Thursday,
11th March, 1897

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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OF

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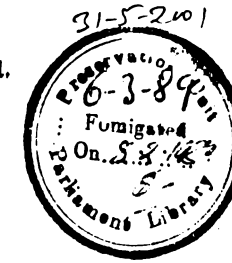

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Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 11th March, 1897.

PRESENT:

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

His Honour Sir Alexander Mackenzie, K.C.S.I., Lieutenant-Governor of Bengal.

His Excellency Sir G. S. White, G.C.I.E., K.C.B., V.C., Commander-in-Chief in India.

The Hon'ble Sir J. Westland, K.C.S.I.

The Hon'ble Sir J. Woodburn, K.C.S.I.

The Hon'ble M. D. Chalmers.

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

The Hon'ble A. C. Trevor, C.S.I.

The Hon'ble M. R. Ry. P. Ananda Charlu, Rai Bahadur.

The Hon'ble Sir G. H. P. Evans, K.C.I.E.

The Hon'ble Alan Cadell, C.S.I.

The Hon'ble J. D. Rees, C.I.E.

The Hon'ble G. P. Glendinning.

The Hon'ble Nawab Amir-ud-Din Ahmad Khan, C.I.E., Bahadur, Fakhar-uddoulah, Chief of Loharu.

The Hon'ble Rao Sahib Balwant Rao Bhuskute.

The Hon'ble P. Playfair, C.I.E.

The Hon'ble Rahimtula Muhammad Sayani, M.A., LL.B.

The Hon'ble Pandit Bishambar Nath.

The Hon'ble Joy Gobind Law.

The Hon'ble C. C. Stevens, C.S.I.

The Hon'ble Sir H. T. Prinsep, KT.

The Hon'ble H. E. M. James.

QUESTIONS AND ANSWERS.

The Hon'ble RAO SAHIB BALWANT RAO BHUSKUTE asked:—

"(1) Is it true that a circular has been issued by the Comptroller General of India to his nine subordinate provincial Comptrollers regarding the recruitment of European and Eurasian young men in the Account Offices?

"(2) If true, has it been issued with the sanction of the Government of India? Will they be pleased to reconsider it, as it tends to give rise to racial distinctions and not to efficiency?"

The Hon'ble SIR JAMES WESTLAND replied:—

"The Comptroller General has recently addressed his account officers on the subject mentioned by the Hon'ble Member. The Comptroller General does not require the sanction of the Government in issuing instructions on such matters when they are in conformity with the orders of Government.

"The Hon'ble Member will find all information about the Subordinate Account Service and the manner of its recruitment in the papers relating to the Public Service Commission. The orders of the Government for the recruitment, for that service, of the better educated classes of Natives of India, both of Asiatic and of European race, had been somewhat overlooked, and I considered it necessary to draw the attention of the Comptroller General to the fact that, if the account officers did not exercise their power of bringing young men into the office on higher salaries than those intended for the less educated classes, they would not obtain efficient men for their higher posts. The Comptroller General's instructions contained in this letter to his account officers deal with only a part of the matter, namely, that relating to young men of European or of mixed race; but it was distinctly the intention of the Government of India, in recruiting for the service in question, to provide for the appointment to it of domiciled Europeans and Eurasians and Muhammadans, as well as of Bengalis; and it seems to the Government that the correction of a system of recruitment which was not authorized by Government, and which has the practical effect of confining appointments in Calcutta to one class only, is the abolition and not the institution of a racial distinction."

REFORMATORY SCHOOLS BILL.

The Hon'ble SIR JOHN WOODBURN moved that the Report of the Select Committee on the Bill to amend the law relating to Reformatory Schools and to make further provision for dealing with youthful offenders be taken into consideration. He said:—"It is unnecessary that I should detain the Council at any length in explaining the proposals of the Select Committee. The Committee designedly framed their Report in some detail so that Hon'ble Members might have an opportunity, if they were interested in the matter, during the three weeks that it has been before them, to examine

and consider the recommendations. They are not numerous and for the most part are minor. The minor proposals have, I trust, been sufficiently explained in the Report, and there are only two or three of them to which I desire to direct at present the attention of the Council. The first of these is the alteration of the definition of 'youthful offender.' The age at which a lad is to be sent to a Reformatory School has been reduced from 16 to 15, and this gives the opportunity which has been urged by several Local Governments of extending the minimum period of detention in a Reformatory School from two to three years. If you want to reform a lad, it is certainly advisable to catch him early, and all our experience has shown that a detention of only two years is generally insufficient to carry out the purpose intended. The object of reforming the character of the lads under our care will be better fulfilled by the arrangements made under this present amendment than under the expiring Act. In clause 12 we have, on the suggestion of the North-Western Provinces and the Oudh Government, recast the proviso to this clause so as to make it impossible to keep a boy who has been sent to jail to wait there until he can be removed to a reformatory for a longer term in the jail than that of his substantive sentence. In clause 16 we have, in accordance with the criticisms offered to us, amended it so as to leave the jurisdiction of the superior Courts under the Code of Criminal Procedure, that is to say, their ordinary jurisdiction, altogether unrestricted, except in respect of two matters—the age of the youthful offender and the propriety of sending him to a Reformatory School instead of sending him to jail. On these two matters we think the local decisions ought to be maintained as final. In clauses 18 and 22 we have made what I consider a useful amendment, in requiring the sanction of the Committee which governs the affairs of Reformatory Schools to any arrangements made by the Superintendent of the School for the employment of the lads who finish their term there.

"These are the most important of the minor changes. The major changes are two: the first of these has been made at the instance of the High Court of Bengal. They represented to us strongly, and I think reasonably, that there ought to be in the Bill some provision by which the Courts should be guided as to the class of boys who ought to be sent to a Reformatory School and the character of the offences for which they should be committed to it The old Act contained no such provision. The Bill which the Select Committee had before it had no such provision, but we thought that it was best to leave the definition of the offences for which boys should be sent to a Reformatory School to rules

made by the respective Local Governments rather than by a definite differentiation of those classes of offences in the Criminal Procedure Code which might seem generally the most fit for purposes of the kind. Obviously cases of theft and burglary are the sort of cases in which a convicted boy would most ordinarily be sent to a Reformatory School, but there are in some Provinces other kinds of offences such as fire raising and others which will occur to the Members of this Council in which the prevalence of that kind of crime may make it expedient that they should be included in the list of offences for which Magistrates should be advised to send lads to a Reformatory School. The Government of the North-Western Provinces in consultation with the Provincial High Court have drawn up excellent rules, practical and sensible, which guide the Magistrates of those Provinces, and I think that there can be very little doubt that the Governments of other Provinces, in concert with their own High Courts, may draw up similar rules suitable to their own territory. Accordingly in the section we have merely said that the Magistrate before whom a case of the kind occurs will be guided by the executive rules which will be issued from time to time by the Government to which he is subordinate. The other major matter is a provision by which the Magistrates of Districts or the Magistrates having jurisdiction are authorised, instead of passing a sentence of imprisonment or instead of sending a boy to a Reformatory School, to dismiss him either with an admonition or under a suitable guarantee that he will be properly looked after by his relatives. This is a suggestion that was made by my friend the Hon'ble Mr. Chalmers on the experience that he has gained in England, and I think that this is a very important innovation in our Indian legal practice. The power of dismissing a juvenile offender with a mere admonition is new to our Indian Legislation and is new to magisterial practice, and the Select Committee, in accordance with the opinions of many of the Local Governments, have thought that this power should be exercised only by Magistrates specially selected for the purpose by the Local Governments; but, if a lad comes before a Magistrate who has not got these powers, it is open to him to send up the case with his recommendations to the Magistrate of the District, who in all such cases will have all those powers.

"There remains only one other matter to which I should draw the attention of the Council. It was very strongly pressed upon us by the Government of Madras that Reformatory Schools for girls should be opened as well as Reformatory Schools for boys. On this suggestion we have consulted all the other Local Governments, and they are unanimous that a plan of Reforma-

tory Schools for girls is inexpedient in the present state of Indian society. The radical objection to the proposal is this: that a girl in a Reformatory School would ordinarily be confined between the ages of 12 and 18, in the very period in which, according to the custom of her race, the marriage arrangements for her future will be made. Those marriage arrangements would be impossible in a Reformatory School, and there is therefore imminent risk that the girl might remain altogether unmarried, that she would return to her parents or guardians at a stage in life in which they would find it very difficult if not impossible to make marriage arrangements for her and that it might end in leading the girl to a condition of prostitution. This is a fatal objection, I think, and on this point I agree with all the rest of the members of the Committee. But it may be otherwise in Madras where there are large Christian communities. I should be extremely sorry to think that Christian communities should contribute in any considerable numbers to the criminal classes, but, if the Madras Government is satisfied that among these Christian communities a system of this kind of girl reformatories is necessary, is expedient, and is consistent with the customs of the community, it will be open for the Madras Government to pass a local law for themselves. Then there is a further point: that according to the information before us in other parts of India, exclusive of Madras, there is certainly no occasion for an arrangement of the kind and there would be extreme difficulty in carrying it out. The Lieutenant-Governor of the North-Western Provinces made a census on a particular day as to the number of female juvenile criminals in jail in those Provinces. On that date there were only ten girls in jail who could be classed as juvenile criminals. Of these two were under sentences for less than a month, and of the remainder there were four who were very doubtful subjects indeed for a Reformatory School. There were thus only six girls in the whole of the North-Western Provinces who could be sent to a Reformatory School, and arrangements for properly educating, teaching and training a class of only six girls would be obviously extremely difficult and very expensive to carry out. In the same way we were advised that in the whole of the Bombay Presidency convictions of female juvenile criminals did not exceed 30 in the year and in Burma only 13. These are reasons in addition to the radical one which I have mentioned which render the extension of the Reformatory Act to girls for the present unnecessary as well as inexpedient. We have, however, made a provision which goes some distance towards meeting the proposals of the Madras Government, and that is that we have included girls with boys in the section which allows a Magistrate to dismiss a juvenile criminal on conviction with only an admonition, or on the security of parents and guardians that she will be properly looked after.

