the only possible solution of the difficulty that has suggested itself. At the same time it is clearly right that when a suspension of land revenue is ultimately converted into a remission, the tenant-at-will who, notwithstanding the suspension, has paid his rent, should get the benefit of the relief.

"To resume what is said above it is proposed (1) to exclude altogether from the operation of the section tenants paying rent in the form of a definite share of the produce; (2) to give automatic effect as regards occupancy tenants paying in cash or a fixed amount of produce to orders of suspension and remission, unless the Revenue Officer otherwise expressly orders (proviso to clause 3, sub-clause (1), of the Bill); (3) in other cases to leave it to the discretion of the Revenue Officer to pass an order carrying on the benefit of the suspension or remission to the tenant (clause 3, sub-clause (1)).

"It remains to notice the proposed amendment of sub-section (5) of Section 30 (clause 4 of the Bill); and on this point it is sufficient to refer to the Statement of Objects and Reasons. In its present form the penalty imposed on a landlord who 'collects any rent of which the payment has been remitted, or before the expiration of the period of suspension collects any rent of which the payment has been suspended,' would, if enforced, have the undesirable effect of leaving the landlord free to realize the whole of the rent payable for his entire estate. That is the only possible interpretation of the sub-section as it now stands. It is therefore proposed (a) to give the Revenue Officer the power of dealing with the landlord under such circumstances *in respect of the single tenancy concerned*, (b) to provide that a fine may be imposed on the offending landlord up to a maximum of double the rent collected, and (c) to provide that the rent collected may be refunded to the tenant out of the proceeds of the fine so imposed. At the same time it has been thought advisable to exclude from the effect of these provisions cases in which the rent has been voluntarily paid.

"Further, it is proposed to provide by a new sub-section (clause 5 of the Bill) for the recovery of fines so imposed by summary process as arrears of land revenue.

"With these remarks I would ask for leave to introduce the Bill."

The motion was put and agreed to.

The Hon'ble MR. GORDON WALKER introduced the Bill.

The Hon'ble MR. GORDON WALKER moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette and circulated for the purpose of eliciting opinion thereon, and said—"I would explain that it is not the intention to proceed further with the Bill until the Council meets in Lahore."

The Hon'ble MR. DOUIE said :—"I should like, Sir, with your permission to add a few words to the remarks made by my Hon'ble Friend. There can be no doubt that the provisions of the Bill are much better than those which they will replace. The power to interfere between tenants-at-will and their landlords where the custom is to divide the crop, that is to say, on two-thirds of the land in the Province cultivated by tenants-at-will, is taken away. Probably the provision of the existing law which made such interference possible has been a dead-letter, but opportunities for foolishness should not remain on the statute book. I hope when the new section comes to be worked it will be remembered that cash rents are often pitched low because it is the custom that they shall be paid in full sooner or later, that meddling is useless where, as often happens here, the landlords want tenants more than the tenants want land, and that it is likely to be futile, if not mischievous, where the contrary prevails. It is obvious that this must be so. A landlord with the power of ejectment can always hold over the head of a tenant eager to retain his holding a sword of which no one has proposed to deprive him."

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned to 5th August 1905.

SIMLA :

The 29th July 1905.

S. M. ROBINSON,

Secretary, Legislative Council.

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at Barnes Court, Simla, on Saturday, the 5th August 1905, at 11 A.M.

PRESENT:

His Honour Sir DENZIL CHARLES JELF IBBETSON, K.C.S.I.,
Offg. Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Mr. J. Mc.C. DOUIE, I.C.S.

The Hon'ble Mr. J. BENTON, C.I.E.

The Hon'ble-Mr. T. GORDON WALKER, C.S.I., I.C.S.

PUNJAB LAND PRESERVATION (CHOS) ACT AMENDMENT
BILL.

The Hon'ble Mr. GORDON WALKER said: "I now move that the Bill to amend Punjab Act II of 1900, the Punjab Land Preservation (Chos) Act, which was introduced at the last meeting of the Council on the 29th July, be taken into consideration."

The motion was put and agreed to.

The Hon'ble Mr. GORDON WALKER moved that the Bill to amend the Punjab Land Preservation (Chos) Act of 1900 be passed. He said:—"In asking leave to introduce this Bill at the last meeting of the Council I explained very fully the necessity for the proposed legislation. The object of the amending Bill is to remove an omission due to oversight in drafting the Bill which was passed as the Punjab Land Preservation (Chos) Act. The defect which has been discovered in Section 5 of the Act detracts in a very appreciable degree and in a manner not contemplated by the framers of the Act from the efficiency of the measures which can be taken under that section. The intention undoubtedly was to give full powers for taking the necessary steps to promote, in the limited areas to which the provisions of the section would be applied, the growth of grass and other natural produce, this being a primary and essential measure of preservation from the action of the *Chos*. The object in view could only be attained by prohibiting the removal, for any purpose of such natural produce, but, as already explained, the wording of the section has landed us in the anomalous position that we can in the case of grass prohibit such removal only where the grass is taken for *bonâ fide* domestic or agricultural purposes."

"As explained at the last meeting, the Bill is entirely non-contentious, having for its object merely the correction of what is admitted to be a mistake. So far as I am aware, the Bill has not been, and will not in this Council be, subjected to any criticism. It is of importance that the mistake should be corrected as quickly as possible, for, until this is done, the protective measures which are being taken in the Hoshiarpur District will of necessity be incomplete in a very material respect. The Notification which has been issued under Section 5 in respect of the area to be experimented on in that district prohibits the removal of grass for *bonâ fide* domestic or agricultural purposes only, there being no power to prohibit removal for any other purpose. The matter being for these reasons of considerable urgency, I now move that the Bill be passed."

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned *sine die*.

SIMLA:

S. M. ROBINSON,

The 5th August 1905.

Secretary, Legislative Council, Punjab.

Remarks

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at the Council Chamber, Government House, Lahore, on Saturday, the 23rd December 1905, at 11 A.M.

PRESENT :

His Honour Sir CHARLES MONTGOMERY RIVAZ, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Major Rája JAI CHAND of Lambagraon.

The Hon'ble Mr. T. GORDON WALKER, C.S.I., I.C.S.

The Hon'ble Sir LEWIS TUPPER, K.C.I.E., C.S.I., I.C.S.

The Hon'ble Mr. J. MCC. DOUIE, I.C.S.

The Hon'ble Miyán MUHAMMAD SHAH DIN, Barrister-at-Law. /

Hon'ble Mr. S. FINNEY, C.I.E.

New Members.

The Hon'ble Sir LEWIS TUPPER, the Hon'ble Mr. DOUIE, the Hon'ble Mr. SHAH DIN, and the Hon'ble Mr. FINNEY took their seats in Council.

PUNJAB MOTOR VEHICLES BILL.

The Hon'ble SIR LEWIS TUPPER moved for leave to introduce a Bill to regulate the use of Motor Vehicles in the Punjab. He said:—"I beg to ask leave to introduce a Bill to regulate the use of Motor Vehicles in the Punjab. The Bill follows in all material respects the provisions of the Bombay Motor Vehicles Act (Bombay Act II of 1904) and of the Motor Cars Act, 1903 (3 Ed. VII, Cap. 36). It was submitted to the Government of India so long ago as February last; and it had already been then for some time obvious that legislation on the subject was required. At the time of the visit of Their Royal Highnesses the Prince and Princess of Wales to Lahore we have had recent and ample proof that the use of motor vehicles is becoming frequent in this Province. The Bill provides for the grant of licenses to drive motor vehicles, and penalises driving without a license and reckless or negligent driving or driving at dangerous speed. It imposes on the driver the duty to stop in case of any accident to persons not in the car or to horses or other vehicles. Ample powers are conferred on the Local Government to frame the necessary rules as to rate of speed, the roads and hours for motor traffic, the use of horns or bells, and other similar matters. The provisions generally are of a simple and useful character, and I do not think that any contentious matter is involved."

The motion was put and agreed to.

The Hon'ble SIR LEWIS TUPPER introduced the Bill.

The Hon'ble SIR LEWIS TUPPER moved that the Bill be referred to a Select Committee consisting of the Hon'ble SIR DAVID MASSON, the Hon'ble MR. FINNEY and the Mover.

The motion was put and agreed to.

PUNJAB TENANCY ACT, 1887, AMENDMENT BILL.

The Hon'ble MR. GORDON WALKER said :—" At a meeting of the Council held at Simla on 29th July 1905 I had the honour of introducing this Bill. In doing so I explained fully the necessity for the proposed legislation and the scope of the measure. The motion that the Bill with the Statement of Objects and Reasons be published in the Gazette and circulated for the purpose of eliciting opinion thereon was put and agreed to. It is unnecessary at the present stage that I should say anything further with regard to the Bill. The motion which stands against my name in the list of Agenda for to-day's meeting is the formal one, that the Bill be now referred to a Select Committee consisting of the Hon'ble MR. DOUIE, the Hon'ble MR. SHAH DIN and myself. I have now the honour of putting that motion."

The motion was put and agreed to.

ADJOURNMENT.

THE Council adjourned *sine die*.

LAHORE :

The 23rd December 1905. }

S. M. ROBINSON,

Secretary, Legislative Council, Punjab.

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PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at the Council Chamber, Government House, Lahore, on Thursday, the 25th October 1906, at 11 A.M.

PRESENT:

His Honour Sir CHARLES MONTGOMERY RIVAZ, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Mr. T. GORDON WALKER, C.S.I., I.C.S.

The Hon'ble Mr. J. MCC. DOUIE, C.S.I., I.C.S.

The Hon'ble Sir DAVID MASSON, C.I.E., Kt.

The Hon'ble Miyán MUHAMMAD SHAH DİN, Khán Bahádur, /
Barrister-at-Law.

The Hon'ble Sardár PARTAP SINGH, AHLUWALIA.

The Hon'ble Thákur MAHAN CHAND.

The Hon'ble Malik UMAR HAYAT KHAN, TIWANA, C.I.E.

The Hon'ble Mr. E. D. MACLAGAN, M.A., I.C.S.

New Members.

The Hon'ble Sardár PARTAP SINGH, the Hon'ble Thákur MAHAN CHAND, the Hon'ble Malik UMAR HAYAT KHAN, and the Hon'ble Mr. MACLAGAN took their seats in Council.

PUNJAB TENANCY ACT, 1887, AMENDMENT BILL.

The Hon'ble Mr. GORDON WALKER presented the Report of the Select Committee on the Bill to amend certain provisions of the Punjab Tenancy Act, 1887. He said :—" This Bill was introduced at a meeting of the Legislative Council held on 29th July 1905, and I then explained very fully the necessity and the objects of the proposed legislation. The motion then agreed to was that the Bill together with the Statement of Objects and Reasons be published in the Gazette and circulated for the purpose of eliciting opinions.

" At a meeting of the Council held on 23rd December 1905, a motion was agreed to that the Bill be referred to a Select Committee consisting of the Hon'ble Mr. DOUIE, the Hon'ble Mr. SHAH DIN and myself.

" The Select Committee, after careful consideration of the opinions expressed, agreed to the report which I have now the honour to present. The report is dated 25th April 1906, and this is the first meeting of the Council since that date.

" It is quite unnecessary that I should again explain in detail the defects in the present Act which the Bill is intended to remove. There was a general consensus of opinion in favour of the substance of the proposed amendments which were the result of a discussion extending over several years. The Bill introduces no new principle of importance, its object being to remove certain defects in that part of the machinery of the Act which is intended to give effect to the accepted principle that, where Government suspends or remits land revenue, the benefit of the relief should reach the tenant.

" The Bill has been well received. Certain criticisms of detail have been made, and these have been considered by the Select Committee with the result that the draft has been altered in one or two places.

" In clause 4 of the original draft it was provided that action should be taken against a landlord only if the payment of rent by the tenant had not been 'voluntarily made.' It was rightly objected that these words were likely to give rise to undesirable contention, and the Committee have decided that they should be omitted. They are unnecessary because the power of recovery from the landlord is discretionary in any case.

" As explained in the report, the Committee have felt that there was a possible source of danger in the provision for imposing on a landlord a fine in addition to the recovery of the rent which he had improperly collected. But the principle of imposing such a penalty has been accepted by Government. The original draft provided for the levy of the rent as well as the penalty in the form of a fine, and it has been thought better to separate them. Clause 4, as altered, provides for the recovery from the landlord of the rent improperly realized from the tenant, and also of a further sum, by way of penalty, not exceeding the amount of the rent. The order of recovery in both cases is left to the discretion of the Revenue Officer; but under the clause as now framed he would probably have to consider separately whether it was advisable in the interests of the tenant to abstain from imposing a penalty."

The Hon'ble Mr. GORDON WALKER moved that the report be taken into consideration.

The motion was put and agreed to.

The Hon'ble Mr. GORDON WALKER moved that the Bill as amended by the Select Committee be passed.

The motion was put and agreed to.

PUNJAB MOTOR VEHICLES BILL.

His Honour the President moved that the Hon'ble Mr. GORDON WALKER be appointed to the Select Committee on the Motor Vehicles Bill in place of the Hon'ble Sir LEWIS TUPPER.

The motion was put and agreed to.

PUNJAB DISTRICT BOARDS ACT AMENDMENT BILL.

The Hon'ble Mr. J. MCC. DOUIE moved for leave to introduce a Bill to amend the Punjab District Boards Act, 1883. He said :—"As there is other important business to be dealt with to-day, it will be convenient to the Council that my remarks in introducing the Bill for the amendment of the Punjab District Boards Act XX of 1883 should be brief. It is the easier to make them so because Bills for the reduction of taxation are not unpopular measures and because the present Bill as a matter of fact merely registers an accomplished fact.

"I do not propose to trouble the Council with the early history of cesses in the Punjab. Suffice it to say that Act XX of 1871 authorized the levy as a surcharge on the land revenue of a local rate calculated at $6\frac{1}{2}$ per cent. on its amount in addition to $2\frac{1}{2}$ per cent. previously realized in most districts for the extension of roads, schools, and rural post offices. The occurrence of severe famines in different parts of India in 1874 and 1877-78 led to the principle being laid down that 'the periodical occurrence of famine ought to enter into the calculations of the Government of India when making provision for its ordinary wants from year to year.' To provide the funds required the local rate was raised by Act V of 1878 from Rs. 6-4-0 to Rs. 8-5-4 per cent. on the land revenue. The addition made to the local rate, sometimes described as 'the famine cess,' was not put at the disposal of the district boards, but became part of the provincial revenues. Five years later the new local rate and the three petty cesses were amalgamated by the Act which it is now proposed to amend. For convenience sake the maximum charge that could be imposed was fixed at $12\frac{1}{2}$ per cent. or 1 anna in the rupee of land revenue. But there was no intention of making any general addition to the actual burden of taxation. Almost everywhere in the Punjab the local rate was, therefore, till last April levied at the rate of Rs. 10-6-8 per cent. of the land revenue. Under the 9th section of the Act four-fifths of the local rate was at the disposal of the district boards, and the remainder was carried to the credit of the Local Government.

"In 1905 the Government of India found its financial position so favourable that it was able not only to reduce the salt tax, but to remit the addition of Rs. 2-1-4 per cent. made to the local rate in 1878. The remission has been carried into effect in the Punjab from 1st April last, and at the same time the patwar cess was abolished. The lightening of the load of taxation is most beneficial when the burden is taken off the shoulders of large numbers of persons in humble circumstances. Judged by that test, the reduction of the local rate and the removal of the patwar cess have been a great boon to a province like the Punjab, where the bulk of the landowners consists of peasant proprietors. These men and the Crown tenants in the new Canal Colonies, to whom the relief is also immediate and direct, number, I believe, three million souls. And to these must be added a considerable body of occupancy tenants. It seems not extravagant to suppose that these people and their families include two-thirds of the 20 million persons of whom the population of the Punjab consists. The relief given has been not only widespread, but also far from insignificant in amount. In the case of the local rate it probably amounts to between 6 and 7 lakhs, and in the case of the patwar cess to quite 15 lakhs, of rupees.

"The Bill is a very short one. The maximum charge for local rate, fixed by section 5 of Act XX of 1883 at one anna per rupee of annual value, i.e., 2 annas per rupee or Rs. 12-8-0 per cent. on the land revenue, is lowered to 10

pies per rupee of annual value or Rs. 10-6-8 per cent. on the land revenue. As I have already pointed out, the tax before last April was in the greater part of the Punjab levied at what is still the legal maximum. But I need hardly say that there is no intention whatever to deprive any district of the full benefit of the remission which the Government of India has fortunately been able to give, and notification No. 87, dated 2nd April 1906, has lowered the rate, whatever its previous amount, by Rs. 2-1-4 per cent. on the land revenue everywhere. Henceforth the whole of the local rate with one trifling exception will be at the disposal of the district boards. No part of it will be an asset of the provincial revenues, but the Local Government will, as at present, have the power to direct that the rate levied within the limits of municipalities and cantonments shall be credited to municipal or cantonment funds. A small amendment has been inserted to make the proviso conferring this power also applicable to notified areas."

The motion was put and agreed to.

The Hon'ble Mr. DOUIE introduced the Bill.

The Hon'ble Mr. DOUIE moved that the Bill be taken into consideration and passed. He said:—"I beg to move that the Bill which I have just introduced be at once taken into consideration and passed. This is a course to which, I think, no objection will be taken in view of the nature of the measure and the simplicity of its provisions."

The motion was put and agreed to.

PUNJAB ALIENATION OF LAND ACT AMENDMENT BILL.

The Hon'ble Mr. GORDON WALKER moved for leave to introduce a Bill to amend the Punjab Alienation of Land Act, 1900. He said:—"The Punjab Land Alienation Act which has now been in force since 1900 was the outcome of long years of discussion. Although it had come to be clearly recognised that something must be done to arrest the process of transfer of land from the agricultural population, there was still plenty of room for difference of opinion as to the way in which this object was to be attained. Even the keenest supporters of the present Act, and those who were responsible for it, might well be inclined to entertain doubts as to the precise effects of what was fully recognised to be a legislative experiment of a rather revolutionary character. There was nothing which could give any certain indication of what those effects were likely to be.

"Looking back on six years of practical working of the Act, I think we may safely say that it has been a success beyond the expectations of its most ardent supporters. That is a subject, however, on which it is unnecessary for me now to enlarge. The point on which perhaps the most serious apprehension was felt was that the Act, instead of conferring a benefit on the class for whose protection it was meant, would cause serious inconvenience to them by the contraction of credit. It was feared that the money-lending class would not continue, under the altered conditions, to make the necessary advances to the zamindars, and that the latter would not be able to get along without the assistance of this nature on which they had so long depended. We now know that this apprehension has not been justified in practical experience. Unlimited credit has undoubtedly been contracted, the village money-lender is not perhaps now so keen on pressing a loan on the reluctant zamindar, and the latter may find it more difficult to obtain the necessary funds for reckless expenditure. But there is nothing whatever to show that, as a result of the Act, the zamindar has been hampered in his business and in his daily life by the difficulty of getting ready money when he requires it. Looking at the working of the Act in this direction, it may be said that it has had a tendency to enforce thrift without causing any general inconvenience.

"It was inevitable, considering that the present Act was in the nature of an experiment, that some defects would come to light in its working. That so very few defects have been discovered appears to me to demonstrate the wisdom and foresight of those who were responsible for framing the measure. The objects of the Bill which I will presently ask leave to introduce are to effect one alteration which may perhaps be regarded as radical, and to remove certain defects in detail which have made themselves apparent.

"One very striking feature of the Act is that, while the non-agricultural classes are excluded generally from the power of acquiring land belonging to the agricultural class, this exclusion was relaxed in the case of a small portion of the former. The relaxation was undoubtedly due to the apprehension I have already alluded to. The genesis of the *statutory agriculturist* may be said to have been the result of the fear that undue economic inconvenience might result from the exclusion *uno actu* of the entire money-lending class.

