Friday,
23rd March, 1888

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXVII

Jan.-Dec., 1888

ABSTRACT OF THE PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

VOLUME XXVII

Published by the Authority of the Governor General.

CALCUTTA:
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.
1889

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 23rd March, 1888.

PRESENT:

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

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Lieutenant-General G. T. Chesney, R.E., C.B., C.S.I., C.I.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

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

The Hon'ble J. Westland.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Peári Mohan Mukerji, C.S.I.

The Hon'ble G. H. P. Evans.

The Hon'ble J. W. Quinton, C.S.I.

The Hon'ble R. Steel.

The Hon'ble F. M. Halliday.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

THE FALL OF FORT LINGTU.

On the members taking their seats, His Excellency THE VICEROY said:—"Before we commence the proceedings of today it may, perhaps, be interesting to the Council to know that Her Majesty's troops have taken possession of Fort Lingtu without opposition. On the 19th they came upon a small stockade erected by the Tibetans at which some opposition was encountered, but with their usual gallantry our troops rushed it, and the enemy fled with scarcely any resistance. The effect of this success seems completely to have disorganised them, and, as I have already mentioned, they have abandoned their position at Lingtu. I am in great hopes that this slight and facile vindication of our treaty rights will in future free the road through Sikkim which had been blocked by the enemy, and will close this trifling dispute which has unfortunately arisen between us and the Tibetans."

DEBTORS BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to amend the law relating to Imprisonment for Debt be taken into consideration.

The Motion was put and agreed to.

The Hon'ble RÁJÁ PEÁRI MOHAN MUKERJI moved that the following sub-section be added to section 10 of the Bill :—

"(3) The provisions of this Act shall not apply to suits under Act VIII of 1885."

He said :—"Several of the Local Governments and Administrations have reserved to themselves a special procedure for the recovery of their own demands of land-revenue. The Punjab, the North-Western Provinces, the Oudh, the Madras, the Bombay and the Central Provinces Revenue Codes provide for the imprisonment of the defaulter of land-revenue independent of the provisions of the Code of Civil Procedure. In Bengal the sunset law and the certificate procedure place perhaps larger powers in the hands of the Local Government as regards the enforcement of its revenue-demands. I do not for a moment contend that these exceptional procedures for the recovery of revenue-demands are open to any serious objection, but I do most earnestly contend that those who have to pay the revenue should not be deprived, except in cases of absolute necessity, of any procedure which the law has placed at their service for the recovery of rents from their tenants. The relations between landlords and tenants radically differ from the relations subsisting between ordinary creditors and their debtors. An ordinary creditor takes care to enquire into the circumstances of the person who wants to borrow, and satisfies himself of his character and of his solvency before he lends him money; whereas a landholder has to collect small sums of money from a large number of persons, a majority of whom are notoriously improvident. It is a case of involuntary creditorship in which the creditor has no power of preventing the contraction of bad debts. There is again the important consideration that, whereas an ordinary creditor in suing for the recovery of debt sues for money which belongs to himself, a large portion of the rents which a landholder sues to recover does not belong to himself, but has to be paid to Government. The legislature has, therefore very properly given exceptional procedures for the recovery of arrears of rent to landholders in the North-Western Provinces, Oudh, Madras and the Central Provinces.

"The effect of the measure now before this Hon'ble Council would be to place the landholders of Bengal and Behar in a singularly difficult position as regards the recovery of arrears of rent. While their brethren in several other provinces will continue to recover their rents under the present procedure, the landholders of Bengal and Behar, who have been recently deprived of the power of distraining the crops of their raiyats without the intervention of the Courts and

ejecting them for non-payment of rent, would be deprived of a procedure which, without causing the slightest hardship to the raiyats, imposed a wholesome check upon improvidence and wilful recusancy. The proposed change of procedure is the more objectionable as official statistics clearly show that it is only in an extremely small number of cases that rent-defaulters are actually imprisoned. During the last official year it was only in about 600 rents-suits out of more than 100,000 that judgment-debtors were imprisoned for default of payment. There is, therefore, absolutely no case made out why there should be a change in the law regulating the relations of landlords and tenants so soon after it has been most carefully and elaborately considered and settled. It is not that this question of procedure was not considered by the Council when the Bengal Tenancy Bill was under consideration. The suggestion of the Rent Commission that the landlord shall not be entitled to resort to any other process for the recovery of rent until he has first brought the tenure or holding of the defaulter to sale was carefully considered and ultimately rejected. Unless, therefore, this Hon'ble Council were to amend the Bill in the way suggested by me, the proposed measure would have the effect of altering one of the most important provisions of the Bengal Tenancy Act."

The Hon'ble MR. HALLIDAY said :— "My Lord, I would ask for the indulgence of the Council to permit me to make a few remarks on the amendment just moved by my hon'ble friend—an amendment which I am unable to support.

"As I understand my hon'ble friend, he is opposed to the provisions of this Bill now before the Council being made to apply to suits under Act VIII of 1885, because, among other reasons, the zamindárs of Bengal, under the provisions of the Public Works and Road Cess Acts, are placed in the position that a large portion of the claim in rent-suits represents a sum which belongs to, and has to be recovered for, the Government, and not for the plaintiffs. Upon this point I think my hon'ble friend is holding an erroneous opinion.