"I think that these are all the observations that I have to make on the subject of this Bill. We are greatly indebted to the Judges of the High Court of Bengal for the practical and useful suggestions that they have made to us, and we are also indebted to Sir Henry Prinsep, who assisted us on the Committee with his counsel. I think the Bill will still further commend itself to my hon'ble friend opposite (Sir Henry Prinsep) inasmuch as it is altogether a new Bill and not an amending Act."

The Hon'ble RAO SAHIB BALWANT RAO BHUS KUTE said:—"My Lord,—Being on the Select Committee to which the present Bill was referred, I would certainly have contented myself with giving a silent vote for it, had it not been for the fact that it is one of the few important Bills of this session which had, to some extent, exercised the public mind. The important nature of the Bill was, no doubt, recognized by the hon'ble mover, Sir John Woodburn, when he introduced it last year in March, and allowed it to be taken up after such a long time, by which he was able to feel the pulse of the public with reference to it.

"The Bill had a twofold opposition, namely, that a youthful offender is intended to be detained in a sort of custody even after the expiration of the time the law determines to be sufficient for his correction, and that he is to be detained there even after an appellate Court commutes his sentence to a nominal imprisonment. The Bill thus deprives the youthful offender of a good deal of his liberty.

"In connection with these objections the proviso in section 8, clause 3, requires a special note. The period for which a youthful offender is to be sent to a reformatory, as well as the general desire for a classification of offences directing offenders to be sent there, have been, like most of the measures of Your Excellency's Government, left to the discretion of Local Governments. This is a very desirable proviso. It at once curtails the far too wide discretionary power given to the Magistrate in the original Bill without defeating any of its objects. I would fain countenance any legislation which could confer powers upon the executive officers to prevent disturbance tending to molest society. But such powers should in no case be more than are absolutely necessary. They must, moreover, be not purely discretionary, but should be so circumscribed as to be beyond the suspicion of being abused. The discretionary power in the original Bill given to a Magistrate, competent to do it, of directing offenders to be sent to reformatories, was regarded with distrust and diffidence. The proviso will thus be looked upon as a material safeguard against all vexation. It softens the seeming objections to section 16.

"The whole of Chapter III, and sections 5, 6 and 7 clearly show that not only does the Bill aim at correcting a juvenile offender, but it aims at taking exquisite care of a fallen human being and a depraved nature prone to perpetrate grosser offences. The industrial training, the grant of licenses, the guardianship superintendents of reformatories are all matters conducing to the material interests of an offender, and will certainly tend to do him immense good.

"There is no doubt a considerable force in the desire expressed by several persons that juvenile female offenders should be exempted from the operation of the provisions of this Bill. But do what I, can, I could not persuade myself to countenance such an exemption. If the provisions embodied in the present Bill are calculated to exercise a salutary influence on boys, I cannot see any reason why they should not do the same on girls. No great hardship can be imposed on them. Nor can they be deprived of a chance of being settled in marriage. A sort of practical training to be imparted in reformatories wil improve their condition and will far more than make up for the grievances alleged. Besides such cases are very rare."

The Hon'ble MR. REES said:—"My Lord, all Local Governments, I understand, were agreed in thinking that no Reformatory Schools need be provided for female juvenile offenders at present, but the Madras Government thinks that the opportunity should not be lost of providing for possible future requirements, and the North-Western Provinces Government concurs with Madras in holding that such provision could be made without exciting distrust and suspicion.

"The Hon'ble Member, in moving that the report be taken into consideration, has suggested that the difference of opinion expressed as regards the attitude of the people towards female reformatories may be due to the existence of a large Christian community in the Southern Presidency. I have no figures at hand, but, if I am right in thinking that Christians are about 2⅔ per cent. of the population, it is possible that this does not explain the matter. I should be tempted to find an explanation in the fact that Madras has not come so much under Muhammadan influence, were it not that the Government of the North-Western Provinces, which is emphatically the province of Hindustan, and the only one in India which has only one language, and that language Hindustani, has expressed the same opinion. Probably the fact that Madras is an old settled province and that the people thereof, much to their credit, are generally inclined to think that Government means well by them, has something to say to the question.

"The Select Committee has, however, introduced a most important change in the desired direction, into the Bill, by amending section 31 so as to make its provisions applicable to female offenders who, if under the age of 15 years, may in future be discharged by Courts empowered with a reprimand, or delivered to their parents or guardians upon their becoming responsible for a limited period for their good behaviour.

"The Government of the North-Western Provinces and the Howard Association agreed in thinking that the case of juvenile female offenders could best be met by provisions similar to those of the Conditional Release of First Offenders Statute, from which this humane provision is taken.

"The change that has been made will also, I think, be very acceptable to Hindu opinion in Southern India, in proof of which I would venture to quote a short passage from the writings of an admittedly eminent exponent thereof, the late Professor Runganatham :—

"'Imprisonment in the case of a woman does a great deal more harm than in the case of a man. A woman may come out of jail as pure as when she went into it; but such is the general feeling against the demoralizing influences of jail life thathere relations and friends will, if they do not disown and repudiate her, show an evident dislike to her society. Left to herself, shunned by those nearest and dearest to her, looked down upon by those who were wont to show her respect, and destitute perhaps of the means of livelihood, she will be sorely tempted to fall.'

"Now, all that can be said against the imprisonment of adult women, which is unfortunately often unavoidable, applies with additional force in the case of female juvenile offenders. But if, as may be hoped and expected, Magistrates are freely empowered to act under the amended section 31, it will rarely happen in future that female juveniles will be thrown into jail in the company of adult female convicts of bad character."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU said:—"On a point which the hon'ble mover (Sir John Woodburn) referred to as a minor one, but which I consider is a great deal more than a minor point, I wish to make a few remarks. It is with reference to section 16 of the Act. My objection is particularly to the saving clause of it. Nothing contained in the Code of Criminal Procedure, 1882, shall be construed to authorise any Court or Magistrate to alter or reverse in appeal or revision any order passed with respect to the age of a youthful offender or the substitution of an order for detention in a Reformatory School for transportation or imprisonment. Here I find a complete ousting of the jurisdiction of the superior Courts, and the explanation that I find is in paragraph 12 of the Report of the Select Committee. There they say, 'we agree generally with

the criticisms which have been passed on this clause and they accordingly amended it so as to leave the jurisdiction of the superior Courts under the Code of Criminal Procedure unrestricted.' If it stopped there I should be perfectly content. There are the further words, 'Save in so far as it relates to orders passed with reference to the age of youthful offenders or the substitution of an order for detention in a reformatory for transportation or imprisonment.' As the section stood originally, it provided for this order falling to the ground as soon as that sentence was reversed or set aside, but, unless I am seriously mistaken, this section takes away even that exception. It seems to make the power of the Magistrate absolute and to make the power of the superior Courts to have no force whatsoever. My Lord, on this point I have only to call attention to the fact that so far as the Madras Government is concerned, that Government was strongly opposed to the interference with the powers of the Appellate and Original Courts. I believe the grounds for that are set forth in a paper submitted by Mr. Dumergne and the paragraph 8 contains, I believe, the arguments very strongly. Paragraph 8 is as follows: 'This clause is in my opinion open to serious objection. In some cases an Appellate or Revisional Court may alter a conviction and reduce the sentence of imprisonment, but will nevertheless be powerless to alter the order for detention in a reformatory for a period calculated probably with reference to the original conviction and sentence. Judges and Magistrates are liable to err. No distinction is drawn in clause 8 under the Code of Criminal Procedure and the power given to Magistrates, some of whom on being first appointed to the charge of a sub-division, are comparatively inexperienced' and he goes on further: I make this remark which I consider very cogent and sound. Youths require the ordinary protection of the law against error and indiscretion even more than adults, and I am strongly of opinion that orders affecting the liberty of youths should be subject to appeal and revision quite as much as orders affecting the liberty of adults.' I do not think it is necessary to make this self-evident statement, that the superior Courts are generally ordinarily superior to the Courts to which they are superior. To say that the superior Courts shall not have the power to modify an order made by an inferior Court is to say something that amounts to this, that Magistrates will do something which the superior Courts might set their faces against; and therefore the superior Courts ought not to be given the power to do so. In the interests of liberty and for the reasons that have been mentioned by Mr. Dumergne in very clear terms, reasons in which the Madras Government has fully concurred, I think it is a matter of regret that the Select Committee have not thought fit to remove that objectionable portion. If in the Select Committee's Report there were any grounds stated, particularly pointing to the necessity for ousting the jurisdiction of the superior Courts and

accumulating power in the hands of Magistracy only in that respect, I should probably not have troubled my learned colleagues, but I do not find the explanation in section 12 sufficient, and under these circumstances I have thought fit to make these remarks in the hope that in case the majority of you agreed with me, that difficulty would be got over. It struck me at one time that I might send in an amendment, but at the same time it struck me that, if many of you are against me, I shall be in no worse position by not sending in the amendment. If you are with me, I do not think I shall have failed to gain my object in merely making the suggestion at the present moment."