"Except to the initiated the term *agriculturist* would certainly convey an erroneous impression of what it was intended to cover. The word had come to be used in connection with the revenue statistics of the Province to denote a person whose hereditary occupation was not agriculture, but who had acquired property in agricultural land. We had come to make a distinction for statistical purposes between those who had recently become land-owners and those who had been land-owners for some time. The latter were known as *old agriculturists*, and it was this class in whose favour it was decided to relax the exclusion from the power of acquisition. It was necessary to draw some artificial line of distinction between the two classes of non-agricultural land-owners which we were creating, *i.e.*, those on whom it was considered desirable to confer the power of acquisition because of the fact of their having held land for a long time, and those who had acquired land more recently and were therefore held not to be entitled to the privilege. This was effected by defining in the Act an *agriculturist* to mean any person who in his own name or in that of his ancestor in the male line was recorded as an owner or as an occupancy tenant at the first regular settlement of his district. But the framers of the Act did not go so far as to extend the advantages which the privileged position involved to all who came within the definition, and section 3 (1) (b) permits permanent alienation of land by a member of an agricultural tribe only to a person who 'holds land as an agriculturist in the village where the land alienated is situated.' Thus the privileged *agriculturist* owed his position to two circumstances which might be purely accidental, the point of departure in respect of the original acquisition being taken to be the first regular settlement, while the second accident was that of the acquisition having been made in the particular village.

"It was not to be expected that a distinction of such a highly artificial nature would be at once understood even by those directly affected. The ordinary zamindar at once grasped the fact that he could not in future make a permanent alienation of his land except to one of his own class; but the privileged *agriculturist* was beyond not only his comprehension, but also as a rule that of the agriculturist himself, and it may be added, of the ordinary run of subordinate officials who had to deal with the details of the working of the Act. Owing to this and other reasons, it has come about that comparatively little use has been made of the permission to make permanent alienations to statutory agriculturists, while we have the broad fact that, notwithstanding this result, the Act has hitherto worked with all the success that could be desired, and without any of the anticipated economic difficulties in view of which the statutory agriculturist was created.

"It has thus been proved in practice that the statutory agriculturist is not a necessity for the working of the Act. It has also been proved that the maintenance of this artificial class is highly inconvenient. The arbitrary line

drawn by the Act as to the time before which the qualifying acquisition must have been made works most irregularly. First regular settlements were effected in the Punjab between the years 1837 and 1870, or even later. Each claim to be an agriculturist requires special inquiry, and there are many troubles and uncertainties involved in the determination of the question. Moreover, further permanent alienations by an *agriculturist* alienee are subject to special restrictions, and this involves ear-marking the areas concerned, while there are other numerous complications which need not be detailed. These reasons fully justify the conclusion that 'the confusion and trouble caused by the introduction into the Act of the *statutory agriculturist* are such as would only be justified by a very much stronger demonstration of the necessity and utility of the provisions (to this effect) than has so far been brought to notice.'

"There is the further consideration of the mischievous effects which are likely to ensue unless the *statutory agriculturist* is eliminated. The agriculturist of the Act belongs in the great majority of cases to the money-lending class from whose encroachments we specially desire to protect the Punjabi peasant, and there are indications which clearly point to the necessity of protecting the latter against the *statutory agriculturist*. There appears to be every probability that unless we interfere, considerable quantities of land would before long pass from the agricultural to the privileged portion of the money-lending class. There is the further real danger of the privileged *agriculturist* taking over the debts and mortgages of other money-lenders who have not the favoured status and then proceeding to acquire the lands of the indebted peasants.

"I should add that when the Punjab Act was extended to the North-West Frontier Province in 1904 the provisions relating to the *statutory agriculturist* were cut out. Again, in the Bundelkhand Act (1903) there is nothing to correspond to the *agriculturist* of our Act, while in framing the Punjab Pre-emption Act, 1935, we studiously avoided the insertion of any provisions based on the presumption that the *statutory agriculturist* was a permanent feature in our legislation.

"For the reasons which I have detailed, not, I hope, at too great length in view of the importance of the matter, the general conclusion has been accepted 'that the introduction of the *agriculturist* into the legislation of 1900 was unfortunate, and that the artificial provisions then inserted may now be abrogated as being unnecessary, inconvenient and mischievous.' The main object of the present Bill is to give effect to that conclusion.

"The opportunity has at the same time been taken to provide for certain minor alterations in the Act which the experience of the last six years has shown to be required. These alterations fall under six heads, concerning—

- (i) the effect of the Act on occupancy rights.
- (ii) the treatment of gifts for religious or charitable purposes.
- (iii) the authority required for notifying agricultural tribes.
- (iv) the enforcement of the provisions of the Act regarding temporary alienations.
- (v) the completion of the existing provisions regarding the conversion of conditional sales into temporary alienations.
- (vi) the relation of the Civil Courts towards the executive in the administration of the Act.

"I will now deal with each of these heads in the order given.

"(i) First as regards the question of *occupancy rights*. It was the intention of the framers of the Act that the provisions of the Act should not apply to occupancy rights, probably because it was thought that the Punjab

Tenancy Act did all that was required in the direction of restricting the alienation of such rights. In 1904, however, the Chief Court ruled that the definition of *land* in the Act did include such rights, and that decision has been since acted on. It has now been decided to remove all further room for doubt and to confirm the present practice by expressly including occupancy rights in the definition of *land* which the Act contains.

"An obvious device for evading the provisions of the Act was for a member of the agricultural class to confer rights of occupancy on a person in whose favour he could not effect an alienation of proprietary rights. It has, therefore, been thought advisable to include the grant of occupancy rights in the definition of permanent alienation given in section 2 (4) of the Act, so that under section 3 such grants may, if necessary, be prevented where the alienee is not a member of an agricultural tribe. I should explain, however, that there is no intention to prevent the Deputy Commissioner sanctioning such alienations where the object is to promote agricultural development by giving favourable terms to new settlers and the like.

"Another point in connection with occupancy rights is that under sections 53 and 54 of the Punjab Tenancy Act a landlord can claim pre-emption in the case of a sale of, or foreclosure of a mortgage on, a right of occupancy. These sections afford a possible means of evading the provisions of the Land Alienation Act; and, while it is not intended to place restrictions on the *bona fide* exercise of the right of pre-emption by landlords who do not belong to the agricultural class, it is considered advisable that such transfers should be subjected to the review of the Deputy Commissioner. While, therefore, on the one hand such transfers are made subject to the provisions of the Act, it is at the same time provided that the Deputy Commissioner shall sanction transfers of this nature made *bona fide* by a tenant to his landlord (clauses 3 and 4 (2) of the Bill).

"(ii) *Gifts for religious or charitable purposes.* Gifts of this nature are expressly excluded from the definition of 'permanent alienation' in the Act as it now stands, and here again there is an opening for evading the restrictions imposed by the Act. In the Bill this matter is dealt with on similar lines to those applied to the purchase by a landlord of occupancy rights, *i.e.*, the sanction of the Deputy Commissioner will be necessary, but it is provided that sanction must be given to all *bona fide* gifts of this character.

"(iii) The permission of the Government of India has been obtained to a change in respect of the authority for notifying agricultural tribes. Section 4 of the Act requires the sanction of the Governor-General in Council before a tribe can be notified as an agricultural tribe. The work of notifying tribes has been practically completed, and the general principles on which they are selected for notification have been determined, so that there is no further object in requiring previous sanction. Clause 5 of the Bill provides for the deletion of the words which make such sanction necessary.

"(iv) The fourth point to be noticed is one of some considerable importance in the practical working of the Act. One of the main features of the Act was the limitation of the period of years for which land could be temporarily alienated by members of agricultural tribes to outsiders, and power was given to the Deputy Commissioner to oust a mortgagee or lessee who remained in possession after the expiry of the prescribed period. But two defects or omissions have come to light of which I will notice the more important first. Where a mortgagee under either of the first two forms of mortgage permitted by section 6 is in possession of the land, section 7 (3) permits the mortgagor to redeem the land on payment of the mortgage debt or the proportionate amount of it which the Deputy Commissioner determines to be due. But if the mortgagee declined to receive the amount due when tendered by the mortgagor or to give up possession, the

mortgagor would have to face the troubles and expense involved in civil litigation. It is a very common cause of complaint that a mortgagor may be quite ready and willing to make the payment necessary for redemption, or may even have made it, but finds himself prevented from getting back his land owing to the passive resistance of the mortgagee. It is now proposed (clause 7) to give the Deputy Commissioner power to eject the mortgagee where either (1) it is proved to his satisfaction that the mortgagor has paid the mortgage debt or such proportion of it as the Deputy Commissioner finds to be equitably due, or (2) the mortgagor tenders the amount due.

"The other defect is of less importance. Where a mortgage is without possession and the mortgagor fails to fulfil the terms of the mortgage, the mortgagee may apply to the Deputy Commissioner to be put in possession, and the Deputy Commissioner may thereon determine that the mortgagee should be put in possession for a period. But the Deputy Commissioner was not at the same time given the power of enforcing his decision by putting the mortgagee in possession. Clause 6 has been framed to remedy this omission.

"(v) The fifth of these minor points in respect of which it is proposed to remedy the defects brought to light in the working of the Act concerns the matter of mortgages with condition of sale. The Act declares null and void a condition of sale in a mortgage made after the commencement of the Act. In the case of a mortgage with condition of sale executed before the commencement of the Act the Deputy Commissioner is empowered to put the mortgagee to his election whether he will agree to the condition of sale being struck out, or will accept a fresh mortgage in one of the authorized forms. It has been found in a good many cases that where the mortgagee accepts the latter alternative further progress is stayed owing to the refusal or neglect of the mortgagor to execute a fresh deed. The refusal might be due to one of several causes; and in particular it would obviously be to the advantage of the mortgagee that the mortgagor should refuse, if the result was to leave the condition of sale effective. It has been considered advisable, in the interests of the mortgagor, to insure that he should not suffer the consequences of his refusal or inaction, and it is accordingly provided in clause 8 that, in such circumstances, the Deputy Commissioner should have the power to execute the deed on behalf of the mortgagor.

"(vi) The last point to be noticed concerns the action of the civil courts in relation to the working of the Act. It has been found that in a large number of cases subordinate civil courts have passed decrees (usually with the consent of the parties) involving transfers of land in contravention of the provisions of the Act. This is a very insidious form of evasion, because the civil appellate court is seldom moved to interfere, and there is no other means of putting the matter right. Either such cases may escape the notice of the Deputy Commissioner, or if they do come to his notice, he finds himself helpless to intervene. It is now proposed to provide means by which (1) the Deputy Commissioner shall be kept informed by the civil courts of all decrees which they pass involving transfers of land from members of agricultural tribes to money-lenders, and (2) he shall be in a position, apart from the wishes of either party, to move the superior civil courts to interfere. Clause 9 of the Bill has been framed with this object. It follows the analogy of section 27 of the Punjab Pre-emption Act, and provides a procedure by which the Deputy Commissioner will be able to bring before the superior civil courts, with a view to revision, any decree of a civil court (which appears to him to be contrary to the provisions of the Act.

"In these remarks I have endeavoured to explain, as briefly as was possible in view of their importance, the amendments which it is proposed to introduce into the Act."

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The motion was put and agreed to, and the Hon'ble Mr. GORDON WALKER introduced the Bill.

The Hon'ble Mr. GORDON WALKER moved—

- (1) that the Bill be referred to a Select Committee consisting of the Hon'ble Mr. DOUIE, the Hon'ble M. SHAH DIN, the Hon'ble Sardar PARTAP SINGH, the Hon'ble Malik UMAR HAYAT KHAN, Tiwana, and the mover, with instructions to report by the 10th February 1907.
- (2) that the Bill be circulated for the purpose of eliciting opinions thereon.

The motions were put and agreed to.

COLONIZATION OF GOVERNMENT LANDS (PUNJAB) BILL.

The Hon'ble Mr. DOUIE moved for leave to introduce a Bill to make better provision for the colonization and administration of Government lands in the Punjab. He said :—"When the story of the development of the Punjab under English rule is written, the chapter which deals with the colonization of State lands in the last twenty years and in the years which still lie before us will perhaps be the most striking of all. It is an administrative achievement of a high order made possible by the engineering skill which has carried the waters of great rivers to wide uplands, which for aught we know to the contrary had lain waste since the dawn of history. The first impulse to this, as to much else that has proved fruitful of large results in this province, came from the late Colonel Wace. His Sidhnai and Sohag-Para Canal Colonies were in themselves small affairs, and few could have foreseen that the seed sown there would so soon develop into the huge work of colonization now rapidly approaching completion in the tract commanded by the Lower Chenab Canal. When Financial Commissioner in 1890, Sir Denzil Ibbetson, working on the foundations laid by Colonel Wace, drew the broad lines on which colonization schemes have since been built. For the actual execution the credit is mainly due to half a dozen young officers who have held in succession the posts of Colonization Officers for the Chenab and Jhelum Canals.

"This is a case in which figures have an eloquence of their own. The State has spent on the Lower Chenab Canal two million pounds, and in eighteen or nineteen years the interest charges and the capital expenditure have been wiped out. The profit earned in 1904-05 was 24½ per cent. and it is likely to be still higher in the future. Between 18 and 19 lakhs of acres have been covered with new settlements, and the population of the Chenab Colony is now 8,58,000 souls drawn mostly from the overcrowded districts of the Central Punjab. The annual irrigation amounts to about two million acres, and four-fifths of this is in these new estates carved out of waste which fifteen or sixteen years ago was roamed over by a few graziers and camel herds. The value of the crops raised every year can hardly be less than three million pounds.

"Nature has confined the Lower Jhelum Canal, which is a much younger project, within straiter limits, and want of hands, due in part to a virulent outbreak of plague in the spring of 1904, has retarded the development of irrigation. According to the latest figures, the area allotted is about 340,000 acres, and besides there is a great deal of land in old estates, for the uplands of Bhera were largely occupied by villages with huge areas of common lands mostly untouched by the plough till the canal came. The annual irrigation is at present about 300,000 acres.

"In addition to these great settlements there is a small colony in Crown land in Lahore served by a branch of the Bari Doab Canal.

" Canal colonization work in the Punjab is not at an end. A new branch of the Chenab Canal is about to be constructed, and the allotment of land in the Jhelum Canal Colony, though almost, is not quite, finished. In the near future the Lower Bari Doab Canal will throw open to settlement a large tract of waste owned by the State in Montgomery and Multan. The prospects of the irrigation of the vast Thal lying between the Indus and the Jhelum are more distant and less certain, but it is probable that there too colonization work on a greater or less scale will be carried out some day.

" It is remarkable with how small a legal apparatus the work which I have described has been accomplished. A short Act of nine clauses, III of 1893, was passed 'to provide for the grant of special tenancies in Government lands in the Punjab.' Its main object was to get rid of the trouble which the execution of thousands of leases would have caused. The Local Government was empowered to issue statements of the conditions on which it was willing to grant lands to tenants. Registers of tenancies were to be maintained, and the signatures of the tenant and of the Colonization Officer on a register were to be accepted as proof that the former held his land from Government subject to the particular set of conditions prefixed to the register. The rights of tenants were protected from attachment or sale in execution, and transfers by sale, gift, mortgage, or other private contract without the consent of the Financial Commissioner were forbidden. By a curious and unfortunate omission wills were not mentioned. Finally sums due to Government in respect of a tenancy were made recoverable as arrears of land revenue.

" In the important matter of the due execution of the contracts between the State and its tenants by the completion of the registers prescribed by the Act of 1893 the requirements of the law were not fulfilled. This of itself renders its amendment necessary. But the Bill is not merely intended to cure past defects; it also seeks to simplify and improve future colonization work. In some respects the earlier statements of conditions were naturally defective, and as fresh tracts have been opened to colonization new statements have been issued. It is possible now to provide by a general enactment for certain incidents attaching to all tenancies. The Act of 1893 failed to confer on Colonization Officers some coercive powers essential to the carrying out of their work, and this defect has had to be remedied. Again it only concerned itself with tenants. But in all three colonies there are persons who have bought land at auction sales, and in the Chenab Colony, while the great body of the settlers, the peasants holding allotments not exceeding 55 acres each, only become hereditary Crown tenants, men holding larger allotments and known as yeoman and capitalist grantees have been allowed to purchase rights of ownership. Till purchase is completed such men are tenants, and for that reason alone it is well to bring them definitely within the scope of the Bill. But besides this all rights of ownership in the colonies are subject to limitations set forth in the statements of conditions, which it is proper that the law should expressly recognise.

" Such is the scope and intention of the legislation which is now proposed. The way in which the object is carried out is clearly explained in the statement attached to the Bill. I do not propose to take up the time of the Council by repeating at length what is there set forth, but there are certain points to which I must shortly refer. The Bill applies to the present colonies and may be extended by notification to any land which is the property of the State. But colony administration is not meant to be permanent, and the last section of the Bill provides for its being merged, whenever the time is ripe, in ordinary district administration. The machinery provided by Act III of 1893 in practice proved cumbrous. In future, once Government has issued statements of conditions, the allotment of land to a person by the Colonization Officer, accompanied by his written order declaring which of the statements of conditions is applicable and followed by actual possession by the tenant, gives the

latter the necessary legal status. His title, like that of all other rightholders in the Punjab, will finally be entered in the record-of-rights drawn up under the provisions of the Land Revenue Act. This is the way in which the titles of tenants in the existing colonies are actually recorded. The conditions under which grantees at present hold land are safeguarded by the concluding words of section 8. They will not be added to or varied except in a few particulars. Transfers of ancestral land by will are opposed to the customary law of the province, and section 15 amends section 8 of the present Act so as to forbid present and future Crown tenants to dispose of their holdings by will. There can be little doubt that this change is in accord with rural sentiment, though the new tenancies are technically self-acquired property. Again, a very limited power is given in section 27 to enforce tree planting, which is one of the great wants of the colonies, even by existing tenants. For sanitary reasons section 22 makes general a prohibition to erect buildings on land lying outside the limits of a village homestead or town which is only contained in the later conditions.

"The fact, to which I have already alluded, that rights of ownership in colonies are subject to limitations is expressly recognized in section 5 (2) and section 10. Among the thousands of colonists who have been drafted from other districts a few criminals have unfortunately been included, and also a few persons who have obtained their allotments by lying statements as to their qualifications. A remedy for future cases of the sort is provided in section 12. In the stretches of Government waste which may hereafter be colonized are a few leased wells. When new estates are formed it is usually necessary to resume the leases and compensate the lessees by allotments of canal-irrigated land. Section 14 provides for resumption on liberal terms by the grant by the Colonization Officer of compensation in money or land. But as a precaution against any possibility of hardship the lessee is given the right to demand that his interest shall be acquired under the provisions of the Land Acquisition Act.

"The effect of sections 17 and 18 is to attach to future Crown tenancies the rule of descent applicable to other occupancy tenures in the province. But the right of the Local Government to limit inheritance to a selected heir or to the eldest son, a measure considered necessary when land is held on horse-breeding or other service conditions, is maintained by section 18 (2) and section 27 (1) (a).

"The coercive powers given by section 23 are very necessary and in the main accord with existing practice. Certain acts, the principal being the cultivation of Government land without permission, are made criminal offences by section 24, and section 25 provides an executive way of dealing with the mischief without actually sending the offender before a magistrate. The towns and villages in the colonies with their broad streets and ample enclosures form from the point of comfort and sanitary requirements a striking contrast to ordinary Punjab towns and villages. This result has been attained by constant attention on the part of the Colonization Officers, who have been helped by the fact that the sites are the property of the State. Any falling off in the standard already reached would be a calamity. The title of the State is therefore affirmed in section 19 (2), section 22 forbids the erection of houses without the consent of the Colonization Officer on land lying outside the limits of a village homestead or town, section 27 (1) (c) gives the Local Government power to make rules for their sanitation and general administration, any breach of the rules is punishable under section 27 (2), and finally section 28 authorizes the imposition of a cess for expenditure on the sanitation and administration of town and village sites. These are the main provisions of the measure which will, when it is passed, put Colony law and procedure on a satisfactory footing."