"The proceeds of the road-cess are, under section 9 of the Cess Act, paid into the District Road Fund, and are applied to the purposes mentioned in section 109, which are mainly construction, maintenance and repairs of roads and bridges and other means and appliances for facilitating communications within the district or between adjacent districts, and the general control and administration of the fund is vested in a committee, formed under the principles of local self-government, chiefly of gentlemen who have the requisite qualifications as

payers of the road-cess of the district, and whose interest on that account it is to exercise the closest scrutiny over the manner of the expenditure of that fund.

"It can scarcely be a correct assertion then that the road-cess belongs exclusively to the Government.

"The proceeds of both the cesses in question are exclusively expended on improvement of the means of communication and other works of public utility, and these have the effect of raising the price of agricultrual produce in the producing districts.

"The zamindárs under the law are entitled to get, and do in fact get, a very large, if not the largest, share of the benefits of this rise in prices, by obtaining enhanced rents. It is indeed questionable whether in some districts in this province they do not receive by way of enhancement of rents the entire benefit of the rise in prices which results from improved facilities for communication, though under the law they pay only half the cost of effecting such improvements, as their raiyats pay the other half.

"I would urge then that the hon'ble member is mistaken when he says that the zamindárs receive no consideration whatever for the risk and trouble of collecting these cesses.

"They receive very great consideration in the enhanced rents to which they are entitled in consequence of the rise in prices which ensues from improvements in communications and from the general development of the province.

"I believe I am expressing the hon'ble member's own acceptation of the amount of the cesses in question in the province at the figure of 80 lakhs, and it seems to me that these figures go to prove that the zamindárs have not been slow to take advantage of the general development of the province by obtaining enhanced rents.

"The Cess Act is in force in 43 of the districts of Bengal, and in all but the one district of Backergunge the full rate of one anna in the rupee is levied.

"Now, if 80 lakhs represent the amount of these cesses, the rental of these districts must be at least sixteen times that amount, or, allowing for the half rates in Backergunge, the rental of these districts must be in round numbers 13 crores of rupees.

"Now, the Government land-revenue demand against these districts is three and three-quarter crores, or about one-fourth of the rental.

"When it is remembered that the permanent settlement was made on the supposition that the land-revenue represented nine-tenths of the rental, while now it represents only one-fourth part of it at the lowest estimate of the rental, it will be apparent how much the zamindárs have profited by increase in rents, due in a great measure to rise in prices from improved communications, and it will be evident how little cause that class has for saying that they get no consideration for the road and public works cesses. No valid argument for exclusion of their tenants from the operation of the Bill before the Council can therefore be based on this ground.

"I would urge, my Lord, that, whatever grounds there may be for giving the Courts discretion to exempt judgment-debtors from imprisonment in the execution of decrees, these grounds apply with greater force to agricultural raiyats than to any other class; because I hold that the possibility and probability of abuse of the power of imprisonment is greater in the case of raiyats than in the case of any other class; and moreover, in the case of cultivating tenants, the landlord or his agent most certainly has, or ought to have, a full knowledge of the position and circumstances of a defaulting tenant, whether he is insolvent or not, able or not able to pay; while it may be said that the *banyá* or the mahájan is at a disadvantage in that he does not and cannot always know the circumstances of his debtors. It may not be fair perhaps to make the assumption *ab uno disce omnes*, but still I may be permitted to give a forcible example of the abuse of such power of imprisonment and of its mischievous consequences.

"The instance I give is that of a village in a pargana in a certain district in which it became the duty of an officer of Government to re-settle rents, and this instance, I understand, was typical of the way rents were enhanced by landlords throughout that pargana. Rents had been formerly fixed at Rs. 2-12 a bighá; the landlord had been demanding Rs. 5-2. The head raiyats, representing the body of the raiyats, refused to pay. The landlord prohibited the cutting of their crops; the raiyats sued and got damages for the illegal distraint; they also sued for leases at Rs. 2-12, and succeeded in their suits. The landlord's brother then sued them for the sum of Rs. 700 on a bond for money supposed to be lent, which bond was contested as forged. The Civil Court peons were intercepted. The raiyats got no notice of the suit; the first they heard of it was by being arrested in execution of decree, and they were imprisoned for three months. Then the other villagers collected a sum of money amongst themselves and paid up the amount due. The raiyats in question were thereupon released, but being, as they said, helpless, they submitted to the enhance-

ment. This is an instance of one village only, but the results of a contest like this in one village strike terror throughout a pargana.

"I am afraid there can be little doubt that the abuse of the power of imprisoning raiyats for debt in execution of decrees has sometimes led to deplorable results in Behar and elsewhere, while it can hardly be seriously contended that the power of imprisonment is necessary in order to make solvent raiyats pay rents which they can and ought to pay but refuse to pay.