The Hon'ble SIR JOHN WOODBURN said :—"I confess I was somewhat surprised at finding the Hon'ble Mr. Bhuskute taking up the position that sending girls to a Reformatory School would not be taken amiss by the people of the Hindu and Muhammadan communities. He was a member of the Select Committee, and I understood that he joined with the rest of the Committee in coming to the conclusion which is expressed in the Report. As to the remarks made by the Hon'ble Mr. Rees, it is true that Sir Antony Macdonnell expressed himself of the opinion that the establishment of a female juvenile reformatory in India was not likely to be regarded with distrust or suspicion, but the other Local Governments were definitely of opinion that it would be, and his own conclusion in the matter was this, that, as far as his Provinces were concerned, the small list of female juvenile offenders in jail showed the matter to be of little importance, and that he himself would certainly not incur the expense of establishing a Reformatory School for this class, were the proposed modification made in the law. The remarks of Mr. Charlu were, I think, answered by what I said in my opening speech. I said that the Select Committee had decided in section 16 to leave the jurisdiction of the superior Courts untrammelled except in two matters, and that it excluded the jurisdiction of the superior and lower Courts in these two matters because they were of opinion that the local officers who tried these juvenile criminals were in a better position to decide than an appellate Court could be, before whom the criminal was not brought. The question whether the character of the offender and the character of his relations led justly and properly to the opinion that boys should be sent to the Reformatory School, was a question which was in our judgment better decided on the spot than it could be in an appellate Court. The powers of the appellate Court are left otherwise entirely unaltered. If they are of opinion that the offence was not committed, they can acquit the prisoner; if they are of opinion that the offence could be best met by a sentence of admonition, it is open to them to substitute the sentence of admonition for the sentence to send to a Reformatory School; but where it is simply a question whether a boy should be sent for a long period to jail or perhaps for a still longer period with the hope of reform to a reformatory, the Committee was of opinion that the decision of the

local officers ought to be left untouched. The Hon'ble Mr. Charlu spoke of the absence of all differentiation in the Bill between petty and grievous offences. I have already explained that under rules which the Local Governments will be asked to pass in concert with the High Courts, guides will be given to the Magistrates as to the class of offences and the class of offenders in which the order of detention in a reformatory ought most properly to be passed. My hon'ble friend Sir Henry Prinsep drew my attention to an omission in my opening remarks. There is a new section in the Bill, which is section 32. The Judges of the High Court drew our attention to a case of this kind. A boy of 12 years of age on being sent to a Reformatory School for six years causes soon after admission grievous hurt to another boy, for which offence he is sentenced to two years' imprisonment. This sentence, under the law as it at present stands, is kept hanging over him all the time he is in school, and must exercise a very depressing effect throughout the reforming process. It might possibly prevent his being reformed at all. But suppose this boy is discharged from the school with an excellent character. It would seem to be barbarous, if he is only to be discharged from school to be sent to jail for an offence committed six years before. In these remarks the whole Committee concurred with the Bengal High Court. It would be cruelty to send a boy to jail at the expiry of his term of detention in the reformatory in a case such as that suggested by the High Court, and in order to give effect to the suggestion of the Judges we added section 32 to the Bill. I hope that the cases will be very few in which a boy in a Reformatory School will be sent to a Magistrate and convicted and sentenced in Court. There are almost no conceivable cases short of the gravest crime, such as murder or incendiarism, in which a boy cannot be adequately punished under the ordinary rules, but should such a case arise in which the disciplinary rules are not adequate and the Superintendent and his committee consider it essential that the boy should be sent for formal trial before a Magistrate, then it was the opinion of the Committee that the sentence of the Magistrate should take immediate effect and that the boy should be sent at once to the prison of the District, there to receive at once the punishment judged necessary by the Magistrate. If the term of imprisonment in the jail expires before the period for which he was to be detained in the reformatory, the boy after having finished his term of imprisonment will return to the reformatory to complete his term of imprisonment, but under no circumstances will a sentence of imprisonment be kept hanging over him until he is discharged from the reformatory."

The motion was put and agreed to.

The Hon'ble SIR JOHN WOODBURN moved that the Bill as amended be passed.

The motion was put and agreed to.

PROVIDENT FUNDS BILL.

The Hon'ble MR. CHALMERS moved that the Report of the Select Committee on the Bill to amend the law relating to Government and other Provident Funds be taken into consideration. He said :—"The Report of the Committee has been in the hands of Hon'ble Members and it explains, I think, pretty fully every amendment and every change that has been made in the Bill. These amendments are for the most part of a formal character, and it is unnecessary for me to say more now. If any Hon'ble Member desires any further explanation, I shall be glad to give it on behalf of the Committee."

The Hon'ble RAO SAHIB BALWANT RAO BHUSKUTE said :—"My Lord,—Cases do not unfrequently occur in which respectable public servants with decent incomes often die through some untoward accident or another leaving behind them a large family which is only a slur on their memory. This is an indeed painful thing, but in so far as it is painful it is unavoidable. The circumstances of their penury are not associated with any improvidence on their part. They are merely accidental and therefore wholly beyond anyone's control. Nothing therefore can afford a more convincing proof of the humanity of Your Excellency's Government than the measure now placed before the Legislature. That it was expedient and necessary is beyond any doubt. Again the line of demarcation where attachment is to begin and its operation to cease has been very considerately laid down. The sum of Rs. 2,000 is a barely sufficient amount for starting business with, or for following a tolerably productive employment. Only this the Bill contemplates protecting from attachment.

"I would, however, wish that the present application of a 'Provident Fund constituted by the authority of the Government of India for the benefit of any class or classes of its employers' be extended to a far wider extent.

"My friend the Hon'ble Rai Bahadur Ananda Charlu and myself were requested by the Honorary Secretary, 'Sind Mutual Family Relief Fund' and several other similar officers of similar organisations to move for the extension of the proposed Act to their institutions. Neither my friend nor I was on the Select Committee to which the Bill was referred. Yet some of the members

constituting it were consulted. They told us of the cogent difficulties in the way of legislation, such funds being more or less uncertain in their nature and dependent on the voluntary contributions of their organisers and subsequent members. Satisfying myself that sufficient attention was given to their request, I did not think of moving any amendment to the Bill as recommended by the Select Committee."

The Hon'ble SIR JAMES WESTLAND said :—"My hon'ble friend Mr. Bhuskute has referred to a number of funds the case of which was under the consideration of the Select Committee upon representations made by their Secretaries. Latterly there have sprung up all over India a number of small societies of persons who combine together under some provision of this kind. They enrol themselves in a society, very often under the Limited Liability Act, and they make a promise mutually that when any one of them dies the other subscribers to the fund shall pay a certain amount, to be handed over to the representatives of the deceased or to the persons who have suffered loss by the death of the deceased. Now, these funds, so far as they go, are very laudable institutions, but the difficulty which we meet in striving to apply the rules of the proposed Act to these funds is this, that it is obviously impossible for us to lay down rules which would have the effect of enabling any person to defraud his creditors by the mere act of using part of his money for a voluntary insurance on his life. If we were to meet the request of all these petty funds to prevent their mutual subscriptions from being attached by the Courts, we do not know where a principle of that sort would stop. The result would be that we will have to apply the same measures to the voluntary insurance in big insurance companies, and we would thus enable persons who may be in debt to remove the money they possess from the control of creditors by the simple operation of insuring their lives or passing the money into some insurance company's possession. It was for this reason that we drew the sharp distinction between compulsory deposits, which are taken from a man as part of the considerations of his service of employment, and the merely voluntary deposits which a man may pay into a fund whether he pleases or not.