The motion was put and agreed to and the Hon'ble Mr. DOUIE introduced the Bill.

The Hon'ble Mr. DOUIE moved that the Bill be referred to a Select Committee consisting of the Hon'ble Thakur MAHAN CHAND, the Hon'ble Malik UMAR HAYAT KHAN, Tiwana, and the MOVER with instructions to report by the 10th December 1906.

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned to 20th December 1906.

LAHORE :

The 25th October 1906.

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S. M. ROBINSON,

Secretary to the Punjab Legislative Council.

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at the Council Chamber, Government House, Lahore, on Thursday, the 21st February 1907, at 11 A.M.

PRESENT:

His Honour Sir CHARLES MONTGOMERY RIVAZ, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Mr. T. GORDON WALKER, C.S.I., I.C.S.

The Hon'ble Mr. J. MCC. DOUIE, C.S.I., I.C.S.

The Hon'ble Sir DAVID MASSON, C.I.E., Kt.

The Hon'ble Mr. STEPHEN FINNEY, C.I.E.

The Hon'ble Thákur MAHAN CHAND.

The Hon'ble Malik UMAR HAYAT KHAN, TIWANA, C.I.E.

PUNJAB MOTOR-VEHICLES BILL.

The Hon'ble MR. GORDON WALKER presented the report of the Select Committee on the Bill to regulate the use of motor-vehicles in the Punjab. He said:—"This Bill was introduced by the Hon'ble SIR LEWIS TUPPER at a meeting of the Council held on 23rd December 1905. In introducing it the Hon'ble Member explained the necessity for legislating to regulate the use of motor-vehicles in the Punjab, a necessity which will no doubt be fully recognized. He further explained that the chief objects of the Bill were to provide for the grant of licenses to drive motor-vehicles, to penalise driving without a license and reckless driving, and to impose on the driver the duty to stop in case of accident to persons not in the car, while ample powers were to be conferred on the Local Government to frame rules as to the rate of speed and other matters. The Bill was then referred to a Select Committee consisting of the Hon'ble Mover, the Hon'ble SIR DAVID MASSON, and the Hon'ble MR. FINNEY. Opinions were invited and considered by the Committee; but the submission of a report was deferred pending the publication of the report of the Royal Commission on Motor Cars appointed in England in 1905. The Bill was again before the Council at a meeting held on 25th October 1906, when I was appointed to take the place of the Hon'ble SIR LEWIS TUPPER on the Select Committee.

"The Bill as originally drafted followed in all material respects the Bombay Motor-Vehicles Act (Bombay Act II of 1904) and the English Act (3 Ed. VII, Cap. 36), which were the only measures then available for guidance. The Select Committee has now had the advantage of studying the report of the Royal Commission, while quite recently an Act has been passed by the Madras Legislative Council. As observed by the Hon'ble Member in charge of the Madras Bill, 'we are still more or less in an experi-

mental stage as regards legislation on motors,' and for this reason it is advisable to have the provisions of the Act of as simple a nature as possible and to confine them to matters which must be provided for by law, while other and subsidiary matters are left to be dealt with by Government in rules, which can by an easy process be framed or altered from time to time according to the experience gained.

" Clause 2 of the Bill prohibits driving without a license and provides for the granting of licenses, while clauses 3—5 are the necessary supplements.

" Clause 6 makes reckless or negligent driving or driving at a dangerous speed punishable. The question of *speed* is dealt with in this clause on general lines; but it will be observed that under clause 10 (2) the Local Government will have the power, if so advised, to fix a speed limit. In these circumstances it is perhaps unnecessary for me to say anything on the vexed question of the speed limit. I may observe, however, that in omitting from the Bill the provision of a fixed speed limit we have followed the conclusion suggested by Royal Commission's report. One point seems to have been clearly brought out by the Commission's inquiry, *vis.*, that speed is not in itself any test of danger, that slow driving may in certain circumstances be much more unsafe than fast driving is in others, and in particular that the fixing of a speed limit is in a way an encouragement to drive up to a pace which would in certain circumstances be highly dangerous, and finally that it is against *dangerous* driving that provision has to be made. But, as already observed, it has been left to the Local Government to fix a speed limit if so advised, and I need not say more on the point.

" Clause 7 of the Bill enforces the obligation of the person in charge of a motor to stop in case of an accident caused by the presence of a motor-vehicle on the road.

" These are the only provisions of the Bill as it stands to which it seems necessary that I should draw special attention. But there is one point connected with clause 2 (2) to which I may usefully refer. The clause in the Bill as introduced in Council stood in this respect as it now does. In the earlier stages of the Select Committee's deliberations it was proposed to insert a condition that the applicant for a license should *satisfy the District Magistrate of his ability to drive a motor*. It will be observed that neither in the United Kingdom nor in the Bombay and Madras Acts is proof of ability to drive required. In view of this fact and of the opinion expressed in the Royal Commission's report the Committee have finally come to the decision that it would not be reasonable to insist on an ability test in the Punjab. Indeed it might lead to absurd results if we did so. As I am referring to this question I may here quote the following passages from the Royal Commission's report :—

" Paragraph 92.—' The principle hitherto laid down is that a license is merely an annual statutory permission to drive, subject to the observance of the law, and is not in any way a test of qualification.'

" Paragraph 93.—' It has been proposed to us that a license, instead of being merely a forfeitable permission to drive, should be issued only on conditions involving a test of competence to drive; in other words that a system of examination should be instituted.'

" Paragraph 94.—' If licenses were made a test of competence to drive, it would not only involve the establishment of a new system of examination with officers to administer it, but it would tend to imply a responsibility on the part of the Government or of the authority administering the test for the driver's capability as such, which in our opinion would be highly undesirable. In certain of the foreign countries which have adopted this system this result has been experienced, and the examination has also been found, in fact, to be either

perfunctory or ineffective, so much so that in Belgium and the Netherlands it has recently been abolished. We are also of the decided opinion from what we have heard that accidents with motor cars are rarely traceable to incompetence to drive, while they are not infrequently associated with undue confidence or occasional recklessness on the part of skilled drivers.'

"I have made these rather full quotations because they are of interest."

The Hon'ble Mr. GORDON WALKER then moved that the report be taken into consideration.

The motion was put and agreed to.

The Hon'ble THAKUR MAHAN CHAND moved the following amendments :—

- (1) That in sub-clause 2 of clause 2 after the words "two rupees" the words "on being satisfied with the fitness of the driver" be inserted.
- (2) That in the same sub-clause for the figures "18" the figures "21" be substituted.

He said :—"It does not appear expedient to grant a license for driving a motor-vehicle to any person unless there is satisfaction that the applicant is a competent motor driver and the restriction of 18 years age is also insufficient. For the driving of such a dangerous and harmful conveyance the license should not be granted to any person under the age of 21 years."

The Hon'ble THAKUR MAHAN CHAND was not seconded, and the Hon'ble Mr. GORDON WALKER opposed and said :—"I am unable to accept the *in* amendment of the Hon'ble Member. It raises two questions concerning (1) age of the person to be licensed and (2) his ability to drive. Dealing first with (1), which is the Hon'ble Member's second amendment, I do not think that the Hon'ble Member has quite realized what the consequences of his amendment would be. The limit of age in the United Kingdom is 17, and so far as we know in all the other provinces of India except the Punjab it is or will be fixed at 18. That is the limit fixed by the Bombay and Madras Acts. Has the Hon'ble Member such a poor opinion of his fellow Punjabis that he would wish to place them at a disadvantage in this respect? Does he think that in the Punjab we are in such a backward state of development that it is necessary to fix a higher age limit here than elsewhere in India? If that is the Hon'ble Member's view I must express my emphatic dissent from it. But I do not think that the Hon'ble Member really means us to gather from his remarks that in the Punjab a young man matures in the matter of ability to drive a motor three years later than elsewhere in India. The age limit being 18 in other provinces nothing that we do here will be effective to raise that limit, while if the Hon'ble Member's amendment were accepted, it would probably have no other result than that of compelling the young Punjabi to go into another province for his license.

"As to the second question I have in anticipation dealt with the matter of this amendment, and I scarcely think it is necessary to repeat what I have already said on the subject. The Hon'ble Member will observe that the whole weight of authoritative opinion in the United Kingdom and in India is against him in this matter. I hope he will see that the proposal to insist on proof of ability to drive as a condition for the grant of a license is open to serious objection. The Royal Commission has after full consideration come to the conclusion that it would be a mistake to make the license anything more than 'a statutory (or a forfeitable) permission to drive,' and that is the conclusion accepted and given effect to by the Legislatures of Bombay and Madras."

The amendments were then put to the Council and declared lost.

The Hon'ble MR. GORDON WALKER moved that the Bill as amended by the Select Committee be passed.

The motion was put and agreed to.

PUNJAB ALIENATION OF LAND ACT AMENDMENT BILL.

THE Hon'ble MR. GORDON WALKER presented the report of the Select Committee on the Bill to amend the Punjab Alienation of Land Act, 1900. He said:—"This Bill was introduced at a meeting of the Council held on 25th October 1906 and was referred to a Select Committee. It was at the same time published and circulated for the purpose of eliciting opinions.

"In asking leave to introduce the Bill I explained that its main object was the abolition of the *statutory agriculturist*, while the opportunity had also been taken to provide for certain minor alterations in the Act which experience of its working had shown to be required.

"Dealing with the former of these matters, which is the main feature of the Bill, I explained in detail and at considerable length the reasons which had forced Government to the conclusion that, in the formation of this artificial class, and the extension to them of privileges in respect of the acquisition of land, a mistake had been made which it was necessary to remedy. I will not trouble the Council with a repetition of the arguments advanced for the purpose of establishing the conclusion then stated, that 'the introduction of the agriculturist into the legislation of 1900 was unfortunate, and that the artificial provisions then inserted may now be abrogated as being *unnecessary, inconvenient and mischievous*.'

"I am not here concerned to defend the principles on which the legislation of 1900 was founded. It is fully recognized that there has throughout been a not inconsiderable body of public opinion which is opposed to the Act. That must be accepted as a necessary incident where class legislation such as we are here concerned with is undertaken; but the question involved in the present Bill is a much narrower and more limited one. There are members and even sections of the community who belong neither to any of the tribes notified as agricultural, nor to the class whose profession is money-lending, but who desire to acquire land. These may or may not already be owners of land. As a body they are excluded by the Act of 1900 from the privilege of being able to acquire land from members of the agricultural class without sanction, and the present Bill does not concern them *as a body*. The exception which the Act of 1900 created, and which it is now proposed to abolish, was confined to the limited class of those who fulfilled *all three* conditions of (*firstly*) already owning land, (*secondly*) coming within the narrow terms of the definition of 'agriculturist' given in the Act, and (*thirdly*) holding land as agriculturists *in the village* where the land to be alienated is situated. I have given this explanation because there would appear to be a good deal of misapprehension as to the scope of the present Bill, and some confusion between what it is proposed to provide for in the Bill and the general effects of the Act of 1900. Except in so far as it bears directly on the interests of the limited class described above we are not now concerned with the policy of the Act of 1900.

"It seems only necessary to add that so far as this, the main feature of the Bill is concerned, there is practical unanimity of opinion amongst the judicial and executive authorities consulted in favour of the abolition of the statutory agriculturist.

"In my remarks at the time of introducing the Bill I grouped the other and minor alterations in the Act of 1900 which the Bill was intended to effect under six heads. It will be observed that the Select Committee have introduced

a somewhat important change with reference to (a) sales of a right of occupancy by a tenant to his landlord, and (b) gifts for religious or charitable purposes. The Bill as introduced provided that for all transactions of these descriptions the sanction of the Deputy Commissioner should be necessary; but that sanction should be given as a matter of course where the Deputy Commissioner was satisfied that the transactions were in fact what they professed to be. The reasons for the change introduced by the Select Committee are fully stated in their report; and I do not propose to trouble the Council with a repetition of them. I may note that the definition of 'permanent alienation' in the Act excludes gifts for a religious or charitable purpose. The Select Committee have thought it preferable not to revert to that method of dealing with the matter, partly because the proposed treatment is preferable as a matter of drafting, and partly in order to make it more clear that the exemption from the necessity for sanction extends only to alienations of this nature made *bond fide* and not to sales in disguise.

"As regards clauses 6 and 7 of the Bill I may perhaps be allowed to quote the opinion of the Hon'ble Chief Judge that 'they are the corollaries of the sections to which they refer,' and that there is 'no objection to the corollaries, the substantive sections being passed law.' The object of these clauses is to complete the sections by supplying an omission due to an oversight in framing the Act. Clause 6 is intended to benefit the mortgagee; and 7, the mortgagor. The powers which they give to the Deputy Commissioner are obviously necessary; and it is only the result of an oversight that they were not given in the Act.

"Clause 9 of the Bill has been subjected to a good deal of criticism, which is met in the report of the Select Committee. In view of the weight of authority behind that criticism it seems advisable that I should supplement in some detail the reasons given by the Committee for the retention of the clause.

"In introducing the Bill I referred to the circumstances which were considered sufficient to justify the intervention of the Deputy Commissioner even when he might be acting in apparent opposition to the wishes of those who were parties to the transaction. I have had brought to my notice and have had to go into many cases of the class for which it is proposed to provide. A member of the agricultural class who is deeply involved with his money-lender will often *under pressure* agree to any terms that the latter may dictate. He is not really a free agent in the transaction. Owing to the pressure to which he is subjected he will agree before the civil court to a compromise involving the permanent alienation of his land, and the strength of the pressure and dread of the consequences are so great that he dare not himself apply to the appellate court for relief. I have myself had to deal with a large number of cases in which a civil court has, without making the reference to the Deputy Commissioner required by the law, given effect by decree to a compromise embodying an agreement which admittedly contravened the provisions of the Act. In many of these cases the alienor (judgment-debtor) has subsequently petitioned the Deputy Commissioner to interfere on the ground that he never accepted the compromise, that he did not understand the terms, or that he was not acting voluntarily in accepting it. It is for cases of this class that we have to provide, and I have no hesitation in saying that the intervention of the Deputy Commissioner (who is the authority responsible for the proper administration of the Act) in the interests of the alienor is fully justified by the entirely exceptional circumstances.

"An original civil court which passes an illegal decree may under warning refrain from doing so again, but that does not help the person who has suffered by the decree. It may be strictly logical to say that a person who has acted so foolishly as the alienors in such cases have done must take the consequences. But, if the principles of the legislation of 1900 are right, a point on which I think

few of those who have studied the problem with any sense of responsibility, or with a true appreciation of the issues at stake, entertain any doubts, there is surely ample justification for the executive intervening in cases where the provisions of the Act have been contravened by the civil courts, and with a view to preventing evasions due to the collusion of the parties or the neglect of the civil courts of original jurisdiction. Apart from this general purpose the immediate object of the intervention would be to protect the alienor and his successors in interest from the results of his folly or helplessness; and the form that the intervention takes is, I may remark, not of interference with the order of the civil court, but of application to a superior civil court to interfere.

"In conclusion I would desire to notice the special objections which have been raised to this provision on the grounds that it introduces an entirely new principle, that it is at variance with the ordinary methods of judicial inquiry in that it allows the intervention of a third party who has no interest in the litigation, and that it may place the court in the position of having itself to set up a case for one party. It is also objected that it is derogatory to the civil court to have to submit their decrees to the Deputy Commissioner for correction. These objections are advanced with authority and deserve careful consideration. With regard to the last I venture to think that it is perhaps a sufficient answer to repeat that the only power it is proposed to give the Deputy Commissioner is that of moving the appellate courts to correct decrees of courts of first instance. The necessity for keeping the Deputy Commissioner *informed* of all such decrees will scarcely be denied. As to the other objections mentioned I have already explained in detail the exceptional circumstances which have been held to justify the departure from the ordinary methods of judicial inquiry. It will be seen that, save in the matter of drafting, the clause differs from section 27 of the Punjab Pre-emption Act (II of 1905), as regards the power conferred on the Deputy Commissioner and the procedure, only in this respect that it permits the Deputy Commissioner to apply to the Chief Court for the revision of an appellate court's order rejecting his application. Except in this detail the principles and procedure are the same. I have looked through the whole literature relating to the passing of the Pre-emption Act; but can find in it no traces of any objection of principle having been taken to section 27 by the judicial authorities consulted. On the other hand I find that in his speech on the introduction of the Bill at a meeting of the Council held on 19th November 1904 the late MR. ALEX. ANDERSON made the following observations:—

'But to prevent mistakes relating to the Alienation of Land Act arising from the inadvertence of the Lower Courts or the collusion of the parties it has been considered necessary to insert in the Bill three precautionary provisions—

- (a) the courts are required to enquire into and decide certain issues of *their own motion*, whether the facts involved therein be admitted or not: and to dismiss the suit if the original sale was made in contravention of the Alienation Act, or if the pre-emptor's claim is barred under the provisions of the Pre-emption Act owing to his not being a member of an agricultural tribe, nor of the same tribe as the vendor, and therefore not entitled to claim pre-emption under clause 11;
- (b) if the pre-emptor, though a member of an agricultural tribe, may not purchase without the sanction of the Deputy Commissioner, he will not be given possession of the land until such sanction has been granted; and
- (c) the court is required to send to the Deputy Commissioner a copy of every decree granting pre-emption, and the Deputy Commissioner is authorised to apply to the appellate court for revision in any case when he considers the requirements of the Alienation Act have been contravened.

'These provisions will, it is believed, ensure strict compliance with the Alienation Act; while at the same time they avoid all references from the Civil to the Revenue Courts during the hearing of the case, and they will also prevent all conflicts as to jurisdiction.'

"That was the view with regard to the question of principle to which full prominence was given in 1904. It was accepted without demur alike by the Judicial and Revenue authorities and was given effect to in the Pre-emption Act."

The Hon'ble MR. GORDON WALKER moved that the report be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. GORDON WALKER moved that the Bill as amended by the Select Committee be passed.

The Hon'ble MALIK UMAR HAYAT KHAN said:—"I am emphatically of opinion that no Act has done or is calculated to do more good to the agricultural community of the Punjab than the Land Alienation Act. It was at the outset feared by a few that the Act would not work successfully and that it would end in nothing but the inconvenient contraction of zamindars' credit. But time has shown that these were imaginary fears only. The object of the Act was to avert the seriously large transfers of land from the classes who were hereditary owners to the money-lenders, and that object has been splendidly attained without contracting the zamindars' credit too much. The Act, however, omitted to provide for the shutting out of those who did not really belong to any agricultural class, but had their names in the record of rights of first regular settlement. A provision is now being made to remedy the defect and it is really imperative to remove the flaw to fully realise the object of the Act which is now I believe universally considered as a real boon to the zamindars. I am quite in accord with the Select Committee's report. Although I have been unavoidably away from the sitting of the Select Committee, yet I have been from the very start in favour of the Bill, and I would gladly give my opinion for the Bill to be passed as amended."

The Hon'ble THAKUR MAHAN CHAND said:—"I agree to all other amendments and additions made in the Punjab Land Alienation Act by the Bill as reported by the Select Committee, but as to the proposal of abolishing statutory agriculturists and repealing sub-section (1) of section 2 and clause (b) and the proviso to section 3, sub-section (1), I cannot agree with the view of my colleague the Hon'ble MR. WALKER that the statutory agriculturists were allowed the privilege of acquiring lands from the agricultural tribes within their own villages simply because there was 'fear that undue economic inconvenience might result from the exclusion *uno actu* of the entire money-lending class.' On the contrary, I think the privilege was granted to the agriculturists for the reasons of their having a status somewhat equal to the members of an agricultural tribe. The right was given only to those who held agricultural land for some long periods.