"Experience has shown me that the power of imprisoning raiyats is seldom had recourse to for the purpose of making them pay admitted or just demands, but it is often used to enforce prospective demands which are unjust, and in order to compel ignorant tenants to assent to illegitimate enhancements.

"When the law can be made an instrument of abuse the hour for reform has struck.

"I do not understand, my Lord, how any argument in favour of the exclusion of suits under the Bengal Tenancy Act can be based on the ground that the Tenancy Act deprived the Bengal zamindárs of the power of ejectment and distraining of crops.

"All that the Tenancy Act has done in these matters is to regulate the procedure by which distraint is to be made, and to define the conditions under which a tenant may be ejected, but it does not abolish the power of ejectment or distraint.

"But even were it otherwise, the retention of the arbitrary power of imprisonment, if bad in itself, cannot be justified on the ground that some other power formerly exercised by zamindárs has been curtailed or restricted."

The Hon'ble MR. QUINTON said:—"I must oppose the amendment. Throughout the greater part of British India, in Lower Bengal, in Bombay, in the Punjab, in the Central Provinces and in Lower Burma, the legislature has affirmed the principle that decrees in favour of landlords against tenants for arrears of rent should be executed in the same way and by the same processes as money-decrees in favour of other creditors.

"The Bill now under consideration modifies the law in respect to one of these processes, namely, imprisonment, as explained by my hon'ble friend Mr. Scoble on the 24th of February last, when presenting the Report of the Select Committee. Under the existing law any creditor who wishes to imprison

his judgment-debtor has only to apply to the Court charged with the execution of the decree, and the Court, if certain preliminary formalities are complied with, must thereupon arrest the debtor, and, if he fails to satisfy his creditor, send him to jail. It has no option in the matter. It is true that the debtor has a partial remedy by which he may escape imprisonment, namely, by applying to be declared an insolvent, but the Select Committee were satisfied that this remedy was not resorted to to the extent which might be reasonably expected, and that from its nature it was not sufficient to meet the evil against which the Bill is intended to provide. This procedure is altered by the Bill in two important points—(1) women are not to be imprisoned at all in execution of money-decrees, and (2) in the case of male debtors, the option of imprisonment is to rest with the Court and not with the creditor.

"The amendment on the table asks the Council to make an exception to the Bill in favour of decrees passed under the Bengal Tenancy Act. The effect of the amendment will be that the landlords of Bengal will retain the power of imprisoning through the ministerial action of the Courts their tenants against whom decrees for arrears of rent have been given, while all other landlords throughout India and all other judgment-creditors in Bengal, as well as in the rest of the empire to which the Code of Civil Procedure extends, will be deprived of this power.

"I am quite willing to admit that the case of the Bengal zamindárs differs in some important respects from that of landlords in the greater part of the rest of India. In the first place, they are now paying a revenue that was fixed ninety years ago, whereas elsewhere the revenue now paid was settled within comparatively recent periods. Again, that revenue has been fixed for all time, whereas other landlords, less fortunate, know that their revenue will be liable to enhancement once in a generation. While in other provinces the revenue was fixed with more or less reference to the rent obtainable from the land, in Bengal there was no such canon of assessment, and the long lapse of time since the permanent settlement has operated to increase the difference between the aggregate amounts paid as rent and as revenue. In Bengal 90 or 95 per cent. of the tenants are said to be tenants with rights of occupancy and their tenures are saleable in execution of decrees for arrears of rent. In other parts of India the landlord has not commonly this security. The Bengal zamindár, in common with the landlords of the North-Western Provinces, Oudh, Madras and the Central Provinces, has the right of recovering arrears by distraining the crops of his tenant. It is true that this privilege must be exercised through the Court, but even with this limitation, which was advisedly imposed three years ago,

the Bengal zamindárs are in a position superior to that of the Punjab and Bombay, where no such right of distraint exists at all. These differences between the relations of the Bengal zamindár to Government and his tenants and the corresponding relations of landlords in most other parts of India do not seem to justify the former in demanding exceptionally favourable treatment in the matter to which the Bill refers. They raise an *à priori* presumption that the Courts in Bengal should have the power, which we propose to give the Courts in other parts of India, of determining whether a tenant judgment-debtor should be sent to prison or not,—a presumption not rebutted by anything that has fallen from the hon'ble mover of the amendment.

"The hon'ble mover has over-estimated the number of provinces excluded from the operation of the Bill. It is only in the North-Western Provinces and Madras that the procedure in collection of rent-decrees is not governed by the Code of Civil Procedure. I would point out that the law as regards imprisonment in execution of rent-decrees in the two provinces already does very much what the Bill proposes to effect elsewhere. In the North-Western Provinces the Collector, by whom rent-decrees are executed, is not bound to send to jail a judgment-debtor who satisfies him that he has no *present* means of paying the amount of the decree; and in Madras a rent-defaulter is only sent to jail if there be no property to distrain or no saleable interest in the land, and if the Collector has reason to believe that the defaulter is wilfully withholding payment of an arrear or has been guilty of fraudulent conduct in order to evade payment.