"It seems to us that a great distinction can be drawn in respect to the protection which we are to give to monies subscribed under these two circumstances. A man who subscribes compulsorily to a Provident Fund as part of the condition of his receiving his income, may reasonably obtain protection in respect of the monies he subscribes; but a man who has got into debt, and who voluntarily taking his money from any possible control of his creditors passes it

into one of these Provident Funds, should not and does not thereby get any protection.

"It is part of that same distinction between compulsory depositors and voluntary depositors that we think applies also to the case of these petty funds in respect to which Mr. Bhuskute has made his representation, and this prevents us applying the principle of the present Bill to those societies to which he alludes."

The Hon'ble MR. CHALMERS said:—"I would only add one word to what the Hon'ble Sir James Westland has said. Before the Bill was originally drafted, as well as in Select Committee, we did carefully consider whether we could extend the benefits of this measure to other societies, and after careful and anxious consideration, we came to the same conclusion that the Hon'ble Mr. Bhuskute has himself come to, namely, not to extend it to purely voluntary societies. The essence of this Bill is that special provisions are applied to payments taken under special terms from men who joined the service and under the terms of their service subscribed to those funds. If we were to attempt to apply them to voluntary societies, we must also regulate these societies, and we could only do that by introducing the whole of the elaborate machinery of what are commonly known in England as the Friendly Societies Acts. Whether these Acts are applicable to the circumstances of India I do not know. At any rate we could not introduce them with all their elaborate machinery into a Bill of this kind. That would be a matter for separate and very serious consideration."

The motion was put and agreed to.

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

The motion was put and agreed to.

GENERAL CLAUSES BILL.

The Hon'ble MR. CHALMERS moved that the Report of the Select Committee on the Bill to consolidate and amend the General Clauses Acts, 1868 and 1887, be taken into consideration. He said:—"May I say again in moving that this Report be taken into consideration, as I think I said in presenting the Report, that this is not a Bill for altering the law but simply a Bill which deals with questions of language. It leaves the Legislature with a perfectly free hand for any provision it may hereafter choose to enact. The only object of the Bill is to define the meaning of the expressions used where the Act itself does not put

a different interpretation upon them. I think I may again describe the Bill as I ventured to describe it originally, namely, as a measure to prevent slips and accidents in the Legislative Department."

The Hon'ble MR. JAMES said:—"My Lord, I made some criticisms at our last meeting on one definition and one omission in this Bill, but following the laudable and prudent examples of the Hon'ble Rao Sahibs Bhuskute and Ananda Charlu, I do not propose to move an amendment on the definition of good faith. Personally I still prefer the old definition, yet as an authority like the Hon'ble Sir Henry Prinsep sees his way to accept the new one, and the Hon'ble Sir Griffith Evans thinks that the point raised by me is not of very great importance, the Council will feel inclined, as no doubt it is right to do when there is a difference of opinion, to follow the responsible person, the Hon'ble Legal Member, in the matter. I should like to say, however, that there seems a difficulty in accepting the Hon'ble Mr. Chalmers' view, that because concrete terms such as bills of exchange, moveable and immoveable property, can be defined differently for the purpose of different Acts, therefore the definition of the cardinal virtues may vary. Good faith, honesty, truth,—surely the Government of India should never change its conception of these. I only hope that when the consolidated Penal Code sees the light of day, we shall find that the words 'due care and attention' qualify all those sections where 'good faith' is used. Nor, my Lord, shall I waste time in asking the Council for an opinion on the omission to recite in the General Clauses Act the artificial interpretation of the word 'may,' though I may, that is I must, thank the Hon'ble Legal Member for his courtesy in explaining its origin. It is to be regretted, I think, that our draftsmen here did not keep it out of Indian Law. But we have got it now, and apparently the labour of eliminating it is not considered worth the trouble. So let it remain, but only as a sign-post of what to avoid in future legislation. My Lord, I should like to add one word more about the Bill as a whole, considering it as a specimen or instalment of our Legislative work. The making of careful and absolutely accurate definitions is, we all know, a most difficult and laborious task, and clear and comprehensive as is this Bill, all those who have to interpret or administer the law will owe a debt of gratitude to the Hon'ble Legal Member for the pains which he has bestowed upon it. At the same time I would venture to point out that in itself, a mere interpreting Act is a small, I might even say a trivial, thing compared with the reforms in our substantive law that are needed. I am acquainted with some of the difficulties which hamper the Government of India in dealing with the subject I referred to last week: the arduous fight they are waging against plague, pestilence

and famine would alone tax all their energies and occupy all their time just now. And of course one recognises that, whether great questions are hanging in the air or not, ordinary legislative reform must go on as usual. All I say is that, except to those who can get a peep behind the scenes, the spectacle of the Government of India passing a General Clauses Act or even an Act for reforming young gentlemen who misbehave, while the indebtedness question is not touched, presents something of the appearance of Nero fiddling while Rome is burning, and it would be well to bear this in mind. I will say nothing more except that I rejoice that the Hon'ble Legal Member is going to cease trying to dragoon the agriculturists of India into common sense by legislation, from the vain endeavour to turn by law the zemindars and raiyats into a nation of canny Scotch elders. That perilous policy has been tried long enough and has failed utterly. My Lord, only yesterday, opposite your lordship's own gate, attached to the walls of the Home Office, I saw a somewhat suggestive notice—'Rubbish for the filling of tanks can be obtained here *gratis*.' If only the Hon'ble Legal Member would tear a few pages or a few sections out of the Civil Procedure Code, and add them to the pile!"

The Hon'ble SIR GRIFFITH EVANS said:—"I had on the last occasion assured the Hon'ble Member that the objections that he had to this particular definition of good faith would receive attention at the discussion of the measure. I have since looked still further into it and I find that my former ideas are confirmed. First of all, it must be remembered, as has been observed by the Hon'ble Mr. Chalmers, that this is merely a drafting Act. It is an Act for making definitions to avoid all discussion as to what particular words are to mean when they are employed in future Acts. It is not retrospective. It is only intended to stop all discussion and make clear what is the meaning of particular words in all new Acts made from this time except when the context or something in the Act provides differently or renders it necessary to put another meaning upon it. Under those circumstances the question really is whether there is any need at all for the definition of the words 'good faith' and whether this is a proper definition. First of all as regards the propriety of that definition. That can be disposed of very shortly. It is the definition which accords with the ordinary meaning of the English language, and it accords, as I understand, with the meaning which would be placed upon it from the point of view of the cardinal virtues spoken of by the Hon'ble Member, because a man is certainly not in ordinary life to be considered to have done a thing in bad faith because he has done it negligently. We know very well from the records of the Post Office that a certain number of letters are sent without any address. That is considerable

negligence no doubt, but one would certainly not say that it was bad faith or anything of that kind. Good faith in plain English and according to the moralists and according to the ordinary understanding of men is opposed to bad faith—*bonâ fides* to *mala fides*—and the question of negligence does not come in at all in the proper definition of the words, except in so far as very gross negligence might be considered to be some evidence of *mala fides*. Very gross negligence may bring you to what one Judge called the border line between the grossest negligence and criminal intention. But when you come to deal with the expression good faith, which there is no difficulty in dealing with in the ordinary English language, and which bears a clear meaning, you find that in various Acts and for various purposes it was necessary to tack on some other meaning to the original meaning and to add some other matter which gave it a different kind of complexion. Now the question that we have before us is this: We find that the latest House of Lords decisions have practically recalled these words to their proper use. They have said that good faith means good faith as opposed to bad faith, and that it is consistent with honest negligence that what good faith means is honesty of intention and what bad faith means is dishonesty of intention. Now under those circumstances the only question we have to consider is how has this word been used in our past legislation, and is there any reason for making the definition at all in the General Clauses Act. In order to consider this I have been at the pains of considering the various Acts in which it has been used. One of the first instances in which we come across it is in the reported cases on the Act for the Protection of Judicial Officers in 1850. There they were protected for acts done in 'good faith' in their judicial capacity, but it was laid down in the judicial decisions that these words did not protect them unless they had acted with due care and attention, or, as some of the cases put it, that if there was very gross negligence shown, that would deprive them of the protection. There were a good many cases. Some of them went into very curious questions. They went into the question of how much learning or how much care and attention could be expected from an ordinary average judicial officer, and how much carelessness he might be allowed to exercise in the interpretation of the Act, supposing his interpretation was opposed to the plain meaning of an Act, the question being whether he was to be protected where he had acted without jurisdiction. Well, this proviso to the words 'good faith' became established by a series of decisions, and accordingly in the Penal Code there is a provision that nothing shall be considered to be done in good faith which is not done with due care and attention, practically embodying in the Penal Code the result of those decisions which had been come to on the Act of 1850. Then there was another class of Acts altogether dealing with transfer f.