"Supposing that the measure has been simply adopted for the benefit of agricultural tribes it is not reasonable why the interests and rights of the other communities should be overlooked. In the first place the Punjab Land Alienation Act with all its beneficial effects and success is still an interference with the sole proprietary rights of the zamindars. Secondly, it puts an undesirable restriction which is without a precedent on the rights of the people in general who are debarred from acquiring agricultural land if they desire to lead a life of a zamindar and invest their money in agricultural operations.

"From the speech of 25th October and from the Statement of Objects and Reasons made by my Hon'ble friend it is clear that the abolishing of the agriculturists is proposed mainly for the reasons of certain difficulties which were caused by the new law in preparing some of the Revenue Records. At the same time it is admitted that in the case of these agriculturists 'comparatively little use has been made of the permission to make permanent alienations to

statutory agriculturists.' It is also mentioned that while the 'non-agricultural classes were excluded generally from the power of acquiring land belonging to the agricultural classes this exclusion was relaxed in the case of a small portion of the former' that is, non-agriculturists. Now from the above quotations it is evident that only small portion of the non-agricultural classes were given the privilege of acquiring land from the members of agricultural tribes and that right was properly granted on the grounds that those who have been holding land in the same village since long years are entitled to the rights of acquiring it from their fellow villagers. At the same time it is proved that very few permanent alienations have been effected during the time in favour of these statutory agriculturists. All this shows that there has been no abuse of the privilege up to now in the course of the last six years. Therefore there is no likelihood of any mischievous results if agriculturists are allowed to be maintained in the Act. All men of the Non-agricultural classes cannot be deemed to be money-lenders and as regards the money-lenders themselves it is admitted that 'the village money-lender is not perhaps now so keen on pressing a loan on the reluctant zamindar.' Under these circumstances there appears no necessity at all to feel so much anxiety about the maintenance of statutory agriculturists. It will no doubt be rather hard for the members of a non-agricultural class who are somewhat in equal position to zamindars in the villages if they are deprived of the privilege which was so justly and reasonably granted to them at the time of passing the original Act."

The Hon'ble MR. GORDON WALKER said :—"I note with satisfaction that the Hon'ble THAKUR MAHAN CHAND agrees to all the amendments and additions which it is proposed to make except that for the abolition of the statutory agriculturist, and that he recognizes the 'beneficial effects and success' of the Act of 1900, although he qualifies his approval perhaps unintentionally by stating that it 'puts an undesirable restriction which is without precedent on the rights of the people in general, &c.'

"In stating as I did in my remarks on the introduction of the present Bill that the genesis of the statutory agriculturist was the result of the 'fear that undue economic inconvenience might result from the exclusion *uno actu* of the entire money-lending class' I was not giving expression merely to my own *opinion*. At the time of the passing of the Act apprehensions were felt that such inconvenience might result, and it was mainly to meet this that recourse was had to the compromise. The question is as to what the reasons influencing those responsible for the measure of 1900 really were and not as to what the opinion of the Hon'ble Member or my opinion as to those reasons may be; and I think it is clear that the reason given rather than any special consideration for the *agriculturist* was what influenced the decision.

"If the Hon'ble Member really gained the impression from my speech of 25th October 1906 and from the Statement of Objects and Reasons that 'the abolishing of the agriculturists is proposed mainly for the reasons of certain difficulties which were caused by the new law in preparing some of the Revenue Records,' I can only say that I must have signally failed to express my meaning clearly. What I endeavoured to establish in my remarks on the introduction of this measure was that the creation of the statutory agriculturist was *unnecessary, inconvenient and mischievous*. Under the second of these heads I referred to the difficulty of determining in accordance with the definition of agriculturist given in the Act, which refers to entries in the settlement records, who came within the terms of the definition. I also referred to the difficulties involved in our having to follow areas which have been alienated to an agriculturist for the purpose of insuring that subsequent alienations were made only to members of agricultural tribes or to other agriculturists. All this, however, has nothing whatever to do with 'difficulties in preparing the Revenue Records.'"

"The Hon'ble Member further observes that 'there has been no abuse of the privilege up to now in the course of the last six years. Therefore there is no likelihood of any mischievous results if agriculturists are allowed to be maintained in the Act.' In my remarks on the previous occasion, however, I endeavoured to explain why it had come about that so little use had been made of the permission to alienate to statutory agriculturists. The result has really been due to the failure of both parties to realize what the Act permitted, and, therefore, no conclusion can be drawn from what had occurred in the past as to what the future results might be. As to the mischief anticipated if the statutory agriculturist remained in the Act, I stated the conclusion, which I should explain is not a matter of my own opinion, but of that of those responsible for the working of the Act that 'there appears to be every probability that, unless we interfere, considerable quantities of land would before long pass from the agricultural to the privileged portion of the money-lending class.'

"It is quite true as observed by the Hon'ble Member that 'all men of the non-agricultural class cannot be deemed to be money-lenders.' That is a point which I have endeavoured to bring out in the remarks which I have already made to-day. But it would be impossible in the circumstances to give effect to any such distinction even if it were desirable to make it, while above all it is to be remembered that the object to be attained by the Legislation is to prevent the alienation of land by the members of the real agricultural tribes, which of necessity involves prohibition of acquisition by any other class."

"The speech of the Hon'ble MALIK UMAR HAYAT KHAN is a valuable contribution to the discussion. I do not think that there is any one whose opinion as to the effects of the Bill is better entitled to consideration. I regret that the Hon'ble SARDAR PAKTAP SINGH has been prevented from attending to-day. We are grateful for the assistance which he has given us in Select Committee."

His Honour the PRESIDENT said—"I wish, before putting the question for passing this Bill, to make a few remarks on the working of the Punjab Land Alienation Act, as this is the last opportunity that I shall have of doing so, and the Act is one in the framing and passing of which I took some share, and whose operations I have always watched with special attention and interest. The Land Alienation Act has been in force now for nearly six years, and I have no hesitation in saying—and I base this opinion not only on the periodical official reports on the working of the Act, but also on my own personal enquiries in all parts of this province during the past five years—that the objects which it was intended to effect have been attained, so far at all events, with a remarkable degree of success. The opponents of the measure, when it was under discussion, raised two main objections to it,—firstly, that the agricultural classes would resent the restrictions which it was contemplated to impose on their rights of free transfer, and secondly, that the credit of the agricultural classes would be so seriously impaired that they would be unable to raise money in time of need for their legitimate requirements. Experience has shown that neither of these forebodings has been realized. There cannot be a shadow of a doubt that the agricultural classes throughout the Punjab regard the Act with full appreciation as a measure which was solely devised for their protection and benefit and which is fulfilling its intention, and as regards the contraction of credit, the effect of the Act has been the very desirable one of placing a wholesome check on reckless and extravagant expenditure, but there are no indications that the agricultural classes experience difficulty in obtaining reasonable loans for necessary purposes; at the same time, the value of land which, as was of course anticipated, was depreciated for a time, has recovered. Also, the apprehensions which were entertained by some critics that the working of the Act would impose an unduly heavy burden on the district officer and his revenue staff have proved unfounded. The two main points which require careful and constant attention are, firstly, whether the smaller and weaker agricultural tribes are being expropri-

ated under the provisions of the Act, as they stand at present, by the larger and more enterprising tribes, and secondly that tribes which are not truly agricultural, and which desire to be notified under the Act, not for self-protection but in order to obtain additional facilities for acquiring land, are not admitted to the agricultural status. The necessity for the alterations made by the Bill now under our consideration in the original Act has been fully explained by the Hon'ble Member in charge, and I have every hope that the Act will work as successfully in the future as it has hitherto."

On the motion being put the Hon'ble THAKUR MAHAN CHAND voted against the passing of the Bill.

The Council divided :—

Ayes—5

The Hon'ble MALIK UMAR HAYAT KHAN.

The Hon'ble MR. FINNEY.

The Hon'ble SIR DAVID MASSON.

The Hon'ble MR. DOUIE.

The Hon'ble MR. GORDON WALKER

Noes—1

The Hon'ble THAKUR MAHAN CHAND.

So the motion was agreed to.

COLONIZATION OF GOVERNMENT LANDS (PUNJAB) BILL.

THE Hon'ble MR. DOUIE presented the report of the Select Committee on the Bill to make better provision for the colonization and administration of Government lands in the Punjab. He said :—"In presenting to the Council the report of the Select Committee on the Bill to make better provision for the colonization and administration of Government lands in the Punjab, I must explain why it is only signed by two of the members. My Hon'ble friend Thakur MAHAN CHAND fell ill on his way to attend the second meeting of the Committee at Delhi. The meeting could not be postponed because the Hon'ble Malik UMAR HAYAT KHAN had important public duties to perform at Calcutta. We therefore discussed the Bill with the result embodied in the report. It was my intention to discuss our conclusions with the Hon'ble Thakur MAHAN CHAND, and he came to Delhi for the purpose. But during the three days we were both there he was much too ill to attend to business. A date was therefore fixed for a meeting in Lahore, but again sickness barred the way.

"I should like to state now that in addition to the amendments suggested in the report I have given notice of amendments to sections 25 (1) (d) and 28 (1) (d), which I understand my Hon'ble friend Malik UMAR HAYAT KHAN considers to be improvements. If these are adopted by the Council clause 25 (1) (d) will run—

'fells, girdles or otherwise wilfully damages any tree standing on any such land' and in clause 28 (1) (d) after 'owners' the words 'other than auction purchasers' will be added."

ADJOURNMENT.

The Council adjourned to Thursday the 28th February 1907.

LAHORE :

S. M. ROBINSON,

The 21st February 1907.

Secretary, Punjab Legislative Council.

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at the Council Chamber, Government House, Lahore, on Thursday, the 28th February 1907, at 11 A.M.

PRESENT :

His Honour Sir CHARLES MONTGOMERY RIVAZ, K.C.S.I., Lieutenant-Governor of the Punjab, *presiding*.

The Hon'ble Mr. T. GORDON WALKER, C.S.I., I.C.S.

The Hon'ble Mr. J. MCC. DOUIE, C.S.I., I.C.S.

The Hon'ble Sir DAVID MASSON, C.I.E., Kt.

The Hon'ble Mr. STEPHEN FINNEY, C.I.E.

The Hon'ble Sardár PARTAP SINGH, Ahluwála.

The Hon'ble Thákur MAHAN CHAND.

The Hon'ble Malik UMAR HAYAT KHAN, TIWANA, C.I.E.

COLONIZATION OF GOVERNMENT LANDS (PUNJAB) BILL.

THE Hon'ble Mr. J. M. DOUIE moved that the Report of the Select Committee on the Bill to make better provision for the colonization and administration of Government lands in the Punjab be taken into consideration. He said :—

" The measure which is the subject of our debate to-day has been misunderstood by many whom it concerns and misrepresented, perhaps unwittingly, by some who claim to reflect and direct public opinion. I hold in my hand a sheaf of petitions (there are many more of them) issued in lithographed form from a newspaper press and bearing the signatures and thumbmarks of a number of colonists. The signatories state that they have carefully read or heard the contents of the Bill and feel grateful for the opportunity given to them of stating their objections. They think it is beneath the dignity of Government to cancel the agreements on the strength of which they were induced to leave home and

kindred and to incur heavy expenditure. For a full statement of their objections they refer Government to the columns of the newspaper mentioned above. Public meetings, at which the attendance has been large, have been held at several of the towns in the Chenab Colony. The objections were summed up in the first three of the resolutions submitted to the Lyallpur meeting, and these I shall now read to the Council:—

“ *Resolution I.*—This meeting is of opinion that Bill 3 of 1906 is not a proper Bill to be passed into law, because—

“(1) It is unconstitutional and goes against previous contracts ;

“(2) it unfairly subjects the previous grantees to new liabilities and responsibilities ;

“(3) it alters the rule of succession against the provisions of the personal and customary law of zamindárs ;

“(4) it provides severe punishments for ordinary faults and mistakes ;

“(5) instead of checking the illegal or unauthorized proceedings of officers it legalizes them ;

“(6) it creates, for reasons given above, feelings of distrust and dissatisfaction among the zamindárs.

“ *Resolution II.*—As the work of colonization in the Chenab Colony is about to end, and the already existing laws applicable to the Punjab are sufficient to regulate the rights and liabilities of tenants, occupancy tenants, and owners, no new law is required for the colony.

“ *Resolution III.*—Even in the case of new colonies hard and stringent rules would be prejudicial to the interests of both the Government and the subjects.”

“ The same resolutions were passed at a large meeting held at Gojra.

“ It is alleged therefore that Government intends to tear up the agreements it has made in the past and proposes to adopt for the future a harsh and vexatious policy. I am well aware that, however aroused, genuine fears and misapprehensions exist among a large number of colonists, and it is my duty to meet their difficulties with sympathy, to provide a remedy where their fears are reasonable, and to give a full answer to the assertions made. If in doing so I have to address you at unusual length I must crave your indulgence. This measure has a long and tangled history behind it, which I must unravel in explaining and justifying its provisions.

“ When I introduced the Bill on the 25th of October I mentioned that the germ of the great work of colonization carried out on the lands commanded by the Chenab and Jhelum Canals was to be found in the settlement of the Sidhnai and Sohág-Pára Canals under the plans devised by the late Colonel Wace. A scheme for the Chenab Colony was drawn up in 1891 by Mr. Ibbetson, who was at that time Deputy Commissioner of Gujranwála, was considered by a

committee presided over by Mr. C. M. Rivaz, Financial Commissioner, and was approved with some modifications by the Lieutenant-Governor, Sir James Lyall. The grantees of land were to be divided into four classes,—

"Auction purchasers.

"Capitalist grantees who were not to be bound to reside, who had to pay according to the size of their grants a *nazrāna* or entrance fee at the rate of Rs. 10 to Rs. 20 per acre, and could five years after entry acquire ownership by additional payment of Rs. 21 per acre, if half of the land had been brought under cultivation.

"Yeoman grantees were to hold on much the same terms, but their grants were smaller and the *nazrāna* less. Under orders of the Government of India residence was to some extent made compulsory.

"Neither capitalist nor yeoman were to have any rights of transfer before acquiring ownership.

"Peasant grantees paid no entrance fee, but, if they brought under cultivation half the area of their grants in five years, they were to be given an inalienable right of occupancy.

"One-fifth of the area of each estate was to be reserved as Government property.

"The form of lease used for the Sidhnai with some modifications was proposed for adoption.

"Before I go further I shall note the progress of colonization on the two great canals. The dates I shall give are not unimportant. In July 1890, when the Chenab Canal was still only an inundation one, three villages were allotted to *Mashhi* pensioners of the three Pioneer regiments. The real work of colonization did not begin till February 1892, when Mr. MacLagan was appointed Colonization Officer. The Rakh Branch was the only one that had then been constructed. This is the smallest of the three branches, and out of a total area of 1,813,000 acres colonized up to the end of March 1904 only 447,000 are on the Rakh Branch. About two-thirds of this had been given out before February 1893 when Act III of 1893 came into force, and by the end of September 1897, 430,000 had been allotted. The area granted to colonists on the Jhang Branch is 572,000 acres, and colonization began in 1896. The first settlers on the Gugera Branch, on which the allotments amount to nearly 800,000 acres, came on to the land in 1898. Following the classification of grants on the Chenab Canal given above, and omitting grants made on special terms, I may classify the Chenab Colony allotments as follows :—

	Acres.		
"To auction purchasers	24,627
"To capitalists	89,174
"To yeomen	142,406
"To peasants	1,344,954

The colonization of the lands commanded by the Jhelum Canal began in 1902.

"In November 1891, some months before the colonization of the Rakh Branch lands was taken in hand, the Financial Commissioner issued vernacular statements of the terms on which lands would be granted to peasants. At the same time forms of application were supplied with statements of conditions attached. On the 25th of January 1892 he distributed similar forms of application for yeoman and capitalist grants. The intention was that each grantee should sign a deed of lease, and on 28th January 1892 forms were sent to Government. Delay occurred, and in February 1893 the Government Tenants Act (Punjab) was passed, which was intended to render leases unnecessary. It provided that the Local Government might issue statements of the conditions on which it was

willing to grant land, that such statements should be prefixed to registers to be opened and maintained by the Deputy Commissioner, that before a tenancy was granted the necessary particulars should be entered in the register, and the entry should be signed by the proposed tenant and the Deputy Commissioner. This constituted the contract. The person signing as proposed tenant was, notwithstanding any previous agreement, to be deemed to have accepted the lands as a tenant from Government on the conditions prescribed in the statement prefixed to the register. The eighth section of the Act protected the rights of tenants from attachment and forbade their alienation without the consent of the Financial Commissioner. The ninth section made all sums due to Government in respect of a tenancy recoverable as arrears of land revenue. In November 1893 the Financial Commissioner sent to the Government for approval statements of conditions for peasant, yeoman, and capitalist grants on the Rakh Branch. These agreed closely with the draft leases; one important change was the omission of the clause from the peasant and yeoman statements which forbade transfers. It was explained that this clause was no longer required as Act III of 1893 prohibited the alienation of tenancies. Again long delay took place. The statements of conditions for *Mashbi* and peasant grants on the Rakh Branch were sanctioned in August 1896, and those for similar grants on the Jhang Branch in April 1897. Those for yeoman and capitalist grants on both these branches were approved in July 1897. The Gugera Branch statements for all classes of grants are identical with the Jhang Branch ones. They were sanctioned in 1898. In January 1899 an amendment was introduced into them, requiring the consent of the Financial Commissioner to transfers by yeoman grantees, even after they acquired ownership. It will be observed that the Rakh Branch conditions only assumed their final form when nearly the whole of the land on that branch had been allotted. In consequence I have proposed an amendment to clause 24 which I hope the Council will accept, although there, as elsewhere, the signing of the register constituted acceptance of all the conditions prefixed to it. The conditions for all classes of grants on the Jhelum Canal and for peasant grants on extensions of the Chenab Canal were sanctioned in July 1902. It is my duty to-day to explain to you what these various statements of conditions contain and to refute the assertion that they have been set aside in the present Bill.

"The procedure provided by the Government Tenants Act of 1893, which was to be so easy, was not so, as a matter of fact. I do not assert that the formalities required by sections 5, 6 and 7 were carried out exactly or fully. The Bill in its 33rd clause admits that there were defects and omissions. I do not assert that grantees made themselves masters of the contents of the statements of conditions. Except on the Rakh Branch at the beginning of colonization the desire for land on the Chenab Canal was so keen that people would have accepted without question almost any conditions offered to them. It was enough to know that, if they built their houses, settled on the land, and brought half of it under tillage in five years, they would be given a permanent title in a canal-irrigated area five or six times as large as the holdings they owned in their native villages. For the rest they trusted Government; and the comfort in which they live, and the large prosperity which most of them enjoy, is proof that their confidence was not misplaced. My Hon'ble friend, MALIK UMAR HAYAT KHAN, has a large grant on the Jhelum Canal. I do not think he will point out anything in the Bill which contravenes any of the conditions on which he holds that land. I shall show when I discuss the clauses of the Bill to which exception has been taken that most of them have been taken straight from the Jhelum conditions. As already stated, the conditions for peasant grants on extensions of the Chenab Canal sanctioned in 1902 are identical with the Jhelum Canal conditions. Are we then tearing up the conditions framed for the three great branches of that canal before 1902? Let us see exactly what these conditions contain. I begin with those sanctioned for the Jhang and Gugera Branches, noting that they irrigate three-fourths of the colonized area.