"I am glad to observe that the hon'ble mover had no complaint to make against the law for the realization of revenue—a subject which is quite distinct from that of the present Bill; but, as pointed out by my hon'ble friend Mr. Halliday, the revenue of Bengal is about 25 per cent. of the rental, and the argument that no obstacle should be placed in the way of landlords realizing rent-decrees which constitute a large proportion of the money payable to Government as revenue comes with the worst grace from Bengal zamindárs, who in this respect are in a much better position than landholders elsewhere.

"The argument from statistics urged by my hon'ble friend seems to me to tell rather against him. The Bill in the opinion of the Select Committee should extend to all provinces where the procedure in rent-suits is regulated by the Code of Civil Procedure; and the amendment asks the Council to make an exception in favour of Bengal. It is urged that it is not worth while to make an alteration of the law in that province, as the cases in which imprisonment is

resorted to are so few. But, if this be so, where is the necessity for treating Bengal in an exceptional manner? The burden of proving that it should be so treated rests on the supporters of the amendment, and by their own shewing the figures quoted prove that the alterations proposed by the Bill can have very little effect there."

The Hon'ble SYUD AMEER HOSSEIN said—"My hon'ble friend having very ably advocated the cause of the zamindárs in support of his amendment, I beg, with Your Excellency's permission, to lay before the Council in a few words the other side of the question.

"We are to consider whether a raiyat should in respect of a debt covered by a rent-decree obtained against him by the zamindár be excluded from the benefit of the proposed law as regards the issue of a rule *nisi* before a warrant of arrest is issued against him. I feel no hesitation in saying that he should not be excluded from the benefit of this indulgent provision.

"The raiyat, of all debtors, should not be lightly sent to jail. As a factor in the food-supply of the country, he represents a class in whom the public generally are interested. His debt is practically a secured debt, the zamindár having the right to distrain his crops and to sell his tenure.

"If we go back to the provisions of the former Codes of Civil Procedure and the former Rent Acts and Regulations, we will find that there has been a parallel provision for the liability of a debtor in a money-decree and a debtor in a rent-decree to imprisonment in the execution of the same. But now that the legislature has thought it proper to give the debtors of money-decrees generally a chance to show cause against their arrest and imprisonment, I do not see why exception should be made against the debtor in a rent-decree.

"No honest and prudent zamindár would like to have an honest, though an unfortunate, raiyat locked up so long as he could have recourse to the other provisions of the Tenancy Act of 1885 for the realization of decrees in rent-suits.

"In the case of dishonest raiyats, the provision of section 4 of the Bill, by which the proposed law has been safeguarded, seems to me to be quite sufficient."

The Hon'ble Sir CHARLES AITCHISON said :—"I shall oppose this amendment. In the first place, the principle that in the province of Bengal the procedure in suits between landlords and tenants should be the ordinary civil procedure for the time being in force has been already adopted by the legislature. We are all familiar with the history of Act X of 1859, which is a landmark in

Indian legislation. By the provisions of that Act the jurisdiction of the Civil Courts was altogether barred in suits of the kind referred to in the amendment, which were made cognizable only in the Revenue Courts and under the special procedure laid down by the Act. Experience showed in a very short time that this was a mistake, and that in Bengal at any rate suits of the kind involve difficult questions of law and fact with which the ordinary Civil Courts were more competent to deal. Accordingly, after ten years' experience, the policy was reversed and the jurisdiction of the Civil Courts was restored by Bengal Act VIII of 1869, entitled *an Act to amend the procedure in suits between landlords and tenants*. Section 33 enacts that 'the jurisdiction of the Collectorate Courts to entertain such suits, save as regards any suits or proceedings then pending, shall cease, and all suits brought for any cause of action arising under Bengal Acts X of 1859 and VI of 1862 shall be cognizable by the Civil Courts according to their several jurisdictions.' And section 34 provided that 'suits of every description brought for any cause of action arising under the Act, and all proceedings therein, shall be regulated by the Code of Civil Procedure, being Act No. X of 1877, and by such further and other enactments of the Governor General in Council in relation to civil procedure as now are, or from time to time may be, in force; and all the provisions of the said Act and of such other enactments shall apply to such suits.' In Bengal, therefore, the special procedure in cases between landlords and tenants failed after trial, and the legislature expressly enacted that the procedure was to be the common procedure from time to time determined upon for ordinary civil suits. And this principle is still maintained. Section 143 of the Bengal Tenancy Act of 1885 gives power to the High Court, with the approval of the Governor General in Council, to make rules declaring that any portions of the Civil Procedure Code shall not apply to suits under that Act or shall apply to them subject to modifications; but the High Court has not yet seen fit to exercise that power. I can see no justification therefore for legislating now in a manner inconsistent with the policy deliberately adopted and followed for the last twenty years. There is indeed all the less necessity in that the High Court has power to prevent the application of any of the provisions of the general civil procedure which experience may show to be unsuitable.