property, and there the words 'transferee in good faith and for value' was constantly to be found. There again the question of good faith was a different one. There it really came to be held that good faith really meant very much the same as in good faith and without notice. Notice, as the Council are probably aware, in law covers a number of things. It covers not merely actual knowledge of a fact, but the existence of facts which ought to have put a person who is going to buy property on enquiry, which enquiry would have led to the knowledge of the facts and many other refinements of equity. So the result is that where the words 'good faith' have been used in cases of transfer of property in connection with those words 'in good faith and for value', there have been numerous cases decided upon it turning mainly on the question of what would constitute notice, what would put a man on enquiry, and so on; but in this case, of course, good faith has a somewhat different meaning from what it has in the Penal Code and other Acts. Then again we find that the words have been used in various Acts in conjunction with other words, and I will give the Council some instances. First of all we find that it was used in the Indian Limitation Act—a transferee in good faith and for value. It was found so difficult to find out what a transferee in good faith was that they struck it out in the last Act and only kept the words 'transferee for value'; but the words still survive in several of the other Acts. In the Transfer of Property Act you find that a man who makes improvements on property which is not his own is entitled to the value of those improvements when he is turned out, if he made them believing in 'good faith' that he was the owner. In another section you will find with regard to fraudulent transfers, that nothing in this section shall affect a transferee in 'good faith' and for consideration. Then we come to another Act, the Specific Relief Act. There you find the words 'a transferee who has paid his money in good faith and without notice.' There the draftsman thought it necessary to bring in the words 'in good faith and without notice', but it makes a great deal of confusion, because in the Transfer of Property Act there can be no doubt that the words 'any transferee in good faith and for consideration' will be held to mean a transferee in good faith and without notice, but in the other Act you find the words 'and without notice' added to the words good faith. Therefore the words 'good faith' must be differently construed in the one Act and in the other. Then we come to the Negotiable Instruments Act. There you have that a payment in due course is a payment in good faith and without negligence. There good faith must mean one thing and negligence another. They are two separate things, and yet in the decisions on the Act of 1850, 'good faith' is treated as importing absence of negligence or the presence of due care and attention. Under these circumstances I think the

Hon'ble Member will see that it is desirable that in future we should have a clear meaning for 'good faith,' and that it is desirable that it should be in harmony with our views of the 'cardinal virtues' and that it is desirable that it should be a clear and distinct definition, and that when we wish to add something to that definition it should be done by additional words or by a special definition for a special Act. In our present Acts I am sorry to say there is a good deal of room for discussion as regards the meaning of the words. I have ventured to take up the time of the Council because the Hon'ble Member having gone into this matter, I thought that it was not only due to him to show that the matter had been fully considered, but that it was necessary that the Council also should be aware that we had not done this without full consideration."

The Hon'ble SIR JOHN WOODBURN said:—"My hon'ble friend Mr. James introduced much liveliness into the debates on this Bill and has now dragged myself into the lists. He has called attention to a question of very great importance which deeply interests him. The question of the indebtedness of the agriculturists in India is a matter which has had the very earnest attention of Your Excellency and myself. It is not the fault of the Government of India that this matter has not been brought forward more prominently in the course of the present Session. It was my particular hope that before this Session closed, I should be able to place before the Council some of the conclusions at which the Government of India had in this matter arrived, but, as the Hon'ble Mr. James has himsef suggested, the enormous task of battling with plague and famine has completely engrossed the energies of the Local Governments, and it has been impossible to obtain from them in time for the purpose of the present Session their final conclusions on the great issues, which have been committed to their opinion."

The Hon'ble MR. CHALMERS said:—"I am much obliged to my hon'ble friend Sir Griffith Evans for the interesting historical sketch he has given us of this term 'good faith,' and I can only say that I heartily agree with all that he has said. I was not aware myself of the history of the definition in the Indian Penal Code; but it seems to be this, that the Indian Courts have worked out by a series of decisions a somewhat artificial definition differing from the ordinary meaning of the term in the English language, and differing from the line of decision in the English Courts and that the catena of Indian decisions has been followed in the Indian Penal Code. I think most Hon'ble Members will agree with me that it is well to get away as far as we can from an artificial and unnatural definition of terms. We have to use sometimes terms relating to what

the Hon'ble Mr. James calls 'the cardinal virtues.' In ordinary language we understand what is meant by the term good faith. We mean to say that a man has acted honestly, and we mean to say that he has not acted dishonestly. The term is used in all kinds of acts and is continually cropping up. I think it is far better for the future that when we use that term its ordinary natural English meaning should be restored to it. There are many cases where a man ought to be made liable for negligence, but when you are going to make a man so liable, I think you ought to say so in terms and not cast on him the slur of bad faith because he acted negligently. There are certain forms of conduct where it is wholly a question of inference whether a man acted in good faith or negligently; that is always a question of fact, but where a question of fact is to be determined, I think it would be a monstrous thing to brand him as having acted in bad faith because he has not come up to a high standard of diligence. Of course there are cases where a man properly is held liable for negligence, and in these cases for the future we shall express the law in these terms, namely, that a man is not protected unless he has acted in good faith and with due care and caution.

"My hon'ble friend Mr. James has travelled somewhat beyond the immediate scope of this Bill. He points out—and of course I agreee with him—that this is a measure which only deals with questions of form—it is a mere draftsman's measure—and he calls our attention to what we cannot but all feel that we are now in times of great stress and danger. I do not think, however, that because we happen now to be in times of peril and danger and stress, that that is any reason for neglecting the ordinary work of the day. We must go on with our ordinary work, doing it as best we can. We shall not diminish the dangers which beset us by neglecting our ordinary daily tasks and sitting looking at others with open mouths and eyes. What can we do in the Legislative Council? I think we have done all we can. We have invested the Governments who have to carry out administrative measures with full powers, and by legislation we can do nothing more. The stress of the work must fall upon the administrative officers and no legislation can help them in that.

"As regards the other subject which, like King Charles' head cropped up in my friend's speech—the question of debtor and creditor—that is a subject which we have often considered long and anxiously. We may be able to do something: I do not know; I am not very sanguine myself. I have seen various experiments tried, and, sitting as a Judge at home, I have tried various plans, and I am sorry to say that the result of the various arbitrary measures which I have endeavoured to adopt to help debtors has simply been to encourage them to run more deeply into debt. I remember

when first I sat as a County Court Judge, I was very much horrified to find that working men ordinarily borrowed money at a rate of interest of 250 per cent. That was the ordinary rate at which working men got small loans. Having the matter in my own hands, and the case not being appealable, I thought that monstrous, and that I would not allow such interest, and I either stayed execution of the judgment, or I said I would only give judgment if the creditor would consent to a reduction to a fair amount of interest. What was the result? That as soon as this decision became known, there was a rush of men seeking to borrow at any price, and day after day in Court debtors used to come up cheerfully before me and say, 'You made such and such an order in the case of so and so, please make a similar order in my case.' I tried various other plans, and so have other Judges, and I think nearly all of us came to the conclusion that all we could do was to enforce the law; but it was no use trying to make a special law to protect the people against themselves. However one is always willing to learn and if any feasible plan—any plan which will hold water—is brought forward, I for one will give it the most anxious and careful consideration."

The motion was put and agreed to.

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

The motion was put and agreed to.

LOCAL AUTHORITIES (EMERGENCY) LOANS BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Bill to enable local authorities to borrow money for temporary emergencies be taken into consideration.

The motion was put and agreed to.

The Hon'ble BABU JOY GOBIND LAW said:—"I wish to say a few words in respect to the amendment of which I have given notice. So far as I have been able to learn this Bill had its origin in an application from the Karachi Municipality for a loan to be granted to them by the Government in order to meet the expenditure in connection with the plague. I confess, my Lord, that sub-clause 1 of clause 2 came to me as somewhat of a surprise. Hon'ble Members are aware that after the famine in 1856, Lord Lawrence boldly declared that the Government of India is to be responsible for famine relief, and this authority ought to be held sacred.

Since then, my Lord, that has been the settled policy of the Government of India, confirmed by the Secretary of State, and more than one Viceroy and more than one Secretary of State have carried that policy into practice. Therefore it appeared to me that the clause I have referred to seemed to me to be a new departure from the settled practice and settled policy in such cases. Is the Government of India going to share its grave responsibilities with municipalities and District Boards? I happen to have some knowledge of these municipalities and a few of the District Boards. I know, my Lord, that they are not able fully to carry out the purposes for which those bodies were brought into existence ; that they had the greatest difficulty in making both ends meet; that they were not able to put their roads in proper repair, to make new roads when necessary, to provide tolerably good drinking water, to provide drainage and sanitary improvements in regard to which we know that the Government of India and the Secretary of State are taking every opportunity of pressing upon their attention. Such, my Lord, being the condition of these bodies, it appears to me to be utterly infructuous to attempt to throw such a heavy burden as the Bill contemplates upon them when, as we know, they are not able to perform the primary duties which local enactments have cast upon them. These are the reasons, my Lord, for my submitting this amendment to this Council. If the Hon'ble Sir James Westland would refer the matter to a Select Committee, I should be quite satisfied, but in the meantime I would move that sub clause 1 of clause 2 of this Bill be omitted and that the numbering of the following clauses be altered accordingly."