"Government reserved its right to minerals and the right of the public to use roads passing through the allotment. It made certain special provisions for the surrender by the tenant of land required for roads, &c., but these were to cease to be operative when permanent rights had been acquired. A condition limited in the same way bound the tenant to pay for the cost of demarcating the land, digging water-courses, and sinking a drinking well near the village site. The peasant conditions provide that the tenant 'shall build a house and settle permanently in the estate.' The yeoman conditions add 'unless the Financial Commissioner sanctions a different arrangement in any particular instance.' The terms of capitalist allotments bind the grantee to construct a house and 'either reside therein himself or cause some competent member of his family or other person approved by the Deputy Commissioner to reside there.' All the conditions permit the tenant 'to sink wells, make water-courses, plant trees, build houses, and otherwise improve the land.' Provision was of course made for the payment when due of canal rates, land revenue and cesses, and clause 19, to which I invite the special attention of the Council, was as follows :—

" 'If the tenant fails to pay in the manner hereinbefore provided all sums due to Government under these provisions and to duly observe all or any of the stipulations herein contained and to be by him observed, then and in any such case the Government may forthwith without payment of any compensation whatever resume and repossess the whole of the said lands.'

In the case of capitalist grants it was provided that the grantees should buy the trees and brushwood outright. No part of the area was reserved as Government property to serve as a grazing ground. For peasant and yeoman grants the provisions were as follows :—

" 'The tenant may use for his own *bona fide* private purposes connected with the cultivation or reclamation of the said lands any trees or brushwood standing thereon, but such trees or brushwood shall not be sold, bartered, exchanged or given away by the tenant : provided that any trees or brushwood which it is necessary to remove in order to bring the said lands or any parts thereof under cultivation shall be at the absolute disposal of the tenant and may be sold by him.'

(That referred to the land allotted to the grantee.)

" 'The portion of the area of the mauza in which the tenancy is situated which has not been allotted, is reserved for the present as Government waste. The tenant shall be allowed as a matter of favour to graze his cattle upon it, and, with the permission of the Deputy Commissioner, to cut wood from it for his *bona fide* domestic purposes when the wood on his tenancy is exhausted. But he shall not be allowed to cultivate it. Any infringement of this prohibition shall be regarded as a breach of the stipulations of this statement within the meaning of clause 19.'

"We have seen already what clause 19 provided. Lastly, I ask your attention to clause 20—

" 'In the event of any dispute arising between the Government and the tenant during the currency of the tenancy as to the property and rights hereby reserved to Government, or as to any matter in any way relating thereto, or as to any of the conditions of the tenancy, or as to any matter or thing anywise connected therewith, the said dispute shall be referred for the opinion of the Deputy Commissioner, whose decision shall be final and conclusive between Government and the tenant.'

"Clauses 19, 20, and the clause regarding residence were to be of perpetual obligation, remaining binding after a capitalist or yeoman grantee had acquired ownership.

"The Rakh Branch conditions as settled in 1896 and 1897 agree for the most part word for word with the conditions for the same descriptions of grants on the other two branches. The residential and house-building conditions are however different. The peasant is bound to settle permanently, but it is not expressly said that he must build a house for himself. The yeoman condition

agrees with the capitalist condition on the other branches and implies that the grantee is not bound personally to reside. There is no provision requiring a tenant of any class to contribute to the cost of sinking a village well.

"I must trespass still further on your patience and ask you to consider with me the chief provisions of the Bill in the light of the above remarks.

"Clauses 5 and 9 refer only to statements of conditions to be issued hereafter. They cannot bear any other construction. But unfortunately the Statement of Objects and Reasons says 'Under the conditions of sale by auction and the terms under which tenants have been allowed to acquire proprietary rights in accordance with the statements of conditions issued under Act III of 1893 the proprietary rights have always been subject to certain limitations, provision has accordingly been made (clause 5 and clauses 9-11) for the legal enforcement of these limitations against the persons bound by them.' The fact that the District Indian Association of Rāwālpindi should have supposed that these clauses could affect the position of existing grantees can therefore be no cause of complaint. The limitations to which the ownership acquired by yeoman and capitalist grantees is subject are embodied in existing statements of conditions. To some of them I have already referred. They are maintained in force, not by clause 5, but by section 4 of the Punjab General Clauses Act I of 1898 and by clause 8 of the Bill. A certain amount of land on the Chenab Canal has been auctioned in 1892, 1899, and 1900. The rights of the auction purchasers in 1892 are regulated by a deed of sale signed by the Chief Secretary to Government and by the vendee. They are practically unrestricted except in one particular. The vendee agreed that 'in case of any dispute . . . as to land or lands, property and rights, hereby reserved, or in any matter incidental or otherwise relating thereto, or as to any compensation as aforesaid, or as to any other matter or thing arising out of this indenture, the decision in each case of the Lieutenant-Governor for the time being shall be final and conclusive.' Before the sales made in 1899 and 1900 public notice was issued stating the conditions. This most assuredly imposed limitations on the fullness of the proprietary title acquired, one of which may be quoted—

"'no buildings shall be erected on the lands purchased for agricultural purposes without the sanction of the Deputy Commissioner.'

"Much suspicion seems to have been excited by clause 8 which provides that 'any person who before the commencement of this Act was a tenant from Government of land to which the Government Tenants (Punjab) Act, 1893, applied shall . . . be deemed to have accepted and to hold the lands of which he was a tenant in accordance with the conditions originally made applicable to his tenancy as supplemented to the extent hereinafter expressly provided by this Act.' I stated when I laid the Bill before the Council how limited was the extent to which retrospective provisions had been introduced into it. In Select Committee we have safeguarded the position further, and I am myself about to propose amendments which go further still. When I deal later with the clauses which have any retrospective effect I shall explain carefully what it amounts to. But here I wish to state that, if the Bill supplements the conditions in one direction, it is the intention of Government to give grantees the benefit of some provisions which are more favourable than their present conditions. I shall state hereafter what these are, and in this matter I should be understood not as stating my own opinion, but as speaking by permission and with authority.

"Section 12 only refers to persons put in possession of land in a colony as tenants after the commencement of the Act. The Select Committee has proposed to strike out the words 'or shall have withheld information which he knew to be necessary for the determination of such qualifications.' They are not required, and it is just conceivable that in a few cases their retention might cause hardship.

" Clause 14 has been framed with so careful a regard for existing rights that I should not have thought it necessary to refer to it here. But in a very temperate and reasonable memorial presented by the Zamindárs' Association of Lahore it is suggested that some further safeguard is required. I should explain that, when the colonization of a great waste area is undertaken, we generally find a few wells scattered over the area and held by Government lessees the period of whose leases has not yet expired. It is necessary to determine these leases, and the usual plan is to give the lessee a grant of canal-irrigated land on peasant terms. I think he makes a very profitable exchange. But section 14 gives him the option of taking instead compensation in cash with the addition of the 15 per cent., which would be given if we acquired his rights under the Land Acquisition Act. If he objects that the compensation offered by the Collector is insufficient he may require that his interests shall be acquired under the procedure laid down in the Land Acquisition Act. When an award is given under that Act he can claim that the matter be referred to the Divisional Judge for decision. The objection of the Lahore Association that an appeal from the Collector's first offer of compensation should be allowed seems therefore to have no force.

" I now come to a very important clause of the Bill,—I mean the one restraining transfers. You will observe that, like the corresponding clause in Act III of 1893, it only deals with the rights of tenants. If in the case of yeomen who have acquired ownership alienation without permission is illegal under the statement of conditions applicable to their grant, as for example in the case of yeoman grantees on the Gugera Branch, the bar to transfer is not removed by this clause. It forbids transfers by will, and this is an addition to the law, the reason for which I explained at the meeting of the Council held in October last. I do not think much, if any, notice has been taken of the change, or that any complaint has been made. My own opinion is that it is very undesirable that the first colonists should have a power to make wills, simply because the grant they have received from Government is technically self-acquired property. The prohibition does not, as I have already pointed out, affect yeomen and capitalists who have acquired ownership. If their personal law gives them the right to make testamentary dispositions of their land they retain that right. Section 8 of Act III of 1893 did not specifically mention leases. All the Jhelum Canal conditions and the peasant conditions issued in 1902 for extensions of the Chenab Canal prohibit subletting for more than two harvests, and this limit was reproduced in clause 16 in its original form. The Select Committee has for very good reasons explained in its report proposed to substitute "two years" for "two harvests." But on further consideration we are prepared to do a great deal more, as I shall explain when I shall propose an amendment which is on the agenda. Grantees on the Jhelum Canal will be allowed the benefit of the relaxation of one of their conditions. I do not intend to take up your time with a discussion of the difficult question how far subletting by tenants was restricted by section 8 of Act III of 1893. I hope the Council will agree to the proviso which the Select Committee wished to add to section 16, that in the case of any tenancy existing at the commencement of the Act the section shall not operate to create any restriction on the power of subletting not enacted by section 8 of Act III of 1893 or embodied in the statement of conditions applicable to the tenancy.

" Exception has been taken to section 18 on the ground that 'it limits the succession of owners to a very narrow circle of heirs against the established custom and usage of the country.' The third resolution of the Lyallpur meeting, which I have already quoted, probably refers to this clause. I understand that in the Chenab Colony the clause was supposed to be retrospective, and the same misconception appears in the memorial of the District Indian Association of Rawalpindi. The opening words of the clause 'in all statements issued under section 5 of this Act' show that it has no retrospective effect whatsoever. The Select Committee has proposed to strike out the words 'or owner'.

This is an undoubted improvement, for there is no reason for limiting succession to heirs of the body of an original grantee who has acquired ownership.

"The first sub-clause of section 19 has been criticized as inequitable on the ground that the deceased tenant's family will lose all he has spent in reclaiming the land. Let me read the corresponding condition in all the Jhelum statements and in the statements for peasant grants on extensions of the Chenab Canal—

'When the peasant dies without having acquired a right of occupancy under condition 22 the tenancy shall lapse to Government, and all rights conferred upon the tenant by those conditions shall be extinguished.'

"Our sub-clause is much less stringent. It merely provides that 'the Collector, if he considers that in the circumstances of the case such an order would be equitable, may direct that the land shall be resumed.' The Collector has to find, and on appeal the Commissioner has to find, that under the circumstances of the case resumption is equitable before he can resume, and if both of them err, the Financial Commissioner can be asked to overrule them. In the Jhelum Colony a regrant to the heir is a new tenancy, and occupancy right is not claimable for five years. But under the provisions of the Bill, if the grant is continued to heirs, the period during which the original tenant held the land will be taken into account in calculating the five years of probation. It is idle to contend that resumption would never be equitable. The tenant's connection with the land may have been very short or very unsatisfactory. I suppose only the Colonization Officers in the Chenab Canal Colony and my predecessors and myself as the authority hearing appeals from their decisions realize the infinite trouble involved in getting many grantees to reside on their grants and build houses. They have homes and lands in Gurdáspur, or Jalandhar, or Ambála, and persistent attempts, continued year after year, are made to evade the fulfilment of the conditions on which they hold their allotments. The plea that the tenant has sunk money in the land with no adequate return is plausible, but is it generally speaking true? Probably on the contrary he has made large profits. The reclamation of land in the tracts served by our new canals often costs very little, the settler gets virgin soil, and initial remissions. On the Jhelum Canal he pays nothing to the Irrigation Department for water and no rent whatever for two harvests. All that is recovered from him is Rs 2 per allotted acre for the cost of survey and water-courses. The terms on the Chenab Canal were still more liberal. Many colonists on the Jhelum and Chenab Canals could tell the people, who think Government is so short-sighted as to be hard on its tenants, that they have received indulgence in this respect beyond the strict letter of the law. The clause applies only to future allotments, but in practice Government will apply its provisions to the Jhelum grants in place of the severer condition on which they are held.

"We have next to consider a group of clauses, 20 to 23, dealing with buildings and village sites. Let me explain the actual state of things in the Chenab Colony. When the first yeoman and capitalist grants were given out on the Rakh Branch no land was reserved for a village site. Under the conditions as finally issued in 1897 they were bound to build houses. They built them for their tenants and themselves on their own lands with the result that in their villages there are numerous hamlets scattered over the area. To quote the words of a former Colonization Officer—

"The small steadings seldom exhibit any signs of cleanliness or neatness, and are generally surrounded by deep and irregular borrow-pits partially filled with refuse. However ideal, therefore, may be the conception that each grantee should live on his own land, in practice it is not satisfactory, and it combines disadvantages both for the people and for the administration. A system of scattered homesteads places difficulties in the way of all police and revenue work, and deprives the colonists of many of the amenities of life obtainable in larger communities. The small hamlet is more liable to theft and depredations, the full complement of village menials being seldom available on the spot,

and if well water is to be obtained for drinking purposes, the whole burden of expenditure falls heavily on one man. For these reasons the grantee themselves now generally prefer joint villages. The only objections to the latter are difficulties of distance for labourers and carriage of manure, but these can be overcome by allowing steadings for cattle and men on the grants themselves.

"With the exceptions noted above and perhaps some cases on the Jhang Branch land has been reserved for village sites in making allotments, and this was also done in selling land by auction in 1899 and 1900. The public notices then issued declared that 'village sites will be fixed at convenient intervals throughout the area to be sold by auction. For the purpose of residences for himself, his servants, and tenants, allotments of building land on these sites will be made to each purchaser in proportion to the area purchased by him. No rent or revenue will be charged on such land.'

"In the vast majority of cases therefore the whole population of each village lives within a single site, the land of which is not included in the allotments made to grantees and entered against their names in the registers. The reasons for keeping village sites as the property of the State are strong. It enables us to insist that sites shall be laid out on a regular plan, and that the people shall live in healthy surroundings. Anybody who is familiar with the colony knows how admirable has been the result. Instead of narrow and dirty lanes and small houses crowded together we have broad roads bordered by spacious enclosures in which the grantee builds his dwelling house and his store-rooms and keeps his cattle. He is usually allotted 960 square feet for every square of agricultural land which he holds. Village menials and shop-keepers are given smaller but still roomy sites. Grantees hold their sites free of rent, and so do the tenants of yeomen and capitalists and the village menials. Other occupants pay a small rent to Government.

"The Jhelum conditions expressly require a grantee to build a house on a site allotted by the Deputy Commissioner. It is true that the conditions for the three great branches of the Chenab Canal do not say that the house must be in the square reserved for the village site, and that the capitalist condition runs that 'the tenant shall construct a house on the said lands' (i.e. the lands allotted to the tenant) 'or in the village in which they are situated.' But surely the enforcement of building on a common site and more or less on a regular plan was most wise and salutary. Here is a pleasant picture of the colony villages—'The best villages are those of the peasant colonists who come to stay and make themselves comfortable; but there are considerable differences in expenditure and style of architecture.'

"The Amritsar peasant is usually the most ambitious. If a Sikh, as he usually is, he loves a high wall and a good gateway, which serves also as a screen. He houses his relatives and tenants well, and usually spends money lavishly on the Lares and Penates of his establishment. The Jalandhar Jat is very partial to the *deorhi* or covered entrance which is so common in his old district. He makes it of burnt brick masonry which may cost him a thousand rupees, and covers it with strange pictures which often include rough presentments of European soldiers. Ludhiāna grantees do not as a rule spend large sums on their dwellings, and Ludhiāna villages are generally rather untidy. Occasionally, however, a lofty two-storeyed house is erected, and a long verandah, which protects one side of the house, is common enough. A bungalow in European style is becoming quite a common luxury even for well-to-do peasant *lambardars* to whom the soothing *pankha* is by no means unknown.

"When touring lately on the Upper Jhang Branch I was immensely struck with the scrupulous cleanness, orderliness, and comfort of some of the *Janghi* villages occupied by people who a few years ago were Bar Nomads. To use a homely phrase one might have eaten one's dinner off the floors, and the store-rooms were models of neatness and good order. These people deserve every credit. Nothing that Government could have done could have enforced

so high a standard, but the action of the State has made it possible. It has been usual, I believe, on the Chenab Canal to require grantees who wished to keep their cattle on their own allotments to get permission to put up the needful buildings. I do not think that was correct, for the conditions permit the grantee 'to build houses.' But if the Council accepts the amendment of the Select Committee to clause 23, no such permission will be required.

"Clause 23 is intended to affect all grants past and future. But as safeguarded by the amendment proposed by the Select Committee, I think the Council need not hesitate to pass it. The Lahore Zamíndárs' Association, dealing with the clause in its unamended form, notes with reason that, if an owner plants a garden on a portion of his land, the erection of a building in the garden ought not to be open to objection. If an owner does anything so useful and pleasant, and wants a garden house in which he can sleep on sultry days or nights, he will be a very cross-grained Collector who refuses leave, and he is little likely to be supported in such ill-advised action. The maximum punishment provided for a breach of the prohibition in section 23 was perhaps too severe, but an amendment on the agenda paper will put that right.

"I believe the other three sections were meant to apply to existing as well as to new grants, but, if that is the case, I am advised that the intention has not been made effectual. I am not sure that this is beneficial to present grantees, as apparently it leaves it optional with Government to demand rent. But there is no intention whatever of altering the state of things to the grantee's disadvantage, and, so long as a grantee in the Chenab or Jhelum Colony continues to be a tenant or owner, he will hold the site allotted to him free of rent. By additions to sections 20 and 21 the Select Committee has made provision for the case of transferees holding under valid deeds of sale. We cannot allow the vendor of the agricultural land to sell in whole or part a site which belongs to Government. But we have done what we can to see that the transferee shall get a site.

"Clause 24 of the Act is one that has been subjected to much criticism. I do not suppose that any one can reasonably object to the first sub-clause. The remaining sub-clauses are in exact agreement with clause 23 of the Jhelum Canal conditions and the peasant conditions on extensions of the Chenab Canal except that we propose to extend the period of grace for payment of Government dues from 15 to 30 days. They are far less drastic than the conditions for all classes of grants on the three great branches of the Chenab Canal sanctioned between 1896 and 1898. If the clause is adopted in the form suggested by the Select Committee, an owner will no longer be liable to ejection without compensation for unpunctuality in paying land revenue and canal charges. Payment will be enforced under section 27 by the same processes as can be employed against any defaulting proprietor anywhere in the Punjab. It may be that we could insist that, sub-section (2) notwithstanding, an owner's liability for default in payment under existing conditions is unaffected, but we shall set up no such claim. It may be assumed that as regards all owners in the Chenab Colony the condition referred to above will be treated as cancelled. There was no provision in the Chenab Canal conditions like that in the Jhelum conditions and the present clause for fining grantees for breach of conditions, but in practice Colonization Officers employed fines as a milder weapon than confiscation. Section 24 is a relaxation of existing conditions, and at present we are not prepared to go further or to deprive ourselves of an effective means of enforcing conditions without the necessity of bringing suits.

"Even in the case of those yeoman grantees who are bound to reside we require a strong and a ready means of enforcing compliance. What good to Government or the Colony are yeomen who do not live on their lands? The very object of the creation of this class of grantees was to attract men who would be local leaders, to whom Government might look for help in its dealings with the great mass of the peasantry. Administration is always difficult where

no class is to be found but the actual tillers of the soil, and one of the great mistakes of the early government of this province, otherwise so admirable, was that that fact was not adequately realized. Sixteen years ago, when the Colony was about to be started, the Government of India pointed out 'the serious objections attaching to the creation of small absentee proprietorships.' Colony administration ought not to be perpetual, and clause 35 of this Bill provides a ready means for its gradual withdrawal. When action is taken under that clause we may be able to relax existing conditions, but that is a matter for future consideration.

"The position of the Rakh Branch grantees is peculiar because most of them had been put in possession long before the conditions were finally sanctioned in 1896 and 1897. I have put on the agenda paper a notice of amendment, which will exempt them from the operation of this clause. I reserve anything more that has to be said on the subject till the time comes for moving the amendment.