"In the next place, except in the case of women, this Bill does not abolish imprisonment for debt, but leaves it to the Courts to determine whether or not imprisonment should be enforced. At present the Courts have no such discretion. Imprisonment depends upon the caprice of the creditor and not upon the merits of the case. The amendment, if carried, will still leave this power in the hands of landlords. Now, that the liberty of any subject of the Crown

however humble, should be at the mercy of any man, however powerful or rich, even if the Court does not consider that the debtor should be imprisoned, is a state of things which ought not in my judgment to be tolerated by the laws of any civilized Government. The greatest of criminals even are not treated so, and it seems to me that Courts of justice exist for the express purpose of preventing the possibility of such things."

His Honour THE LIEUTENANT-GOVERNOR said:—"I, too, must oppose the motion of my hon'ble friend opposite. It seems to me that the landlord who wishes that the Bill which is now before the Council should not be applied to suits in which the judgment-debtors happen to be agricultural raiyats makes a proposal to limit the value of that law in the very point and with respect to the very classes in respect to which the law is likely to be most valuable, and in which in my opinion it is most seriously needed. The law does not prevent the hon'ble gentleman from imprisoning his defaulting raiyat. What it does do is to say that he should not imprison his debtor without first giving him an opportunity of being heard by the Court, and yet he would take away this small safeguard and say 'No, he must be imprisoned on my dictum and not on that of the Judge.' I say that the safeguard provided by this Bill is more needed in the case of agriculturists than in respect of debtors of other classes, and I say so for this reason: my hon'ble friend has himself pointed out in how few cases it has been found requisite absolutely to imprison judgment-debtors on decrees for rent. Why then is it necessary to keep those sections of the old law as they stand? It is necessary as a most powerful reserve to those who apply a systematic method in harassing, worrying and finally breaking down those raiyats who combine to resist enhancement. The system by which monthly suits for arrears of rent are in very many cases in certain estates regularly introduced with the view of breaking down the opposition of raiyats was brought before the Council during the discussions on the Bengal Tenancy Bill, and I need not now refer to it further than to mention that the efficacy of that system depended upon the ability of the landlord to bring refractory raiyats to book by imprisoning them. The advantage is really immense to take a leader of the opposition and have him imprisoned without reference to what he may have to say before the Judge, and thus break down the opposition. Now, that is not a healthy state of things. The state of things proposed by the present Bill, by which a judgment-debtor may be afforded an opportunity to show before a Court of law why he should not be imprisoned, must be considered by everybody but the zamindárs—I would believe by most of them also—to be a far more healthy state of things. It is not the case that the Bengal landholders are absolutely helpless in the way of reaching their judgment-debtors. It is true, as my hon'ble friend has pointed out,

that the power of distraint is somewhat limited by the Bengal Tenancy Act, but, on the other hand, the power of sale is strengthened and legitimatised. The facilities which a zamindár who is a judgment-creditor now has of selling up the tenure of his defaulting raiyat is certainly a facility greater than is given by the laws of other provinces, and may well be set against the deficiency in point of distraint. For these reasons I must oppose the amendment of my hon'ble friend."

The Hon'ble RÁJÁ PEÁRI MOHAN MUKERJI said:—"The liability to pay cesses to which the Hon'ble Mr. Halliday referred may, I think, be considered an additional ground on which this Hon'ble Council should support my amendment. Cesses belong exclusively to the Government; no part of them goes to the coffers of the landholders. On the other hand, it is admitted that most landholders have to bear heavy losses in collecting cesses for the Government on account of bad debts, desertions, deaths and other causes. The accusation that the zamindárs want the present law because it places in their hands an engine for crushing their raiyats is based purely on sentiment, and it falls to the ground when it is seen that, during all these years in which the present procedure has been in operation, the landholders behaved in anything but a vindictive spirit in applying for the imprisonment of their raiyats for non-payment of rent. The great difference which the Hon'ble Mr. Quinton tried to make out between the profits of the landholders of Bengal and Behar and the landholders of other provinces is, I think, not borne out by facts. The question has been taken out of the region of controversy, and it is now a matter of bare reference to official records to determine what ratio the rent collected by landholders bears to the revenue collected by the Government. I am in a position to submit to the Council authoritatively the ratio which the revenue bears to rent. It varies from 50 per cent. to about 10 per cent. But in districts like Hooghly, Burdwan and the 24-Pergunnahs the ratio which the revenue bears to rent is very high. The fabulous wealth of the zamindárs of Bengal and Behar, based on figures which were placed before the public by irresponsible persons, should have no influence whatever on the hon'ble members of the Council in the consideration of this important question. I appeal to them to refer to official statistics on the question. His Honour the Lieutenant-Governor referred to the practice of landholders recovering their rents by monthly instalments. That, I submit, was an unfortunate allusion. The Government itself some years ago collected its revenue by monthly instalments, and the zamindárs were expected to recover their rents by monthly instalments in order to pay their revenue to Government."

[His Honour THE LIEUTENANT-GOVERNOR—"I referred to monthly suits, not to the payment of rent by monthly instalments."]

"Suits for monthly instalments were extremely rare and should not be taken into account in the consideration of a general question like this; and the Government was not satisfied in recovering its revenue by monthly instalments, but they charged interest at 25 per cent. on all arrears of such revenue. His Honour also said that 'although the right of distraint had been in some measure taken away from the landholders, they had been given increased facilities for the sale of tenures and holdings.'