The Hon'ble PANDIT BISHAMBAR NATH said :—" The omission of sub-clause 1 of section 2 from the Bill is, I submit, desirable, and it is not expedient, for the reasons given by the Hon'ble Member on my right (Hon'ble Joy Gobind Law), that more elasticity should be given to the borrowing powers of public bodies, such as municipalities and District Boards. It is a pity, indeed, and it is deplorable that famine and pestilence are stalking in the land hand in hand ; and I know that we must have the sinews of war at hand to cope with the enemy. Your Excellency's Government, I am aware, has left no stone unturned to meet the calamity. I know also that the emergency is a temporary one ; and it is a consummation devoutly to be wished for, that the emergency were soon over. My Lord, I understand that the Famine Code already provides that whenever any such expenditure, such as we now have to meet, has to be incurred, that it is the duty of the Municipal bodies and the District Boards to provide for any extraordinary expenditure that might be entailed thereby, but I also understand that their liability to such expenditure is limited to their present and existing resources.

It would not, therefore, be advisable to enable them by legislation to borrow money for the purposes of meeting the relief in the event of a dreadful famine. Their means for ordinary purposes are already hampered ; and for these reasons I submit, that the clause which has just been referred to be omitted from the Bill."

His Excellency THE PRESIDENT said :—"I did not wish to interrupt the Hon'ble Member while he was speaking, but the Rules of Business provide that, when an amendment is moved, the member in charge of the Bill is entitled to speak next after the mover of the amendment."

The Hon'ble SIR JAMES WESTLAND said :—"I think that the motion which has been made to omit the first clause of section 2 is to a certain extent based upon a misunderstanding, and I have to acknowledge, therefore, the tone in which the mover of the amendment spoke, in saying that he was not particularly committed to the precise terms of his amendment, and would, under certain circumstances, not press it. I do not wish to enter with him into any discussion as to what local bodies may be expected to do or not to do within their ordinary municipal functions ; but I am afraid that I am obliged to challenge altogether his views on the question as to whether the affording of famine relief comes within the purposes of municipal and local bodies. I quite admit that the law in India is not uniform on this subject, but I shall presently state what the various sections in the various laws on this matter prescribe, and I think if I can show that Municipal Boards and District Boards have authority to spend money on famine relief, there can be no harm in giving them power, if they find their balances are not sufficient to meet their objects, to go into the market or to borrow temporarily. I wish to draw special attention to the wording of the sub-section. I can quite understand the strong objection to a law prescribing that the local authority, as defined in the Act, must, under the directions of the Governor General in Council, borrow money on the security of its funds and apply it to any purpose. That is not the object of the present law. It is not to saddle Municipal or District Boards with any expenditure which they are not competent at present to incur. It is meant purely to apply to the cases in which they are competent to incur the expenditure, or in which they are under an obligation to incur the expenditure, and its object is merely to enable them to borrow money for carrying out purposes for which they may find their existing means are not altogether adequate. Now, on a question of principle, might I be permitted to refer for a moment to what has been laid down on this matter in the Famine Commission Report. The mover of the amendment referred to

certain instructions and undertakings which had been given by the Government of India and the Secretary of State. He went back as far as 1866. What he said is perfectly true. The Government of India have undertaken a certain responsibility in respect of famine relief, and that responsibility, I am sure, the two Hon'ble Members who have just spoken will admit the Government are doing their best to meet. But the Government is entitled, and ought to be entitled, to call to its aid Municipal and District Boards, and, as a matter of fact, it does so. The section of the Famine Commission's Report, which refers to this matter, is this :—

"'It was observed by the Secretary of State, and we think with perfect justice, that "however plain may be the primary obligation of the State to do all that is possible towards preserving the lives of the people, it would be most unwise to overlook the great danger of tacitly accepting, if not the doctrine, at least the practice of making the general revenue bear the whole burden of meeting all local difficulties, or of relieving all local distress, and of supplying the needful funds by borrowing in a shape that establishes a permanent charge for all future time. . . . The question which is thus raised of how to make local resources aid in meeting local wants is no doubt one of great difficulty and complexity especially in a country like India. . . . The duty of the State does not extend further than to see that the needful means are supplied for giving effect to this principle and for distributing the local burdens arising from its practical application in the manner in which shall be most equitable and least onerous to those who have to bear them.'"

"So far this is a quotation from the Secretary of State. After this the Commission go on to say on their own part:—'This sense of responsibility would, of course, be most effectually quickened by meeting famine expenditure out of the proceeds of local taxation, and by administering the relief through representative members of the tax-paying body, themselves responsible for providing all needful funds. There are, however, insurmountable difficulties in the way of any but a very partial development of such a system in India at the present time.'

"Then they go on to discuss other matters ; but that is the principle laid down and accepted by the Government of India. It is a principle also which has been accepted by the Legislature both of the Government of India and by the local Legislatures. In all cases there are distinct directions to the local authorities. The directions are not altogether uniform, but still I shall be able to show that in every province where there is famine at present there is a distinct direction that the local bodies must bear their share in meeting the expenditure that arises out of it. Bombay, for example, is the most hardly stricken province in

India. The Bombay District Municipalities Act, VI of 1873, puts this principle in a much stronger form than any Municipal Act in the rest of India. Section 24 says :—'It shall be the duty of every municipality to make adequate provision, out of the municipal property and funds, for the following matters within the Municipal District under its authority.' Then follow a number of duties among which is 'the establishment and maintenance of relief and relief works in time of famine or scarcity.'

"In three other Provinces also which are at present severely stricken by famine—the Central Provinces, the Punjab and Burma—it is laid down in Act XVIII of 1889 for the Central Provinces, section 37, in Act XX of 1891 for the Punjab, section 72, and in Act XVII of 1884 for Burma, section 61—that is, Lower Burma—that municipal funds are applicable to purposes of famine relief. Then we go on to the case of the District Boards. I find in the Bengal Act, III of 1885, section 99, that, 'It shall be lawful for a District Board, subject to such limit of expenditure as may be prescribed by the Commissioner, to take such measures as it thinks fit for the relief of the famine within its district and for that purpose to—..... open and maintain such relief works as may be necessary.'

"Then I take up the Act relating to District Boards in the Punjab (XX of 1883) and I find (section 20) that the 'Local Government may direct that any of the following matters shall, subject to such exceptions and conditions as it may make and impose, be under the control and administration of a District Board within the area subject to its authority.' Then follow certain matters among which are 'the construction, repair and maintenance of famine preventive works and the establishment and maintenance of such relief works, relief houses and other measures in time of famine or scarcity as may be entrusted to the charge of the Board by the Local Government.'

"I take up the Local Boards Act of the North-Western Provinces and Oudh (XIV of 1883) where (section 24) it is stated that 'every District Board shall, so far as the funds at its disposal will permit, but subject to such exceptions and conditions as the Local Government may, from time to time, make and impose, provide for the control and administration of the following matters within the area subject to its authority' and among these matters are the 'the establishment and maintenance of such relief works in time of famine or scarcity as may be entrusted to the charge of the Board by the Local Government.'

"I need not quote the Famine Codes of the various Provinces, because all these Famine Codes are based on the law current in the several Provinces, and

all lay down that for certain purposes the district officers are to call in the aid of Municipal and District Boards in the administration of their famine duties. I am glad also to be able to say that this obligation has been so far recognised that expenditure has been already incurred to no inconsiderable extent by the District Boards in various parts of India in meeting the existing famine. Now I do not wish to enter into any question as to how far Municipal and District Boards may be expected to undertake these duties. The principle upon which we go in that respect is that, although the first duty in time of scarcity falls upon those local Boards, still it is not intended that they should exhaust their means, and the Government at present undertakes the main duty of famine relief. The Municipal Committee or District Board aids in all these matters when it is within its legal power to do so, and may reasonably be expected to do so. I admit that in the case of municipalities in Bengal there is no such provision, but I say that provision exists even in Bengal in the case of the district authorities.

"I have shown, therefore, that the principle adopted by the law is that the local authorities have a responsibility in the matter of meeting famine relief. I admit that the ultimate responsibility rests with the Government, and that the Government having more ample funds at its disposal, having long been prepared for these calamities, may reasonably be expected to come forward and bear by far the larger burden of famine relief. But the District Boards do bear part of the charge, and where they do bear part of the charge and where the law imposes upon them an obligation to bear part of it, it is quite consistent with the existing law to provide that, if they desire to borrow money on the security of their funds for meeting their obligation, they should have legal power to do so, and that is all the present law which is now proposed to the Council proposes to do. It imposes upon them no obligation. It is not intended to give the Government the power of saying that they must run into debt in order to discharge their duties. Their duties are defined quite irrespective of this particular Act, but I think it is perfectly legitimate to say to local Boards and Municipalities that the mere fact of their having overspent their balances, or having found themselves as one or two municipalities at present do find themselves, devoid of the actual cash balances necessary to meet their obligations, they shall not for that reason be excused altogether from fulfilling them. I do not think that on the other side of India the Municipal Boards are unwilling to bear a share in the burden of famine relief; they are at the present moment doing so. But this Bill is not meant to confer upon them powers which they do not possess; nor to impose upon them any new expenditure which at present they may not be called upon to discharge."