"Sections 25 and 26 deal with offences and their punishment. These are new provisions and one of them at least has caused alarm. The offences are all connected with land owned by or in the possession of Government, or set apart for the common purposes of a town or village community, or for a road, canal, or water-course. No one may encroach on such land, break it up for cultivation, build or dig water channels on it. Ought we not to have a ready means to prevent such things? The provision as to trees on Government lands or lands set apart for the common purposes of a village has aroused alarm, and in its present form this is not perhaps to be wondered at. I have put an amendment on the paper which I hope will be considered an improvement. In the Select Committee's report it has been proposed to greatly reduce the penalties as they stood in clause 25 as originally drafted. On further consideration we think we can do even more than it proposed and still retain sufficient power to enforce obedience. I shall move an amendment to-day which will, if adopted, strike out the penalty of imprisonment altogether.

"The tracts commanded by our new canals in the Western Punjab were in their natural state singularly bare of trees. Much has been done in the Chenab Canal to remedy this, though the conditions for the three principal branches did not give Government power to enforce tree planting. The provision on the subject in clause 28 (1) (d) and the proviso thereto is taken from the Jhelum and later Chenab conditions. Tree planting is so desirable that we wish to take power to enforce it generally on Government tenants. In framing actual rules we shall endeavour to require nothing that will directly or indirectly have any serious effect on the area which can be successfully cultivated. The trees will belong to the tenant and Government will have no claim to derive any profit from them. The clause as it stands gives Government power not only to insist on trees being planted on land owned by itself and held by tenants having a permanent title, but also on land of which the ownership has been acquired by capitalist and yeoman grantees. I observe that my Hon'ble friend THAKUR MAHAN CHAND intends to propose an amendment to omit the words 'and owners', in clause 28 (1) (d). I am quite willing to accept that amendment if he will agree to limit its scope, so that it shall only apply to those persons who have already acquired ownership or are now holding land on conditions which permit them to acquire ownership. But I think we should retain full power to require future grantees of all classes to plant trees. I have an amendment to propose which will greatly reduce the severity of the penalties that can be attached to a breach of rules framed under clause 28.

"The provisions of section 29 enable Government to impose a cess on the occupiers of village sites in colonies to be spent on their sanitation and general administration. This is a new power, but it is one I think may very properly

be taken. I have already referred to the excellent homesteads that the colony estates now possess. The sites belong to Government and in the vast majority the chief inhabitants are State tenants. It may become, I do not say it will become, necessary to levy a small cess to be spent on conservancy and other purposes for the common good of the inhabitants. In all Punjab villages there is a *malba* or village fund which may be used for any common purpose at the people's discretion. There is no *malba* in most of these colony estates and we have at present no power to introduce one. Of course a cess under clause 29 would not be a '*malba*' properly so called, for it would be imposed by authority, Government could by rules issued under clause 28 (1) (c) regulate its expenditure, and these rules would certainly not cover some of the objects on which the *malba* is commonly spent.

"The Select Committee has proposed to add to clause 34 a proviso that if a register has not been signed by a tenant the statement applicable to the tenancy shall be deemed to be that which was in force for tenancies of the same description at the time when the land was allotted. No registers have been prepared in the Jhelum Canal Colony and there are a few cases in the Chenab Canal Colony where the registers have not been signed.

"I fear I have occupied much of your time. But the circumstances to which I alluded at the beginning have made it my duty to explain the provisions of this measure fully, to answer objections with patience, and, where they were reasonable, to meet them half way. A great deal of the criticism has been ill-informed, but that was inevitable. It is possible that some of the critics and some who have felt their personal interests were at stake may read what I say to-day. Perhaps I may be allowed to address one word to them. Criticize fully and freely any measure of Government, which, like this one, affects large bodies of people. It is right and proper that you should do so. But avoid that attitude of overstrained suspicion, which robs your criticisms of half their force. More than one of us who sit round this table have in their own spheres had something to do with the building up of the great colonies to which this Bill relates. We have seen the prosperous villages which occupy what was once a barren waste. We rejoice in the prosperity of the people, who have exchanged slender means and scanty acres at home for what is to a peasant affluence. We know that their prosperity has not only benefited themselves, but has brought a rich return to the State for the money it ventured on its great canals. Is it likely, is it even imaginable, that we should deliberately set our hands, I do not say to destroy, but in any way to mar, that great fabric of which we are so proud."

The Hon'ble MALIK UMAR HAYAT KHAN said:—"Your Honour, I beg permission to say a few words before the Bill is taken into consideration. It is admitted on all hands that the Bill is an important one, but unfortunately owing to certain circumstances we have been unable to give sufficient time to its consideration.

"As the people in the province generally and the agriculturists particularly are backward in education they do not grasp things quickly, and thus lose the opportunity for criticism especially as the conditions prevailing in the colonies themselves are manifold and diverse. It is only now at the critical time that they have been awakened to the fact, and have begun to send in their applications and representations.

"I would, therefore, like to suggest that further time should be given to the Members of the Select Committee to go through all the papers thoroughly; and thus be in a better position to submit a complete and satisfactory report to the Council.

"Moreover, the changes in the Bill during the last two days have been so rapid that it is very difficult for one to follow them and to frame any opinion about the merits and demerits thereof."

The Hon'ble THAKUR MAHAN CHAND said:—"It is rather satisfactory to remark that the Bill as now amended by the Select Committee appears to be much better than what it was before, but it could have been much improved, had it been postponed for some time for further consideration. The coming forth of so many proposals of amendments from all three Members of the Select Committee sufficiently prove that the Bill yet requires fuller consideration, and before having a discussion about it in the Council it must be returned to the Select Committee for a fresh and final report.

"I find too many amendments on the List of Business proposed by the Hon'ble Mr. DOUIE, of which I had no notice before now, so I will be unable to make any observations on the point unless a reasonable time is allowed to think over them."

The Hon'ble SARDAR PARTAP SINGH said:—"Your Honour, as a layman I cannot offer any observations with regard to the legal aspect of the proposed enactment, and it will be a matter for experts conversant with principles of jurisprudence to consider whether or not so much of the Bill as increases the rights of the Government, and relatively derogates from the rights of tenants, is politically sound. Permit me, however, to make one remark in regard to the policy of the Bill under discussion. If the result aimed by the measures proposed and achievable by them is to place the landlord and tenant on a basis of fair adjustment of mutual rights, they are open to no objection. While, on the other hand, if the rights of the tenants vested in them prior to the present Bill are to be detracted from, then in my opinion the landlord must make out a very strong case supported by political exigency or strong grounds of expediency. Of course new tenants desiring to become so with a knowledge of the terms offered have obviously an option to accept or reject them, but to those who have placed themselves in the position of Government tenants on a particular understanding, the Bill naturally will not be acceptable. It is a fact which should not be ignored that clause 8 of the Bill has invited great opposition from tenants prior to the Bill, and on various grounds this clause has been criticised. I may be pardoned for remarking that the Government occupies two-fold capacities which are independent of each other. One is that of a landlord of an impersonal type whose object is certainly unlike and dissimilar to a common landlord whom a sordid desire often prompts to trample on the rights of his tenant. The second capacity is that the Government possesses the machinery of a legislature which it can always invoke to its advantage, a privilege denied to private landlords. It follows, therefore, that the public generally should not be given an impression that that machinery can be used for the benefit of the Government as a landlord without a corresponding advantage to the persons affected thereby.

"Now viewing the Bill from that standpoint I for one have not been able to discover anything in it which confers on the tenants any advantages over and above what they possessed before, while there is manifestly considerable derogation from the original grants. I can understand that there may be, at times, reasons, and very cogent ones, for giving retrospective effect to an enactment between party and party, for example the Punjab Pre-emption Act, Contract Act Amendment Act (on the subject of undue influence), and the like, but the same grounds cannot apply reasonably when one party concerned happens to be the Government itself, not a political State but as proprietor of certain properties. From what will follow hereafter, namely, when I shall examine some of the provisions of the Bill, it will appear that the tenant prior to the Bill will be in a much more disadvantageous position *quâ* their landlord, the Government. The conclusion is irresistible that there can be no legal or moral justification for clause 8 of the Bill which, I would suggest, should be so framed as to exclude the tenancies and tenures created before the Bill.

"Coming now from the general to the particular, I find that in clause 18 'heirs' and 'legal representatives' are held to mean exclusively the heirs of the body of tenant and his widow if any. This provision clearly deprives old

tenants of the privilege which, I believe, they otherwise possessed of being succeeded by heirs other than those of their body, as for example heirs by adoption or customary appointment of an heir. The restriction of heirs to those of the body only will naturally result in larger resumptions to the Government—a result detrimental to the interests of the tenants. Likewise, there is a possibility of rules of succession to tenures which the Local Government is authorised to regulate under clause 28 of the Bill, also resulting in derogation from the tenant's rights.

"With regard to clause 23, I am of opinion that the equitable rule which prevails in courts of law between ordinary landlords and tenants, should not be departed from, and which is to the effect that no tenancy is forfeited, particularly a permanent tenancy for mere non-payment of rent. The courts of equity always afford relief against such forfeiture clauses. The clause under discussion will, I am afraid, work great hardship on the tenants if non-payment of the sums due to Government entail a forfeiture of tenancy and a consequent resumption of it, super-added as it is by a further penalty of so many rupees per acre or a part of an acre. This hardship will be further enhanced by a summary eviction of the defaulting tenant by the Collector who is undoubtedly an agent of the Government. We must not forget that the interests of Government in the matter of dues are amply safeguarded by clause 27 which provides that 'all sums due to Government and' shall be recoverable as arrears of land revenue. The clause as it stands provides no guarantee whatever against a wrong decision as to a demand for payment of the dues. Nor is any remedy open to such a tenant otherwise than by way of appeal to higher revenue authorities, which the public will always view, rightly or wrongly, as representatives of Government interests. I, however, think that the period of even 30 days, assuming that the clause is retained as it is, is too short a period of grace. It should be at least raised to six months, considering that an impecunious tenant may be able to repay the sum in arrear from the produce of the next harvest, and also in consideration of the penalty of forfeiting the tenancy. I would suggest that if clause 24 is retained, some guarantee should be provided against any possible abuse of the privilege conferred on the Collector. Would it not be more advisable and expedient to substitute in lieu of the forfeiture of tenancy some penalty in money in addition to the rent due. We must not lose sight of the fact that the very benefit which the benign Government intended to bestow on retired military and other officers and the peasantry, who have forsaken their ancestral homes for better prospects on the colony, be frustrated by frequent resumptions. The tenants as a class, the moment they are evicted on default of payment of Government dues, will naturally smart under a sense of wrong, which state of affairs is farthest from the motives of Government.

"With regard to clause 25, my Hon'ble friend MR. DOUG has proposed an amendment which is intended to diminish the possibility of the harassment of tenant on paltry grounds, but the amendment is too vague and general to prevent the mischief intended to be avoided. I would suggest that lopping the twigs or leaves of a tree should not be made an offence, and the interests of Government will be amply protected if sub-clause (a) were to run as follows:—

'fells or destroys a tree.'

According to the amendment I have ventured to suggest, tenants shall be able when they are in need of small wood pieces for agricultural purposes to make use of the trees in a manner not permanently destructive of them. I may note in passing that in the majority of cases trees on occupancy holdings of private individuals are partially made use of by occupancy tenants for agricultural purposes, without the property in the trees being detrimentally affected. A rule approaching to this practice would be the best rule between the Government and its tenants.

"Coming now to clauses 32 and 33, the combined effect of these two clauses appears to me to divest Civil Courts of all jurisdiction regarding the working of the Bill under discussion. Not only are the Collector and Local Government exempted from all jurisdiction of the Civil Courts, but the protection has been extended to *every* public servant and for *anything* done by him in good faith. Statutory powers exercisable under various statutes by public officers are generally subject to correction by the Civil Courts if the actions of such public officials are beyond the scope of their powers conferred by a particular enactment, or are proved to be oppressive, grossly negligent or unreasonable. The present Bill goes very much further; it gives immunity to every public servant for anything done by him in good faith. The clause 33 as at present worded introduces, however, the words 'good faith,' the definition of which has to be sought for elsewhere in other enactments. When we remember that the Crown has allowed itself to be subjected (excepting Acts of State) to the jurisdiction of its own Courts, there does not seem to be any reason why in a matter not of public interest, but of its proprietary interests and in its relations towards its own tenants, the Civil Courts should be deprived of all jurisdiction whatever.

"I cannot conclude this without prominently drawing the attention of the Council to the political aspect of the proposed measure. It scarcely requires any demonstration to prove that in opening out the barren tracts of land which for centuries had lain waste, the Government had in view the material prosperity of its subjects. So many congested areas of the Punjab have been relieved; so many deserving zamindars and Government officials have been rewarded for their meritorious services; so many wayward and the unemployed have found useful and lucrative employment. The whole agricultural community has appreciated the boon conferred upon them. They are fully alive to the solicitous care the paternal Government takes of them by adopting various methods to protect them and by devising so many plans for their material prosperity. The same community out of which our Indian Army is mainly recruited is labouring under a sense of gratitude and displays every readiness to assist Government with their hearts and souls. The retired military officers and others found in the land awarded to them a generous recompense for their labours. That to allow this community which is the backbone of the Indian Empire to entertain an impression that the Government is going to back out of their contract would be highly impolitic and inexpedient.

"To conclude, I would summarise my suggestions briefly to the effect that the Bill should not have a retrospective effect with regard to the tenancies and tenures prior to the Bill; that the rules of succession extant with regard to other property rights should not be deviated from concerning land acquired from Government; that the tenants should have the satisfaction of holding on as near as possible as other tenants of private landlords, *vis.*, tenancies and tenures should not be forfeited for mere default of payment of dues; and, lastly, that, in order to ensure the proper working of the proposed enactment, the Civil Courts should possess some sort of jurisdiction. I would, moreover, suggest that the Bill be referred again to the Select Committee for reconsideration with a suggestion to consult public bodies and principal persons of light and leading on the Colonies to avoid misapprehensions which the Bill as it now stands is calculated to create, and to dispel all possible impressions that the Government means to commit a breach of faith, with regard to contracts entered into prior to the Bill."

The Hon'ble SIR DAVID MASSON said:—"I desire to say that I came to this Meeting of the Council with a feeling of considerable apprehension and misgiving. It was brought home to me, in many ways, that this Bill had evoked strong opposition, and I came here quite prepared to vote against its being passed to-day if it appeared that the reasons for that opposition had not been fully considered. After listening to the clear

and ample statement of the Hon'ble MR. DOUIE I felt quite re-assured, and I would not support the motion of the Hon'ble MALIK UMAR HAYAT KHAN that the Bill should not be taken into consideration. Nothing that has been said by the Hon'ble SARDAR PARTAB SINGH alters my decision, nor do I share the feelings of regret with which he would still apparently regard the passing of the Bill. On the contrary, it would appear to me a matter of regret if the Bill were not passed into law before the Hon'ble PRESIDENT gave up the reins of Government in this province. I cannot speak with the Hon'ble Member's authority on behalf of the zamindars, but it seems to me that all their reasonable objections have been liberally met, and I am confident that the amendments of to-day will remove all valid objections to the Bill."

His Honour the PRESIDENT said:—"I did not know until now that any objection would be raised to this motion, and I cannot agree that the consideration of this Bill should be postponed. All Hon'ble Members will, I am sure, agree that in the interests of the colonists themselves an enactment of some kind is needed, to regulate their relations with Government and to provide for the proper administration of the colonies. The Hon'ble Member in charge of the Bill has pointed out what care has been taken in preparing the present measure: it has twice been submitted to and considered by the Government of India and the Secretary of State; it was introduced into this Council four months ago; and the very large number of memorials, representations, and resolutions submitted to us shows that every one has had ample time to consider and criticize its provisions. Lastly, I myself have very carefully made a final study of the Bill with the Hon'ble Member in charge, and we have carefully considered the criticisms submitted, with the result that the more stringent provisions of the Bill have been in many directions relaxed and a number of concessions have been granted as will be seen from the amendments on the List of Business. No doubt some uneasiness has been created in respect of this Bill, but for this very reason it seems to me that it should be passed as soon as possible, and I have little doubt that, when it has become law and its effects in working are seen and understood, all such uneasiness will pass away."

The Council divided—

Ayes—4.

The Hon'ble MR. S. FINNEY.

The Hon'ble SIR DAVID MASSON.

The Hon'ble MR. J. M. DOUIE.

The Hon'ble MR. GORDON WALKER.

Noes—3.

The Hon'ble MALIK UMAR HAYAT KHAN.

The Hon'ble THAKUR MAHAN CHAND.

The Hon'ble SARDAR PARTAB SINGH.

So the motion was agreed to.

The Hon'ble MR. DOUIE moved that in clause 8 after the words 'Any person who' the words 'at any time' be inserted. He said:—"There appears to be some ambiguity in the wording of clause 8, for I find that the Zamindars' Association of Lahore thinks that it does not apply to persons who were once tenants, but have become owners. The remarks I have already addressed to you will show that we are prepared to limit very considerably the retrospective action of the Bill so far as owners are concerned. But we consider that in one respect at least we must assert it. I refer to the power we take in clause 23, which enacts that no tenant or owner shall, without the consent in writing of the Collector, erect any building for human habitation upon any land lying outside the limits of the area reserved as a village homestead. I have already stated that in the past the power has been generally exercised, though it is not contained in many statements of conditions. We attach too much importance to the maintenance of well ordered villages to give up this power. And to make it plain that we have it, I propose to insert the

words 'at any time' between 'who' and 'before the commencement of the Act' in the first line of clause 8. In all discussions about the Bill section 23 have been treated as having retrospective effect."

The motion was put and agreed to.

The Hon'ble MALIK UMAR HAYAT KHAN moved that the last eleven words of clause 8 be omitted. He said:—"Your Honour, though it is not clear whether the word 'tenant' in section 8 includes those tenants who may have acquired rights of occupancy before the Act comes into force, yet it seems to me that such tenants are intended to be included in the term 'tenant' as used in the section. If I am right in entertaining this opinion I think the section requires further consideration. Rights acquired previous to the passing of the Act should be interfered with as little as possible. To such tenants only those supplementary provisions should be applied which do not place them in condition worse than they were in under their original contracts. This being so, I would have wished that the provision in the enactment should have been so worded that they should not have retrospective effect unless the nature of the provision was such that it could not work hardship on previous grantees. I would therefore suggest that the wording of the section be changed in such a manner that its provisions may not have the said effect.

"I therefore beg to propose that clause 8 of the Bill be amended by the omission of the last eleven words thereof, so as to attain the desired effect."

The Hon'ble THAKUR MAHAN CHAND moved that in clause 8 after the words 'expressly provided by' the words 'section 16 of' be inserted. He said:—"I think the clause 8 of the Bill requires full consideration before the Bill is passed into law. It is clear that other clauses will deal with the tenancies granted after the commencement of this Act, but contrary to the general principle of the proposed law the concluding words of section 8 are retrospective. There is no reason why the words are inserted in the clause to make whole of the Act to have retrospective effect. It is certainly against the fundamental principle of justice and equity to bind persons to accept the conditions of which they were not aware and to which they never gave their consent. Is it not illegal if a landlord, whether it may be a private individual or Government itself, makes any addition to the conditions of a mutual agreement (*vide* section 6 of Act III of 1893) in the absence and without the consent of his tenant? The clause thus providing that 'notwithstanding any previous agreement,' and even without obtaining their consent, the tenants shall be deemed to have accepted all the supplemented conditions does not appear to be in accordance with the general principles of law. It does not matter whether the alterations intended to be made will be useful or otherwise; it will be still wrong in principle to do so without the consent of the parties concerned. It is just possible that the provisions of this Act or the rules framed hereinafter under it may not suit the tenants already in actual possession of the land. In such a case they will be placed in a worse position than the new-comers who will have a choice to accept or refuse the tenancy on new conditions, while the old tenants will have no alternative. Apparently there seems to be no necessity of making the Act retrospective on the holdings of old tenants. If it aims to restrict the power of alienation of the tenants or to bring them under a special rule of succession, I think the Land Alienation Act and the ordinary customary law of the province are quite sufficient to restrict their power of transferring their rights. The rules of succession are already given in full details in the Punjab Tenancy Act, XVI of 1887:

"The creation of clause 16 in the Bill now fulfils the desire of restricting the power of willing and making exchanges of the tenants which was wanting in section 8 of Act III of 1893, and this express provision makes it absolutely necessary that the general retrospective effect of clause 8 of this Bill be altogether removed.