"I do not remember that any increased facilities whatever in that direction had been given to landholders by the Bengal Tenancy Act which they did not possess before.

"The Hon'ble Mr. Ilbert, in submitting the Report of the Select Committee, expressed his regret that, although one of the objects of the Bill was to give larger facilities to the landholders for the recovery of rent, the Committee had been unable to accept any of the suggestions which had been put forward for simplification of the procedure for the recovery of rent. The question of giving increased facilities for the recovery of rent by the sale of holdings and tenures was fully discussed; and it was at the instance of the Bengal Government that those provisions were excluded from the Bill, on the ground that they would lead to the creation of a class of middlemen to the injury of the cultivators of the soil—a supposition which has been since borne out by the events which have taken place in the Dekkhan, and the Sonthal Parganas in the territories under the Lieutenant-Governor of Bengal, where the introduction of the free sale of tenures and holdings had led the Government to put a stop to all sales of raiyati holdings. I submit, therefore, with great confidence that not a single argument has been adduced to show why Bengal and Behar should have an exceptional law for the recovery of rent by landlords from their tenants when the law in the North-Western Provinces, in Oudh, in Bombay and in the Central Provinces—in fact, in almost all the other provinces in India—is very different. The Hon'ble Mr. Quinton has said that the onus lies on me to show why Bengal should have an exceptional law favourable to the landholders. I submit that his assumption is wholly erroneous, as the effect of the present Bill, if it is not amended, will be that it will not touch imprisonment of raiyats for debt in most of the other provinces in British India, whereas it will materially alter the law which obtains in Bengal and Behar. I shall give a short summary of what the law is in other provinces. In the Punjab the revenue law provides for the imprisonment of

the debtor. The rent law allows no imprisonment, but it provides that no right of occupancy can grow by lapse of time. In the North-Western Provinces the revenue as well as the rent law provides for imprisonment. In Oudh the revenue law provides for imprisonment, and the rent law provides for imprisonment subject to the provisions of the Code, but there landholders have this additional privilege that they can distrain crops of their own accord. In Madras both the revenue and the rent law provide for imprisonment of the debtor. In Bombay the revenue law provides for imprisonment of the debtor. In the Central Provinces the revenue law provides for imprisonment of the debtor, and landholders distrain crops of their own accord against all but 'absolutely' occupancy-tenants. The consequence will therefore be, if the present amendment is not carried, that in large portions of the rest of British India landholders will have the power of imprisoning rent-defaulters independently of the provisions of the Code of Civil Procedure, whereas in Bengal and Behar, where it is admitted that landholders require facilities for the recovery of rent, the law, as settled after most careful consideration, will be disturbed. The Hon'ble Sir Charles Aitchison observed that the Bengal Tenancy Act provides that the procedure contained in the Code of Civil Procedure should be the procedure in execution of decrees, unless the High Court sees fit to exclude any part of it from application to rent-suits, but there is no legal bar to any amendment of the Code of Civil Procedure, although it affects the procedure in execution of decrees in rent-suits. I submit that when the Bengal Tenancy Act was passed the legislature carefully excluded those portions of the Code of Civil Procedure as regards execution of decrees which they thought would be inapplicable to execution of decrees in rent-suits. I may mention that sections 305 and 320 to 326 of the Code of Civil Procedure are declared inapplicable to rent-suits not in the interests of raiyats but in the interests of landholders. And it was simply with a view to save the bulk of the Act swelling to large dimensions that the provisions of the Code of Civil Procedure which are applicable to the Bengal Tenancy Act were not bodily incorporated in that Act. It would be, I think, assuming a state of things which was never intended by the legislature which passed that measure to suppose that important provisions affecting the relations between landlords and tenants could be similarly altered by altering the provisions of the Code of Civil Procedure so soon after that Code was passed by the Council."

The Hon'ble MR. SCOBLE said:—"With reference to one matter which has been referred to by the hon'ble mover of the amendment, I wish to state that I think he is in error regarding the procedure which is now in force in other provinces besides Bengal. I had a careful note prepared and submitted

to the Select Committee as to the law which exists in the provinces of India generally with reference to the enforcement of decrees against rent-defaulters. I have that note now before me, and it fully bears out the state of the law as described by the Hon'ble Mr. Quinton. In the Punjab, Oudh, Bombay, the Central Provinces and in Lower Burma a rent-defaulter against whom a decree is passed is liable to imprisonment in execution of the decree under the Civil Procedure Code for the time being in force. If the Council today adopts this Bill, the provisions of the Civil Procedure Code in reference to the execution of decrees in rent-suits in those provinces will be those incorporated in this Bill. In the North-Western Provinces and in Madras the law is as has been stated by the Hon'ble Mr. Quinton."

The Motion was put and negatived.