The Hon'ble MR. SAYANI said :—" What I intended to say after my friend the Hon'ble Pundit Bishambar Nath had made his statement, is now explained by the Hon'ble the Financial Member. As I have understood the Bill from the first it was not brought forward before this Council for the purpose of deciding as to whether this expenditure is to be met from the general revenues of the country or from the moneys assigned to the Provincial Governments, or out of local funds, or to throw any burden on the Local Governments or on the municipalities, or on the District Boards, but that it was simply intended as a temporary measure to enable Local Governments, Municipalities and District Boards to tide over the difficulty for the present, because the Bill states 'that whereas it is expedient to enable local authorities to borrow money for temporary emergencies,' and it goes on to give a list of the temporary emergencies which are at present requiring additional funds,—the giving of relief and establishment and maintenance of relief works in time of famine or scarcity being the first in such list; and what I understood from this was an intention to enable Local Governments at their discretion to do everything in their power to relieve the distress. For instance, they might advance moneys to certain classes of people in order to enable them to go to work, spin yarn, weave cloth and so on, so as not to allow them to fall into distress. The big question as to who is finally to bear the expenditure or the loss or both as the case may be, must yet be an open question, as, notwithstanding what the Hon'ble Financial Member has said, I do not think the Government can have already decided it, because before Government decides that question, the representations of the Local Governments and the representations of the municipalities and District Boards through the Local Governments, will have to be very carefully considered, and then and then only a final decision come to, and that as this is only a temporary measure in order to enable the local authorities to tide over temporary difficulties which are very exceptional, it is desirable to give the power which is intended to be given by this Bill, leaving the question of responsibility to be determined hereafter, when a full and proper consideration can be given to it."

The Hon'ble MR. PLAYFAIR said :—" My Lord, I think it is very probable that in establishing urban relief works, one difficulty will be to prevent calls being made upon the municipality by those inhabiting the agricultural area outside of its limits. Artisans or operatives following a special trade are, generally speaking, drawn from the country to the town. These do not as a rule sever their connection with their native villages and not unfrequently keep this up by leaving their families there to follow agricultural pursuits. If income failed them in the towns they would most probably return home to assist in

doing what could be done in the preparation of land for future crops. On the other hand those who do not follow a special trade and are of the landless class will be obliged to accept such other employment in the town or elsewhere as may be obtainable, and in this way they will in all probability eke out a living. If not, they would have to seek charitable relief either from private individuals or from the State, but it does not seem clear why the owners of property in a municipal area, who in their own interests may in times of scarcity do much for the preservation of their tenants or operatives, should be called upon by special taxation to provide also for the other members of the urban community. This leads to the question, my Lord, whether municipalities have not fair grounds for a claim upon the Famine Insurance Fund on behalf of citizens as well as the District Magistrate who, as a matter of course, prefers a claim upon the Government on behalf of the rural population. The Famine Insurance Fund was started for the preservation of life against a failure of crops, and direct calls are only made upon it under emergency.

"I would proceed a step further, my Lord, and ask whether communities suffering from or jeopardised by the outbreak of such a dangerous epidemic disease as the plague should not also be considered as worthy of relief under this Insurance Fund. It is very evident that municipalities and other corporations have not thought it necessary in the past to contemplate a heavy expenditure on account of the probable appearance of such a dangerous disease as the plague, just as they have not considered it necessary to lay up a reserve fund for the damage that may follow upon a cyclone, and it would appear that much may be said in favour of expenditure for the stamping out of plague being met by the Provincial if not by the Imperial revenues. Omitting reference to Calcutta, which has special powers under its Municipal Act, and looking to the financial position of the municipalities throughout Bengal, it is very evident that the assessment has reached what has been considered by the general public to be the limit of taxation. So much is this the case that it is not apparent what security in the nature of increased taxation would be forthcoming for large borrowings.

"The present Bill will evidently not become applicable to these municipalities, for in addition to their having reached the maximum of taxation, the Bengal Municipal Act does not seem to provide for any new form of taxation, although Acts of other provinces do allow for 'the levying of any other taxation' with the sanction of Government. The position seems to be that the Bengal municipalities can only offer indifferent security for payment of interest demands and instalments of sinking funds on capital borrowed for the purposes of the Bill before

the Council, and it is very certain that whatever risk the Government might take in giving loans to municipalities, the general public would not be very ready to provide capital without security. It seems to me therefore that the outlay contemplated by the Bill on the occurrence of famine and plague in the municipalities of Bengal at least will fall upon the shoulders of the Government, and to this I do not object."

The Hon'ble MR. CADELL said :—"My Lord, I did not intend to take up the time of the Council with respect to this Bill, but as so many Members have spoken against the clause under discussion, I am anxious to state the conviction derived from considerable experience of local authorities in the North-Western Provinces, that there are many such local authorities which will not thank the hon'ble mover of the amendment for wishing to deprive them of the safe, and in my opinion, suitable discretion allowed to them by the Bill. Surely if there is any reality in self-government, these authorities should be permitted to decide for themselves whether they shall raise money for the help of their fellow-citizens in times of scarcity and famine. In some parts of the country there are old decayed towns the impoverished inhabitants of which are the first to feel the effect of high prices, and which may need relief long before relief works are undertaken by Government, and even where such relief works are never likely to be undertaken, and in all cases it seems to me right and proper that local authorities (and here I am thinking chiefly of municipalities) should do what they can to alleviate distress in their neighbourhood. As to the practice hitherto, there can, I think, be no doubt ; in times of scarcity, if a municipality has funds, it devotes them to works which are useful to the town and the construction of which will be helpful to its population. It would, I think, be very undesirable that, while one Board was doing its duty readily and effectively, having funds to do so, another Board having temporarily exhausted its funds, should sit idly by and do nothing for its distressed inhabitants.

"I am glad to notice that there is no suggestion that there is any danger that local authorities will be harshly treated by Government, and we may, I think, rest assured that, even if local authorities wished to ruin themselves, 'the previous sanction of the Governor General in Council' will not be given to loans which are likely to injure or permanently cramp the local authorities applying for such loans."

The Hon'ble SIR GRIFFITH EVANS said :—"As far as I have been able to follow the Hon'ble Sir James Westland, it appeared that the bodies which this Bill will affect are divisible into two classes—one a class who are at present

empowered to spend money on the establishment of relief works, and the other a class who are not so empowered, and I understood him to say that the Bengal Municipalities are not empowered to do anything of the kind under the present state of the law."

SIR JAMES WESTLAND :—" I believe that is the case."

SIR GRIFFITH EVANS:—"If so, we see at once that the position of the Hon'ble Joy Gobind Law who has moved the amendment is a perfectly different one from the position of the Members who represent the North-Western Provinces. They might fairly say we hail an Act which enables us, in cases where it is hard to discharge obligations which we are ordinarily called upon to discharge, to borrow money for the purpose, but it is quite a different thing here in Bengal, and I gather in Madras, too, where this duty has never been placed upon the municipalities and is not cast upon them now. The position of these municipalities is, I entirely agree with the Hon'ble Joy Gobind Law, in many respects rather deplorable. They are short of funds. They are constituted primarily to see to the roads, to the water-supply, and to the conservancy. These are their necessary duties. Those duties they find it difficult to discharge, and I am sorry to see there is a tendency to throw on them other duties that they cannot perform.