"As a rule even the slightest alteration is objectionable, but as there already exist certain conditions restricting the power of sale, gift and mortgage by tenants even under the old Act which was applicable to their holdings, it may not be of so much consequence if the power of willing and exchanging of the tenants is also restricted to certain extent. For these reasons I propose that clause 8 of the Bill, if could not altogether be removed, be amended in the manner indicated at the commencement of my speech."

The Hon'ble MR. DOUIE said :—" I am unable to advise the Council to accept the amendments proposed by my Hon'ble colleagues, which cover very much the same ground. I think the explanations I have given to-day and the remarks I made in proposing my own amendment to clause 8 make it clear why this is the case. My Hon'ble friend says :—' There is no reason why the words are inserted in the clause to make the *whole* of the Act to have retrospective effect.' I have signally failed in my attempt to explain the Bill if any one now thinks that the words objected to have that effect now or ever had it. The Select Committee introduced an amendment which has restricted the retrospective action of the Bill. There are on the agenda notices of amendment to be proposed by the Hon'ble Member and by myself, which, if accepted, will restrict it still further. But for the reasons I have already given I am not prepared to advise the Council to refrain from taking the full powers given by sections 23 and 28 of the Act. I have pointed out that many grantees will benefit largely by the relaxation of their conditions. If owners are to be required to comply with a provision as to the place where they may build their houses which is not in the statements of conditions, we intend to exempt them for their existing liability to ejectment without compensation for unpunctuality in paying Government charges."

Both the above amendments proposed by the Hon'ble MALIK UMAR HAYAT KHAN and the Hon'ble THAKUR MAHAN CHAND respectively were separately put to the Council and declared lost.

The Hon'ble MR. DOUIE said :—" The amendments I have now to propose to clause 16 are very important and relax the original provisions of the Bill. It is convenient, indeed necessary, to take them together, for I could only propose the first on the understanding that the second will also be accepted. The Select Committee amended the 16th clause of the Bill by increasing the period for which tenants could sublet from one to two years. But it made no distinction between tenants who had no permanent rights and tenants who had acquired a right of occupancy. I think that is a distinction that may very well be made. I therefore propose that a tenant who has earned no permanent right by fulfilling the conditions of his tenancy shall be debarred from subletting for more than one year, but that an occupancy tenant shall be allowed to sublet for seven years, the period permitted to ordinary occupancy tenants of private owners by section 58 of the Punjab Tenancy Act. I am sure my Hon'ble friend MALIK UMAR HAYAT KHAN, who is an occupancy tenant of a very large area of land on the Jhelum Canal, will think this a very substantial concession.

"The difficulty we have always felt about subletting is that the whole object of our colony schemes is to have a resident tenantry. It is necessary therefore to couple this liberal extension of the power of subletting with an express proviso that it shall not effect the obligation of the tenant of the State to reside on the land. If we did not do this, many existing grantees would hurry back to their original homes, and the colonies would see them no more. I move that in clause 16 for the words 'two years' the following be substituted :—

'one year in the case of a tenant who has not acquired a right of occupancy or ownership and seven years in the case of a tenant who has acquired a right of occupancy'

and that the following proviso be added :—

'Provided that the right of subletting conferred by this section shall not release any tenant from a condition requiring him to reside in the estate in which his tenancy is situated'

and that after the word 'provided' in the present proviso to this clause the word 'further' be inserted."

The motion was put and agreed to.

The Hon'ble THAKUR MAHAN CHAND said :—"There appears to be some confusion in the contents of clauses 20 and 21. In sub-clause (2) of clause 20 the Collector is stated to allot site to the transferee of a land in a village 'if available,' and in sub-clauses (2) and (3) of clause 21 he is required to resume possession of the whole or part of the sites allotted for building purposes from those who have transferred their lands. The words 'if available' in sub-clause (2) of clause 20 seem to be unnecessary when it is evident that the site vacated by the vendor under sub-clause (3) of clause 21 will be available for the allotment to the purchaser.

"To ask the vendor to remove the materials and vacate the site on the one hand, and to allot a new site to the vendee for buildings on the other hand, will simply be waste of money and will cause much inconvenience to both. In order to avoid such a troublesome and vexatious procedure, I think it will be better if the vendor be allowed to transfer his rights in whole or part of the buildings on the site along with his land. The sub-clause (3) of clause 20 is sufficient to safeguard the rights of the Government to the building sites whether they are occupied by one or the other. I therefore move the following amendments in clauses 20 and 21 :—

"(1) that in sub-clause (2) of clause 20 for the last sixteen words thereof the following be substituted :—

'he shall be at liberty to transfer also his rights in the whole or part of his buildings on the site for the habitation of the transferee';

"(2) that in sub-clause (3) of the clause 20 after the word 'allotted' the words 'and occupied' be inserted :

"(3) that sub-clause (3) of clause 21 be omitted."

The Hon'ble MR. DOUIE said :—"I cannot advise the acceptance of these amendments to clauses 20 and 21. The effect of the amendments made by the Select Committee is this that, supposing a grantee makes a valid transfer to A of say one-half of his land, the Collector may, without disturbing the vendor, give A a vacant building site, if such be available. It might be very awkward sometimes for the vendor to have to surrender any part of the site on which his house, &c., stands. But as he got it in respect of a grant of say 100 acres, and he has chosen to part with 50 acres, the Collector may, if he thinks fit, require him to give up half his site and may hand that over to the vendee. The site belongs to the State, and the vendor cannot sell that. And seeing that section 21 is not retrospective grantees in existing colonies have not a *right* to hold their building sites rent free, and all they can transfer is the material of their houses. It is not the case, as stated by my Hon'ble friend, that in the event of a transfer of agricultural land the Collector is *required* to resume possession of the whole or part of the vendor's building site. All that the clause says is that he may do so. I do not understand the object of adding 'and occupied' after the word 'allotted' in sub-clause (3) of clause 20."

The amendments moved were put to the Council and declared lost.

The Hon'ble MR. DOUIE moved that clause 23 be renumbered 23 (1), and that for the words "of a village homestead or town" the words "of the area reserved as Government property for a village homestead or town" be substituted.

He said:—"That is a restrictive and explanatory amendment. It will show that where, as on yeoman and capitalist allotments on the Rakh Branch, no such area has been reserved, we claim no right of interference."

The Hon'ble MALIK UMAR HAYAT KHAN said:—"On the amendment of clause 23 I would like to say that the substitution of the words 'areas reserved as Government property' should not apply to those areas of land which are or have been allotted to zamindárs, &c., on account the money paid by them or otherwise acquired by them."

The motion was put and agreed to.

The Hon'ble MR. DOUIE said:—"At present the means of enforcing the provisions of section 23 have to be sought for in clauses 25 and 26. The result is that clause 25 is a very awkward bit of drafting. I think too that only a mild penalty is required for a breach of the provisions of clause 23, and that it will be well to include in one clause both the prohibition and the means of enforcing it. I therefore move that a second sub-clause to the following effect be added to clause 23:—

- (2) If a tenant or owner erects any building in contravention of the provisions of sub-section (1), the Collector may cause such building to be demolished and levy the costs of so doing from the said tenant or owner, and the said tenant or owner shall likewise be liable on conviction by a Magistrate to be punished with fine not exceeding fifty rupees."

This contains nothing not at present contained in clauses 25 and 26 except that the penalty of imprisonment is struck out and the fine is reduced. I would ask Hon'ble Members to compare these provisions with those of sections 92, 93, and 145 of the Punjab Municipalities Act, XX of 1891."

The motion was put and agreed to.

The Hon'ble MR. DOUIE:—"The provisions of clause 24 are of a stringent nature. I find that when the Rakh Branch colonization was started the provision that a breach of conditions would make the grant liable to confiscation was only intended to remain in operation till permanent rights were acquired. This is expressly stated in the form of application for peasant grants issued at the time. A long period elapsed, as I have already stated, before the statement of conditions under Act III of 1893 was finally issued. These Rakh Branch grantees signed the registers long after they had received their grants. I think in the circumstances it is well not to take advantage of a somewhat stringent condition in the statements finally sanctioned for peasant grantees on twelfth August 1896 and for yeoman and capitalist grantees on thirteenth July 1897. I therefore move that the following proviso be added to clause 24:—

- 'Provided further that in the case of land irrigated by the Rakh and Mián Ali Branches of the Chenab Canal sub-sections (2) and (3) shall not apply to a tenant to whom land was allotted before the twelfth day of August 1896, and who has been granted a right of occupancy therein; and sub-section (2) shall not apply to an owner to whom land was allotted as a tenant before the thirteenth day of July 1897.'

The motion was put and agreed to.

The Hon'ble MR. DOUIE:—"The first amendment which I move to clause 25 is that for the last twenty-four words, namely, 'lops, taps, or burns any tree standing on any such land, or strips off the bark or leaves from, or otherwise damages, the same' the following words be substituted: 'or otherwise wilfully damages any tree standing on any such land.' The original wording is taken from the Forest Act and is unfortunate, for it might well lead, and has led, people to think that Government intended to be very strict to mark petty misdemeanours; and

might give underlings a handle for extortion. Sub-clause 25 (1) (d) will, if my amendment is accepted, run 'fells, girdles, or otherwise wilfully damages any tree standing on any such land.'

The motion was put and agreed to.

The Hon'ble MR. DOUIE :—"I have proposed, and the Council has agreed to remove breaches of clause 23 entirely from this section. I now move that section 25 shall consist of a single clause, that the words 'any tenant or owner who erects a building in contravention of section 23' shall be cut out, and that the next part of the clause shall run—'shall be punished on conviction by a Magistrate with fine not exceeding two hundred rupees.'

"I think the punishment of imprisonment may be given up, and that in the amended clause and clause 26 we shall still have sufficient power to repress the misdemeanours detailed in clause 25.

"The words 'nothing in this section shall be deemed to prohibit any act done in accordance with the conditions of a tenancy or by the permission of the Collector or of any officer of Government duly authorised in this behalf' will stand as at present."

The motion was put and agreed to.

The Hon'ble MR. DOUIE :—"In clause 26 (b) I move the omission of the words 'or sub-section (2)' and between the letters '(c)' and '(e)' the word 'or' be inserted. This is a necessary result of the amendment which the Council has just accepted."

The motion was put and agreed to.

The Hon'ble MR. DOUIE :—"Section 9 of Act III of 1893, the law we are now repealing, provides that 'all sums due to Government in respect of a tenancy granted in pursuance of this Act shall be recoverable as if they were arrears of land revenue.' By a curious omission clause 27 as drafted only applies to sums recoverable under the present Bill. It seems hardly necessary to say anything to justify the insertion after 'due to Government' of the words 'in respect of a tenancy granted in pursuance of the Government Tenants (Punjab) Act, III of 1893.' I move that they be inserted with the necessary addition of the word 'or.' That will be merely to maintain the existing law."

The motion was put and agreed to.

The Hon'ble THAKUR MAHAN CHAND :—"It seems to be an unnecessary interference with the rights of owners to make restrictions for the planting of certain number of trees in their holdings.

"There is an amendment proposed to withdraw the interference in the case of auction purchasers; then there is no reason why the other owners who have acquired proprietary rights by one way or other should not also be exempted from the effect of the clause; so I propose that in clause 28 (1) (d) the words 'and owners' be omitted."

The Hon'ble MR. DOUIE :—"In the matter of trees I do not think we need insist on the power of making rules requiring the planting of a certain number by men who have acquired, or can acquire, ownership in existing grants. In the Chenab Colony men have acquired, or may acquire, ownership in well over 200,000 acres, but after all that is but a small part of the huge area which the colony contains. I advise that the amendment of my Hon'ble friend be accepted if he will confine its scope to existing owners and existing grantees who may, under the conditions of their grants, acquire ownership. I think Government should have full power in future colonies to require persons to whom it permits the acquisition of ownership to plant and maintain a certain number of trees on their holdings. I would suggest that the words 'and owners' be left in sub-clause (d), but that

we should add to the proviso the following words :—

' and further that rules under clause (d) shall not apply to tenants who, before the commencement of this Act, have acquired ownership or have been allotted land as tenants on conditions that permit them to acquire ownership.'

If this is accepted, I shall withdraw the amendment to sub-clause (1) (d) that stands in my name."

On this the Hon'ble THAKUR MAHAN CHAND, with the permission of His Honour the President, withdrew his amendment, and moved that the following be added to the proviso to clause 28 (1) :—

" and further that rules under clause (d) shall not apply to tenants who, before the commencement of this Act, have acquired ownership or have been allotted land as tenants on conditions that permit them to acquire ownership."

On the motion being put and agreed to, the Hon'ble MR. DOUIE, with the permission of His Honour the President, withdrew the amendment that stood in his name.

The Hon'ble MR. DOUIE :—"It seems to have been supposed that under the proviso to clause 28 (1) Government would require a grantee to plant two trees on every acre included in his grant. That is certainly not our object. Trees would naturally be planted in a line along the water-course which serves the square or in a clump in one corner of it. To make this plain I move to substitute for the words 'the number of trees of which the planting is ordered by rules under clause (d) shall not exceed two for each acre' the words 'the rules shall not require the planting of a larger number of trees in a holding than twice the number of acres included therein.'"

The motion was put and agreed to.

The Hon'ble MR. DOUIE :—"In clause 28 (2) I move to substitute 'fifty rupees' for 'one hundred rupees,' and to strike out the words 'or imprisonment for a period not exceeding one month.' That is in accordance with the policy of limiting the penal powers for which we ask as much as possible."

The motion was put and agreed to.

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

The Hon'ble MALIK UMAR HAYAT KHAN said :—"Your Honour, I now beg permission to make a few general observations. The Bill has caused a great deal of sensation in the province. It may be said that it is mostly due to its being introduced at a time when there is an over-tendency to criticize Government measures. Nevertheless, I am of opinion that we should guard, as much as possible, against misunderstandings. Somehow or other an idea has been created that the Government is going to curtail vested rights. I believe this is far from the intentions of the Government. This being so, I would have wished that the enactment should have been so worded that it should not have retrospective effect unless the nature of the Bill was such that it could not work hardship on previous grantees. At the meetings of the Subcommittee my Hon'ble colleagues and I suggested some amendments, most of which were accepted. But the sections to which I have to-day taken objection were left intact. I regret that I cannot approve of any of those provisions of the Bill which will interfere with vested rights. It is apprehended by a large number of persons that tenants having right to acquire proprietary titles under the conditions of their leases might be subjected to new conditions taking away that right of acquiring ownership.

"Tenants and owners feel that the powers of re-entry given to the Collector are too severe, and I should have preferred to see the Bill so drafted as to provide that other and less stringent remedies should be resorted to first,

in the case of tenants; and that this power should not be exercised at all in the case of owners unless it was provided in their original agreements.

"I also consider that these provisions are open to objection as likely to retard the development and large future schemes of colonization."

The Hon'ble SARDAR PARTAP SINGH said:—"I again take the liberty of respectfully pointing out that the feeling against the Bill is very strong amongst the agricultural classes, and I think it would have been wiser in every way to postpone the final passing of the Bill. This would give time to the public to think over the Bill as it is now after all the amendments that have been made in it to-day. As a whole the Bill has certainly improved. I would not have urged the postponement had I not considered it my duty to do so as a loyal subject of His Majesty.

"As the motion for postponing the reconsideration of the Bill has not been accepted and as most of the serious objections have been up to a certain extent modified, I have no alternative left but to reluctantly vote for the passing of the Bill."

The motion was put and the Council divided—

Ayes—6.

The Hon'ble THAKUR MAHAN CHAND.
The Hon'ble SARDAR PARTAP SINGH.
The Hon'ble MR. STEPHEN FINNEY.
The Hon'ble SIR DAVID MASSON.
The Hon'ble MR. J. M. DOUIE.
The Hon'ble MR. GORDON WALKER.

Noes—1.

The Hon'ble MALIK UMAR HAYAT KHAN.

So the motion was agreed to.

The Hon'ble SARDAR PARTAP SINGH in a few words of farewell wished His Honour the President on behalf of Council good-bye and God-speed.

His Honour the PRESIDENT addressed the Council. He said:—"As this is the last time that I shall have the honour of presiding over a meeting of this Council, I should like to make a few farewell remarks before we separate. At our first meeting after I assumed charge of my present post I said that I hoped my tenure of office would be characterized by a satisfactory outturn of sound and solid, but unostentatious and unsensational, legislation. I think I may fairly claim that this hope has been realized. During the past five years 14 new enactments, including the Bill we have passed to-day, have been added to our Provincial Statute Book. Of these, one was a special and temporary measure dealing with matters connected with the Coronation Darbār which was held at Delhi in January 1903, but the rest of this legislation will, I trust, prove to be of permanent utility and benefit to the people of this province, and some of these enactments, such as the Court of Wards Act, the Minor Canals Act, and the Pre-emption Act, are measures of very significant importance and value. Only three of the Acts we have made during my term of office have, as far as I recollect, given rise to any difference of opinion during their passage through our Council. One of these was the Loans Limitation Act which has extended the period of limitation for ordinary money claims from 3 to 6 years, and as regards this enactment I am able to say that, as far as can be seen at present after nearly 3 years' experience of its working, it is fulfilling its main object of diminishing litigation between money-lenders and their agricultural debtors by providing greater facilities for the private settlement of such cases. The other Acts which have evoked criticism on some of their provisions are the Colonies Bill which we have just passed into law after introducing some important modifications into it, and the amendment of the Land Alienation Act which we passed a week ago. As regards the former of these enactments, I have full confidence that experience of its working will show that while strengthening the

hands of the officers who are responsible for the administration of the Canal Colonies to the extent necessary to enable them to discharge their important duties effectively, its provisions are in no way detrimental, but on the contrary really beneficial, to the true interests of the colonists themselves. And as regards the amendment of the Land Alienation Act of 1900, the abolition of the statutory agriculturist, to which the Hon'ble THAKAR MAHAN CHAND objected, is, as was fully explained when the Bill was discussed, essential to the carrying out of the full policy of the Act. Gentlemen, I much regret that the time has come for me to bid you farewell, and I wish you all success in your future legislative labours."

ADJOURNMENT.

The Council adjourned *sine die*.

LAHORE:

S. M. ROBINSON,

The 28th February 1907.

Secretary, Legislative Council, Punjab.

PUNJAB GOVERNMENT.
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of the Punjab, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 and 25 Vict., Cap. 67, and 55 and 56 Vict., Cap. 14).

THE Council met at Barnes Court, Simla, on Saturday, the 3rd July 1909, at 11 A.M. بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

PRESENT :

His Honour Sir LOUIS WILLIAM DANE, K.C.I.E., C.S.I., I.C.S.,
Lieutenant-Governor, *presiding*.
The Hon'ble Sardar PARTAP SINGH, C.S.I., Ahluwalia.
The Hon'ble Malik UMAR HAYAT KHAN, Tiwana, C.I.E.
The Hon'ble Mr. HARKISHEN LAL, Barrister-at-Law. ✓
The Hon'ble Mr. A. M. KER, C.I.E.
The Hon'ble Mr. W. R. H. MERK, C.S.I., I.C.S.
The Hon'ble Mr. A. MEREDITH, I.C.S.
The Hon'ble Mr. M. W. FENTON, I.C.S.
The Hon'ble Mr. W. B. GORDON, C.I.E.
The Hon'ble Khan Bahadur Mian MUHAMMAD SHAFI, Barrister-at-Law.