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

The Hon'ble LIEUTENANT-GENERAL CHESNEY said:—"I think the Select Committee and the Council may be congratulated on the passing of this Bill, which I regard as a very useful step forward in the direction of a more humane and equitable treatment of this branch of the law. My only regret personally is that the Select Committee has not seen its way to go still further in the direction of abolishing the law of imprisonment for judgment-debtors in the terms of the original draft of the Bill. My hon'ble friend Mr. Scoble, when presenting up the Report of the Select Committee, observed that the provisions of the draft Bill had been objected to by a majority of high authorities who had been consulted; he added further that there was a strong and apparently a weighty minority in favour of the more liberal provisions of the draft Bill. Of course, it will be understood that under the method and the procedure adopted by the Select Committee it was not open to him in a general way to do more than put into form the recommendations and opinions which the Select Committee had received from the authorities consulted, and, the majority having expressed their opinions against it, it was perhaps not open to the Select Committee to do otherwise than to act on those suggestions. At the same time I am not surprised to find that the general opinion of the majority of the authorities consulted was unfavourable to the full conditions of the draft Bill, because I think that it is a matter of observation that lawyers generally are opposed, and have in most times been opposed, to a reform in the law in the direction of making its provisions less severe. We may remember that when any modification or reform has been proposed in the criminal law of England, there have always been found great legal authorities to object to these reforms and to declare

that if these severe penalties and conditions were modified there would be an end to all social obligations, as that, for example, if a man was not hung for stealing a sheep or a few shillings from the person, then all social and commercial business would come to an end; and so, in the various reforms which the law of imprisonment for debt has undergone, there have never been wanting authorities to protest that the particular reform would be followed by disastrous consequences to the commercial and revenue laws. Happily the result has always been that notwithstanding these reforms the business of the world has gone on as smoothly as before. The truth seems to be that in all these matters we are somewhat under bondage to the conditions of the old Roman law. No doubt the modern world is under great obligations to the Roman nation for their system of jurisprudence. That people, with their remarkable love of order and method, instituted a system of laws which was a vast improvement on the law which then existed in all other parts of the world, equally superior to the total absence of law in despotic countries as to the fanciful and fickle procedure obtaining in the Greek republic, where the whole of the free people sat in judgment in a case both as judge and jury. It is not wonderful, therefore, that, as the world emerged from the barbarism of the middle ages, those who had the business of legislation adopted the Roman Code. And to that could be traced the extreme severity obtaining for many generations relative to the law of debt. Now, it is not surprising that the Roman law of debt was very severe, because it was more or less in keeping with their hard ideas of jurisprudence. Under their law the master or the head of the house had absolute power not only over his servants but also over his own children and the members of his family, and it is not surprising that men should be sold into slavery for not being able to pay their debts. The tradition of imprisonment for debt was a tradition handed down from those days; but in establishing imprisonment for debt one object of this imprisonment was lost sight of; when a man became a slave in the old days he could work out his redemption, whereas under the modern system the debtor was subject to useless imprisonment. However, the practice of life-long imprisonment for debt has happily been abandoned. First of all, the term of imprisonment was reduced to two or three years. At the present time it was six months and for small debts six weeks; but I regret to see maintained in the new measure the apparent inconsistency in this distinction between the penalty prescribed for small debts and that for large ones. I fail to see why a man should be liable to a greater punishment because the debt is greater in one case than in another. It seems to me that the penalty due depends entirely upon the nature of the case and not on the amount, and that a person with a small debt may be just as criminal as another person whose debt is large.

1888.] [*Lieutenant-General Chesney; Mr. Scoble; Mr. Evans.*]

However that may be, I think the proposals of the Select Committee are all good as far as they go and in the direction of wise reform, and that they may be accepted as a valuable instalment towards the completion of a process when—and I hope the time is not far distant—imprisonment for debt will be entirely abolished."

The Hon'ble MR. SCOBLE said:—"I wish to make one observation with regard to what has fallen from my hon'ble and gallant colleague, because I think it is of some importance as regards the functions of Select Committees. I cannot accept, on behalf of Select Committees of this Council, the statement that they have only to register the opinions of the majority of the authorities consulted. The function of the Select Committee is to sift those opinions, and to ascertain from them what upon a consideration of the whole matter is best suited to the circumstances of the country. Having come to a conclusion, it is their business to recommend it to the Council in the form best calculated to attain the object aimed at. I wish also to say one word in defence of my own profession, which has been, I think unjustly, assailed by my hon'ble and gallant friend. I may remind him that, if he will look into the history of law reform in the present century, he will find that the greatest law reformers have been lawyers. The names of Romilly, Brougham, Jervis, Campbell and Cairns are a few among the eminent men who have devoted themselves to the amendment of the law with an experience and a success which I venture to say no layman could have attained. If the Bill now under consideration does not accomplish as much as the gallant General could have desired, I am bound to say that it has been framed to meet the wishes of men of business, whom it most nearly concerns, rather than to gratify any conservative feeling that may be supposed to be entertained on the subject by the legal community."

The Motion was put and agreed to.

CIVIL PROCEDURE CODE, &c., AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed.