New Members.

The Hon'ble Sardar PARTAP SINGH, the Hon'ble Malik UMAR HAYAT KHAN, the Hon'ble Mr. HARKISHEN LAL, the Hon'ble Mr. A. M. KER, the Hon'ble Mr. MERK, the Hon'ble Mr. MEREDITH, the Hon'ble Mr. FENTON, the Hon'ble Mr. GORDON, and the Hon'ble Mr. MUHAMMAD SHAFI, took their seats in Council. ✓

His Honour the President addressed the Council. He said : " Gentlemen,—Beyond acknowledging the pleasure that I feel in meeting the Legislative Council for the first time during my tenure of office, it was not my intention to have taken up your time with any remarks before we proceeded to the consideration of the short, but important, measure which stands on the agenda. Things in the Punjab are prosperous. The last rabi harvest has been on the whole very good, and in the Chenab Colony the average outturn of wheat is put at 16½ maunds to the acre, while the exports of wheat to Karachi in June have risen to the amount of over a quarter of a million tons, which is twenty-five thousand tons in excess of any previous record for the month. There were excellent rains for the early sowings in April, and conditions have been very favourable during June for the districts of the Delhi Division, and I trust that there will be a good kharif harvest so that we may recover a large portion of the balance of 50 lakhs in that division of the sums which

have been advanced by the rest of the Province to the cultivators of that tract as loans without interest in the shape of suspensions during the past years of scarcity. Plague has been mild throughout the year, and now has died down almost entirely, the return for the week ending 26th June showing only 120 deaths for the whole Province. Altogether therefore our prospects are bright, and there was no need for me to say anything on the present occasion as, though it may be almost the last on which the Council in its present form may meet, I hope to have another opportunity of giving an account of our stewardship.

I feel, however, that I must refer to the appalling tragedy which has just occurred in London, where Sir William Curzon Wyllie and Dr. Lalkaka have been murdered in cold blood by a dastardly assassin. I have not the pleasure of knowing Dr. Lalkaka, but he appears to have been an Indian gentleman of the best type, and it is said that he fell in a gallant attempt to protect his companion. Sir William was an old friend and one of the best-loved officers who ever served India. He was dear both to Indians and Europeans, and had not an enemy in this country, while his services as Political Aide-de-Camp to the Secretary of State in England, which were freely at the use of any visitor, must have given him an additional claim on the affection of all Indians who have visited that country during recent years. That such a man should have been struck down by an assassin at all is deplorable by all lovers of India, but that the deed should have been accomplished by an educated student almost before the eyes of his wife and at an entertainment of the Indian Association, which exists solely for the benefit of India and Indians in Europe and strives to bring both communities together, almost makes one despair of our modern system of up-bringing. It is said that the assassin was a Punjabi, but for the credit of this Province I trust that this is not true. We have our differences in this Province as elsewhere, and as becomes manly races we state our views with freedom, and even vehemence—a state of things which I for one welcome—but thank God cowardly assassins of this type have been few in the Punjab. It will be a grievous blot on the escutcheon of our Province if a Punjabi has done this thing. At any rate, I trust that it will give pause to those who are engaged spitefully bespattering all well-meant attempts to infuse more sympathy and cordiality into the relations between the communities out here. Friendly reunions are denounced as truckling subserviency on the one side and attempts to undermine independence on the other. Even assistance given by the Government and the servants of the public to an attempt by a considerable body of men of position and influence to show forth to advantage the industrial and agricultural resources of the Province as was done in Calcutta in 1906 and elsewhere—an action which we should certainly take in the interests of the Province, whether or not we agree entirely with all the political views of the promoters—is described as barefaced bribery. What these gentlemen really want is beyond my understanding, but it is their poison which distilling in the weakened brains of ill-nurtured and half-educated youth produces effects which I trust the writers do not intend, and results in crimes such as that which I am sure we all deplore. If Sir William Curzon Wyllie's death leads to a change in the tone of such writers, he would himself have rejoiced in his end, which, joined as it was by the fall of a devoted Indian, may I trust in Providence be the seal of a closer union between all of us out here."

The Hon'ble MR. MUHAMMAD SHAFI said:—"I crave leave, on behalf of the Indian community in general and the Muhammadan community in particular, to give expression to the feeling of intense horror with which we have heard the sad news of the dastardly assassination of Colonel Sir Curzon Wyllie. I am deeply grieved that the perpetrator of this horrible crime should have been a Punjabi student, for in this Province—at least as regards the better classes—the relations between Europeans and Indians have been satisfactory. I assure Your Honour that the people of the Punjab will hear of this outrage with deep

indignation. They are thoroughly loyal to the British Government, and sincerely desire the maintenance and stability of the British rule in India. Indeed, dastardly crimes like this cannot but cause deep horror amongst all loyal subjects of the British Crown, and I have considered it my duty to say these few words to express our abhorrence of this cowardly crime."

The Hon'ble SARDAR PARTAP SINGH said :—" It breaks my heart that a man of the province of the Punjab, of which all are so proud, should have committed so foul a deed. As a member of one of the ruling families of the province and as a Chief in Government territory myself, I consider that people whose diseased brains lead them to perpetrate such dreadful crimes should be uprooted out of the country. No punishment could adequately meet such crimes, and I assure Your Honour that if the Government wish it, the Punjab Chiefs would take any steps to stop a propaganda which resulted in such actions."

The Hon'ble MR. HARKISHEN LAL said :—" With Your Honour's permission I join with my friends the Hon'ble MR. MUHAMMAD SHAFI and the Hon'ble SARDAR PARTAP SINGH in the expression of regret at the dastardly act just brought to the notice of the Council. I have no doubt that the whole of the educated community, to which I have the honour to belong, would look with abhorrence on this act, and would echo the sentiments expressed in this Council to-day. Ever since the troubles have arisen, the educated community have endeavoured to bring about a better condition of affairs into the country, and I have no doubt that they will not relax their efforts until a better understanding is established in the land.

" I also wish to express on behalf of all communities our deep sense of gratitude for the liberal support that Your Honour has extended to the proposal of holding an Arts, Industrial and Agricultural Exhibition at Lahore this year, and for the unstinted assistance that the officers of the Government are rendering us in the arduous task of organising the Exhibition. Your Honour is aware that all classes of people are realising the benefits likely to result from the Exhibition proposed, and I trust Your Honour will not heed the adverse remarks made by misguided people, and I have no doubt that the officials and the public will continue to co-operate in what is the real good of the people."

The Hon'ble MALIK UMAR HAYAT KHAN said :—" Your Honour, I agree with the sentiments expressed by my colleagues in the Council at this dreadful tragedy, but I cannot find words to express my sorrow. Unlike my friends, however, I say that we should not confine ourselves to mere words. We must propose certain measures to stop the recurrence of such deeds in the future. I think that the higher education now accessible to low and irresponsible classes has much to do with these crimes, and unless some measures are taken to check or qualify it, it is bound to produce the same results."

PUNJAB COURTS ACT (AMENDMENT) BILL.

The Hon'ble MR. FENTON moved for leave to introduce a Bill further to amend the Punjab Courts Act, XVII of 1884. He said :—" I beg to move for leave to introduce a Bill further to amend the Punjab Courts Act, 1884. I find that this particular enactment has undergone amendment no less than eleven times. Some of these amendments were important and far-reaching in their effects. Others were of a simple character—the addition or omission of a word, a sentence or a section. The Bill which I now ask leave to introduce is of the latter description. It adds a single section to the Act of 1884, a section conferring upon the Chief Court a power to review the decisions on certain points of a Judge of the Court exercising original jurisdiction in trials of European British subjects. As the law now stands, points of difficulty may be reserved by the presiding Judge and be referred for full bench decision. But if no such reservation and reference have taken place, the decision of the single Judge is final. Above the Chief Court there is of course the Privy Council, but

appeals to the Privy Council in criminal cases are seldom admissible. They can be entertained only if the Chief Court certify that the case is a fit one for appeal, and, as has been decided by the Bombay High Court in the Tilak case of last year, before granting such a certificate the Court must be satisfied that grave and substantial injustice may have been done by reason of some departure from the principles of natural justice. The Privy Council may for practical purposes therefore be left out of account in considering the courses open to a convicted person who conceives that he has been prejudiced by a legal error in a trial before a single Judge. In the High Courts of India Rule 26 of the Letters Patent issued under 24 and 25 Vict., Cap. 104, provides for a review by the Court of the decisions on points of law of Judges in original trials, and the Lower Burma Courts Act of 1900 contains a similar provision applicable to the Chief Court of that Province. It is this latter provision, section 12 of the Lower Burma Courts Act VI of 1900, which has been taken as the model for the section now proposed to be added to the Punjab Courts Act. It may be explained that in this matter the initiative has been taken by the Chief Court itself. In two recent cases, *Hale versus the King Emperor*, decided in 1907, and *Press versus the King Emperor*, decided in 1908, the Chief Court has fully examined the law on the subject, and has held that the review jurisdiction which is vested in the High Courts and the Burma Chief Court by the enactments cited above has no counterpart in the law applicable to this province. In these particular cases Government was satisfied that the absence of such jurisdiction had not resulted in any injustice to the convicts concerned. In the Press case the circumstance that the Chief Court was thus precluded from exercising revision was regarded as entitling the convict's petition to Government for clemency to specially careful consideration, which I am authorised to say was accorded to it in full measure. But though the circumstance that the law in this Province differs from that which prevails elsewhere has not up to the present resulted in any injustice, the Chief Court has very rightly deemed it expedient to ask that steps be taken to remove the anomaly, now that its existence has attracted attention. Thus the legislative action now taken is so taken at the request of the Chief Court."

The motion was put and agreed to, and the Hon'ble MR. FENTON introduced the Bill.

The Hon'ble MR. FENTON moved that the Bill be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. HARKISHEN LAL moved the following amendment in the proposed section 11 A—

That after the word "trial" the words "or exercising extraordinary criminal original jurisdiction under section 526 of the Code of Criminal Procedure, 1898," be inserted.

He said :—"In moving this amendment I ask leave to make only a few observations. The Bill has been introduced in consequence of a recent judgment of the Chief Court, *Press versus King Emperor*. The Chief Court had before it in that case for determination 'whether an application for revision under section 439 of the Criminal Procedure Code lies in a case, where the applicant has been convicted and sentenced at a trial held by a single Judge of the Court with Jury, in the exercise of the Court's original criminal jurisdiction' and held that no such application lies, and hoped 'that the Legislative will, at a convenient date, confer upon the Court powers similar to those possessed by the High Courts and the Lower Burma Chief Court.'

"Now, on examining the sections of the Letters Patent of the High Courts and that of Lower Burma Courts Act, it appears that the powers of revision bestowed upon the High Courts are somewhat wider than those of the Lower Burma Chief Court,

"Section 26 of the Calcutta Letters Patent covers all cases decided by the Court's original criminal jurisdiction, *i.e.*, having powers under sections 22 and 24 of the Letters Patent and section 526 of the Criminal Procedure Code; while the Lower Burma Courts Act in this respect confines itself to cases 'decided by a Judge of the Chief Court as a Court having power to try European British subjects committed to it for trial.' Now, the Chief Court of the Punjab has original criminal jurisdiction under section 7 of the Punjab Courts Act as well as under section 526 of the Code of Criminal Procedure, which empowers the Court to order, 'that any particular criminal case be transferred to and tried by itself' or 'that any accused person be committed for trial to itself.'

"It is to provide revision in such cases that the amendment is suggested, and the necessity for such a provision as contemplated by the amendment is all the more urgent as in these cases the trial may as well be without the jury."

The Hon'ble MR. MUHAMMAD SHAFI said:—"I have great pleasure in seconding the amendment proposed by the Hon'ble MR. HARKISHEN LAL. Clauses (iii) and (iv) of sub-section (1), section 526 of the Code of Criminal Procedure, empower the High Court, in certain circumstances specified in that section, to direct transfer of 'any particular criminal case' to or commitment of an accused person for trial before itself, and sub-section (2) provides that the High Court shall, except as provided in section 267, observe in such trials the same procedure which the original Court would have observed if the case had not been so withdrawn. Now, the provision of the law mentioned above read together with that contained in section 267 makes it clear that the trial of the case so withdrawn to its own file by the Chief Court will be either with or without a jury, as the Court may think fit. In either case the Court will be exercising original jurisdiction, and yet, strange to say, the Code of Criminal Procedure does not provide for an appeal or a revision against the final judgment passed by the Judge presiding at such a trial. This appears to me to be an extremely anomalous state of things, and is opposed to all principles underlying the administration of justice. There is absolutely no reason why the decision of the single Judge in such cases should be final and the Crown or the accused, as the case may be, should be prevented from obtaining redress in cases, at least, of errors of law leading to a miscarriage of justice or where a jury has given an erroneous verdict due to a misdirection by the Judge. I would like to add that the enactment of a sub-section such as has been suggested will be a complete answer to the objection advanced in certain quarters that the Bill has been placed on the Legislative Council in the interests of a particular class alone."

The Hon'ble MR. FENTON said:—"This amendment is accepted by Government. It is true that the section of the Lower Burma Courts Act on which the present Bill is modelled deals only with review in cases of trial of European British subjects, but the powers of the High Courts under the Letters Patent are more general and extend to all original jurisdiction by a single Judge. All original jurisdiction in the case of the Chief Court will be covered by the words of the section now under consideration as it will stand if this amendment is accepted. There is no other original criminal jurisdiction than that which is exercised in trials of European British subjects and that which may be exercised under section 526 of the Criminal Procedure Code."

The motion was put and agreed to.

The Hon'ble MR. HARKISHEN LAL moved:—

That the words "on its being certified by the Government Advocate that in his opinion the decision should be further considered" be omitted.

He said:—"In suggesting the omission of certain words from the original section it is intended to give the accused the right of going direct to the Judges of the highest Court without the intervention of a middleman. The accused

when tried on the original side of the Chief Court, whether with or without the jury, has no right of appeal on the questions of fact, and a limited right on the questions of law. Therefore it is necessary that the privilege of revisional remedy should not be further fettered by restrictions of the nature proposed. Only two objections can possibly be urged against the amendment that I am proposing,—one that the accused in the Punjab should not have wider privileges than the accused in any other province of India, and the second, that the time of the Chief Court should not be wasted by indiscriminate applications. As to the first objection, I beg to observe that the rights of the accused are already very much restricted when tried on the original side of the Chief Court, and it is hardly fair to grudge him the right of applying to the Chief Court direct. As to the second, the cases contemplated are generally so few and far between that the Chief Court may well spare a little time for their consideration, especially in view of the fact that there are liberal rights of appealing and revision in other cases. It is besides difficult to conceive that the Advocate who appears on behalf of the Crown and contests the case in the Court will be, at a subsequent stage, readily convinced of the importance of the points raised by the accused so as to certify for revision; and it is quite conceivable that he may be afraid to run the risk of criticism by the Chief Court of the proper use of his judgment and therefore refrain from certifying.

"In the Punjab once existed the rule of certificate for further appeals on the Civil side, which had to be repealed for its unsatisfactory working, and the present rule, if enacted, will not work any better."

The Hon'ble MR. MUHAMMAD SHAFI opposed the amendment and said:—"I regret I am unable to agree to the amendment just proposed by the Hon'ble MR. HARKISHEN LAL not only because it is a departure from the law as prevailing in other Provinces, but also because I regard the restriction imposed by this clause as a wholesome one. The proposed section contemplates three cases, *i.e.*, (a) errors of law, (b) a wrongful admission of evidence, and (c) misconstruction of documents. Now, an error of law may be with reference to a point material to the final decision of the case or may concern itself to a matter absolutely immaterial to it. Similarly the evidence alleged to have been wrongfully admitted, though relevant, may not have a material bearing on a point essential to the final decision. The same may be said of the document the construction of which is in question. The removal of a wholesome restriction such as this will enable the persons concerned to take up almost every case to a Division Bench, and will result in the time of the Chief Court being wasted. Those of us who have any experience of Chief Court practice know full well how the time of the Court is taken up by applications for revision, most frivolous in their character. I, for one, cannot imagine that the Government Advocate will refuse to grant the necessary certificate in cases which really do require reconsideration, and experience in other Provinces has not shown that the restriction in question has worked any injury to the administration of justice in such cases. For these reasons I am unable to agree to the amendment proposed by my Honourable friend."

The Hon'ble MR. FENTON said:—"I oppose this amendment. It will establish a practice for the Chief Court different from that which prevails elsewhere. The Legislature does not allow the decisions of the supreme tribunals to be lightly assailed. In the case of an appeal to the Privy Council a certificate of the Court against whose decision the appeal is preferred is a necessary preliminary. It was never intended that a procedure designed to meet exceptional circumstances and to be resorted to only for the correction of legal errors which have substantially prejudiced an accused person should be regarded as a stage of invariable routine. It should not be permitted to every person convicted in a fair and full trial by Judge and Jury to demand for reasons, however fanciful, unfounded and far-fetched, to have the case re-opened and re-argued before a Bench. Such tactics if permissible would inevitably be resorted to in every case in order to delay execution. The requirement as to a preliminary certificate by the Government Advocate will act as a safeguard against such

attempts to abuse judicial procedure while ensuring that the remedy now provided will be available in all genuine and *bona fide* cases."

The Hon'ble MR. HARKISHEN LAL replied. He said :—" In reply to the remarks made by the Hon'ble MR. MUHAMMAD SHAFI and the Hon'ble MR. FENTON, I beg to urge that they have not raised any new point which I did not anticipate and meet in my opening remarks. The story told us by the Hon'ble MR. MUHAMMAD SHAFI might be regarded as an impeachment of the Counsel concerned and not a sound objection to the amendment proposed. No doubt in some cases the time of the Chief Court is wasted by frivolous petitions or by the unpreparedness of Counsel, but it is not likely that any appreciable effect will be felt in this respect if the amendment is accepted."

The motion was put and lost.

The Hon'ble MR. MUHAMMAD SHAFI was permitted by the President to move the following amendment, that the word "revise" be substituted for the word "review" in the proposed section. He said :—" With your permission I would like to suggest the substitution of the word 'revise' in the place of 'review' in the proposed section. The object of the section is, I presume, to give to a Division Bench of the Chief Court power to revise the decision of a single Judge in these cases. The word 'review' has a well-understood technical meaning, and the expression 'the Chief Court may review' is susceptible of being construed to mean that the application for reconsideration is to be heard by the same Judge who originally presided at the trial. I would, therefore, propose that the word 'revise' be substituted for 'review' in the provision of the law now under the consideration of this Council."

The Hon'ble MR. FENTON said :—" I do not think that the language in which our law is to be framed should depart from the precedents of the Letters Patent applicable to the High Courts, the Lower Burma Courts Act and the Criminal Procedure Code itself, which in section 434 uses the word 'review' to describe the action taken by a Bench of the High Court on a reference from a single Judge under that section. I oppose the amendment."

The Hon'ble MR. HARKISHEN LAL said :—" I support my friend in the amendment that he has proposed inasmuch as I know from my own practice at the Chief Court that the words 'review' and 'revision' are used in two different aspects, and it is likely that the object of the Bill may be defeated if the customary meanings are attached to the word 'review' in this section. I had intended to raise the question myself, but was prevented from doing so in consideration of the fact that the same word was used in the Letters Patent and the Courts Act of Burma. If the word 'revise' is substituted for the word 'review' it will certainly save the Chief Court the trouble of listening to a fine argument on the different connotations of the two words and the writing of an elaborate judgment on the subject."

The motion was put and lost.

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

The motion was put and agreed to.

ADJOURNMENT.

The Council adjourned *sine die*.

SIMLA :

S. W. GRACEY,

The 3rd July 1909. }

Secretary, Legislative Council, Punjab.

الحاجی ابرار علی خان
3 جولائی 1909