The Hon'ble MR. EVANS said:—"There are a good many amendments of the Civil Procedure Code contained in this Bill. Some—in fact, the majority

of them—arose out of difficulties in the construction of the existing Code which have been felt by the different Courts which have been administering the law. In many cases the Courts have not been able to agree as to the true construction, and something was necessary to be done to make matters clear. There is another class of amendments arising from the fact that certain matters are not provided for by the Code regarding which the Courts have found difficulties, and there is a general desire to have these matters provided for. Most of the amendments which have been made by the Bill do not now require any detailed remarks before this Council, as no amendments have been proposed, and I may take it that they are generally accepted by the Council. But there is one provision as to which there is a good deal of conflict of opinion, and I wish to make a few remarks in respect of that provision. I refer to the provision that Judges who have been selected by the Local Government should have power to take down the evidence in English although it may be given in the vernacular. Although there has been a good deal of difference of opinion as regards this matter, clearly the balance of opinion is in favour of making the change; and I think that in making the change we have met the difficulties which have been suggested by providing that this power should only be given to Judges selected by the Local Governments, who will no doubt have regard to the knowledge which the Judges have of the vernacular in certain places, and also to the knowledge which the pleaders who appear before such Judges have of English as well. In many cases there will be no difficulty in finding Judges who have such a competent knowledge of the vernacular that there would be little chance of error in the record of the evidence taken down by them. Where there might be a possibility of such error, if the pleaders have a competent knowledge of English, we may safely trust them to draw the attention of the Judge to the error if he has misinterpreted the evidence or taken down wrongly what the witness said; they are wary enough to do it, and the error would thus be corrected. The Local Governments will, I have no doubt, exercise the power given to them in a cautious manner; we have given to the Local Governments power to make the experiment. If it proves a success,—as I have little doubt it will,—it will be an enormous gain as regards the saving of time and the expense of making translations and the rapidity with which appeals can be brought to hearing before the higher Courts. It will enable the Judges to get through more work within a shorter time and greatly lessen the expense of appeals. Anything which will lessen the cost of obtaining justice from the Courts of law will be a measure of great imperial importance."

The Motion was put and agreed to.

1888.] [*The President.*]

At the conclusion of the business of the Council His Excellency THE VICEROY said:—"This Council will now adjourn *sine die*, and as it will probably not be my good fortune to preside again over so full a meeting, or in the presence of His Honour the Lieutenant-Governor of Bengal, I trust I may be permitted to express my deep sense of obligation to all its members for the assistance which they have given to the Government in the discharge of its legislative duties. I especially desire to tender my thanks to the non-official members, who have been good enough to sacrifice their time and pretermit their private and professional pursuits in order to devote their energies to the business of the country, and to give us the advantage of their experience. I can assure them that, as representatives of an independent public opinion, and of those various important interests which form so large an element in the Indian commonwealth, my colleagues and myself have welcomed their presence with the greatest satisfaction. I also wish to convey to our Native colleagues my appreciation of the ability with which from time to time they have handled the various matters which have come up for consideration. The manner in which they debate the several questions under discussion in a language which is not their own has always been to me a matter of surprise and admiration. I have been equally struck by the good temper, the courtesy and gentlemanlike bearing with which they engage even in the warmest controversies. I think I may congratulate the Council on the very considerable amount of work which has been done during the four sessions over which I have presided. The number of Acts which have been passed has been no less than 73. Amongst these may be mentioned the Bengal Tenancy Act, the Oudh Rent Act, the Provincial Small Cause Courts Act, the Indian Marine Act, the Punjab Tenancy Act, the Punjab Land-revenue Act, the Inventions and Designs Act, and last, though by no means least, the Debtors Act. It must always be remembered that the debates which take place round this table, and to which the public are admitted, form but a very small part of the labours of the Legislative Council, inasmuch as the time, thought and attention devoted to Bills in Committee are infinitely greater than that which the Council when assembled in its full numbers is required to give them. It is true the Acts I have enumerated do not belong to that category which excite abnormal and universal attention throughout the country, but they have not for that reason been the less beneficent in their operation. In fact, if we regard our land legislation alone, as it affects Bengal, Oudh and the Punjab, it will be found that the labours of this Council have contributed vastly to the security, happiness and content of many millions of our fellow-subjects. I have also especially to express my thanks to the Legislative Department, and I shall always remember

with gratitude the industry and devotion which Mr. Ilbert and Mr. Scoble, assisted by Mr. James, have given to the preparation of those various Bills which have eventually secured the assent of the legislature. Neither their colleagues nor the general public have any adequate idea of the amount of thought, correspondence, labour and research which are necessary before a Bill can be brought up for the consideration of the Council. I am glad to be able to add that experience has proved—and a sufficient time has now elapsed to justify the statement—that the legislation upon which we have been engaged during the last four years, whatever opinions or doubts existed at the time, is now admitted to have been necessary and desirable, and to have worked advantageously in the interests of those for whom it was initiated."

The Council adjourned *sine die*.

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

FORT WILLIAM;
The 26th March, 1888.

Government of India Central Printing Office.—No. 59; L. D.—26-3-88.—308 —A. E. deS.