" They have been charged to some extent with education. If they have not got money enough for roads, water and their conservancy, what is the use of talking about education? There is I believe a further proposal that they should pay for a Veterinary Department and for improving the breed of mules, horses and asses. Now on the top of all this they find that they are by a side wind apparently let in in many cases for loans for famine relief, although that is no part of their substantial Act. They are driven, as in some cases they complain, to undertake expenses with regard to education and with regard to other things which they have no sufficient funds for. How far those complaints are well founded or not is not for me to say, but it is probable that when the Bengal Council comes to deal with the matter a good deal will be heard of these complaints, and now this Bill apparently gives the Bengal Municipalities the power of raising these loans; if they have no power to spend money on famine works, why give them the power to borrow money for this purpose? The Act, at any rate, should be restricted to those parts of India in which the municipalities are charged with these duties, and, if it is wise to allow them to mortgage, give them a discretionary power to raise loans for these purposes, but to give other municipalities power for purposes which are not within the Acts which constitute them at all, is a strange kind of legislation."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU said :—"This Act has been described as merely permissive and not one that throws any additional burden upon the municipalities and other bodies. I know that in terms it does not, but once an Act makes it the duty, that duty is easily forced upon them. We have, in our Presidency at least, a section of the Municipal Act which has received the historic name of the 'bludgeon section' by means of which where a municipality would not carry out any duties imposed upon them by the Act, by means of that section, the authority took it into its own hands to have it done by appointing an officer for the purpose of carrying that purpose out. Therefore, the permissiveness is only the first step towards making the ground prepared for the application of a stringent section, and I may also say that the duty of making a fund against famine is not cast upon, I think at present, the municipalities of Madras. All that has been said against the application of this Act to Bengal must be said with equal force, if not with greater force, in regard to the Madras Presidency. If anything, Bengal is much more rich than Madras, and if rich Bengal complains to have this task thrown upon it, I am sure the poor and benighted Madras ought to. My Lord, the various duties cast upon the municipalities have been referred to by the mover of this amendment. There are certain duties which on the face of them do not belong to a municipality, but have been cast upon it in Madras, and that is, perhaps, one of the grounds why further care ought to be taken that municipalties ought to be exempted from further obligations of this kind. For instance, the municipality in Madras has to contribute a pretty good sum towards the maintenance of the Police in the management of which they have not the slightest power. They have to give away a large sum of money towards hospitals—not hospitals that they maintain—but towards medical education itself to the management of which they have no right whatsoever. They have also to give away large sums of money for purposes of education, in the management of which they have no hand. It is well known that the water system in Madras, though good I think to-day, requires a good deal to be modified, and the drainage is one the very thought of which makes people frightened as to the amount it would cost. Under these circumstances it seems to me that, although the Act as it at present exists does not lay this duty upon the municipalities of Madras and such municipalities, it strikes me that the passing of this Act would cast upon them, if not the duty of spending its current income for the purposes of famine, but possibly the duty of borrowing money for the purpose of helping in the alleviation of famine. The Famine Commission Report has been referred to, but the Famine Commission Report is not law, and when I read the Bengal Municipal Act and the Bengal Famine Code sometime back I was not a little surprised

that the Famine Code throws the duty of relieving people in the earlier stages of distress upon the municipalities and the District Boards, though there was no foundation in law for that duty to be cast upon them. But, my Lord, I go further and say that not only is the law objectionable in so far as where those municipalities are concerned upon whom the duty is not laid at present, but I go further and say it is a law which ought not to be passed even in regard to bodies upon which at present the duty lies. The duty that lies under the Act is the duty of employing the current income of the municipality for the purpose of relieving distress, but the power that this will give is to convert that duty, not only to a duty of supplying the current income, but also to pledge the future income for the purposes of the present generation. In that view I think that even in regard to those municipalities upon which the duty is cast at present to render relief, it is a duty which is limited to the current income and not to pledge future income by borrowing loans for the purpose."

The Hon'ble MR. CHALMERS said :—"I merely wished to point out that Hon'ble Members seem to labour under some misapprehension as to this measure. This is not a Bill for compelling municipalities or local authorities to run into debt, but to enable them in certain cases, where they desire it, to obtain money on the security of their rates which they could not otherwise obtain. Of course, a Municipality or Local Board by the terms of the Local Loans Act is prevented from borrowing money except for certain definite purposes, and all that this clause does is to give an optional power to local authorities to borrow money in certain cases outside the general purposes for which they are empowered to borrow. Perhaps it is an administrative question, but there are surely many cases in which a local authority might properly wish to borrow money for the purposes mentioned here. Some of the authorities, as Sir Griffith Evans has pointed out, are under the duty of providing for their inhabitants in times of scarcity. It is clearly advisable that they should have power, if necessary, to borrow money to carry out that duty. Other municipalities are under no such duty at all. That being so, I do not suppose they would borrow the money, but it is very easy to imagine cases where a municipality, which is under no direct duty, might nevertheless wish, for the sake of preserving a particular trade, to incur expenditure which might not be authorised by its ordinary borrowing powers. One instance occurs to me. Take the case of the lace-workers of Delhi. I believe at present there is great distress among them. It is an important trade to the city of Delhi. It is important that the trade should not be allowed to die out. It is quite possible that Delhi might wish to borrow money to help the lace-workers who are now in great distress, and it is quite clear that the ordinary famine rules could not

be applied to trade of that kind. Where you have skilled workers whose work depends upon the delicacy of touch of their fingers, you could not apply the ordinary famine relief tests to them. You have to make special provision for cases of that kind. It might very well be that ordinary famine funds would not be available under the famine rules requiring test works in a case like the Delhi lace-workers, but yet the city wishing to help these people might desire to borrow money to help them through this period of scarcity. As regards epidemic diseases I do not understand that any question has been raised. Of course, similar considerations apply there."

The Hon'ble SIR JOHN WOODBURN said :—"It might, perhaps, reassure the Hon'ble Mr. Joy Gobind Law if I interpose with a single word of explanation. As Sir James Westland and the Hon'ble Mr. Chalmers have pointed out, the Bill is a purely permissive Bill, and applies entirely to voluntary applications for loans from municipalities or other local authorities, and the case originated out of two voluntary applications which were actually made. One was made by the Kurrachee Municipality for a loan from Government of 1½ lakhs of rupees to assist them in the extirpation of plague from among its community. The other application—I have not the papers to refer to at this moment, and I am not absolutely clear about the facts—was from the Bombay Government on behalf of the Sholapur Municipality. In that Municipality there is a large body of weavers whose occupation has come to a standstill for the time being. In addition to the difficulties of the time, and the hardships from high prices, the Pundits of that region have declared that this is an unlucky year for marriages, and there is, therefore, an exceptionally small demand for their commodities, but the relief which the Government was prepared to give these weavers was a relief upon relief works upon which they must toil with their hands and in a manner to which they were not accustomed. The Sholapur Municipality, if it could get money from Government, would willingly employ these weavers themselves, take their goods when they are woven and sell them at a more convenient season and pay the weavers in the meantime the prices of their products. On both these occasions we were advised that the municipalities under the present Act had no valid powers of raising loans from Government, but these were two genuine cases in which municipalities of their own accord had asked for money to expend in a manner which they thought proper and convenient, and it was to enable such applications where they were voluntarily made that this proposal has been brought before the Council."

The Hon'ble SIR GRIFFITH EVANS said :—"Might I ask Your Excellency's permission to make a remark. My objection does not seem to have been quite

understood. As I understand these Bengal Municipalities have no power to spend money for famine relief works and therefore to spend the money they are enabled to borrow would be *ultra vires* except so far as they get implied power under this Act. This is an Act which has the effect incidentally of giving them permissive power in borrowing for purposes beyond the scope of the Act by which they are constituted and that is a fatal objection to the measure as it stands. As regards what the Hon'ble Sir John Woodburn has just said, no doubt the Sholapur case is one in point, but it could be dealt with by a special Act, but it is no excuse for giving Bengal Municipalities permissive power to borrow money to do acts *ultra vires* of the Act under which they are constituted."

SIR JOHN WOODBURN :—"I think it was explained by the Hon'ble Sir James Westland that this Act imposes upon no local authorities any new duty."

SIR GRIFFITH EVANS :—"It gives them the right to borrow in order to do something which they have no power to do and that is I think very curious legislation—the more so as the framers of the Bill seem to disclaim all intention of producing this result."

His Honour THE LIEUTENANT-GOVERNOR said :—"The Hon'ble Sir Griffith Evans has anticipated to a great extent the remarks I was about to make with reference to this Bill. When it was first brought in, I ventured to suggest to the Hon'ble Mover that it should be published in the local Gazettes in the local languages, in order that it might be carefully considered. I have been away on tour myself, and it has not come before me officially. All the consideration I have been able to give to it has been in the course of this debate. So far as the Bill empowers local authorities who are under their existing Acts able to spend money upon these objects, it appears superfluous. As the Statement of Objects and Reasons explains, the Local Authorities Loans Act enables a local authority to raise a loan for the carrying out of any works which it is legally authorised to carry out ; and it is only where a doubt arises as to whether a particular work falls within the legal powers of this local authority that any question of the necessity for this Act can arise. In the case of the Bengal Municipalities it has already been stated that they have no power at present to spend money upon famine relief. They do, as a matter of fact, spend certain sums upon that object; because it is possible under the executive orders of Government to direct ordinary municipal operations in such a way as to practically afford relief for famine. Strictly speaking, they have no power to spend their funds on relief works, and the logical form of

the section would be to insert in section 2 after the words 'borrow money on the security of its funds' the words—'and may, with the previous sanction of the Governor General in Council and with the approval of the Local Governments, expend its funds for any of the following purposes.' I should have been glad if we had more time—I see it is proposed to pass the Act to-day—to consider whether we should not make some proposal of that kind and take power to expand our general Municipal Law in Bengal on those lines. I do not myself hold that famine relief is an object on which a municipality should not be enabled to spend funds, and as I say indirectly in Bengal we do spend funds in that way. The municipalities have not, however, at present much surplus income. As regards District Boards in Bengal, there is no doubt whatever that they have full power to spend money upon famine relief. Necessarily so, because we make over to them the road cess, and it is a perfectly legitimate and proper thing to spend that money on works for the relief of distress. It is true that the Act is a permissive Act, but as it stands will be perfectly infructuous in Bengal. If the necessities of other parts of India require it, I shall throw no obstacle in the way, but it must be clearly recognised that with regard to Bengal municipalities it does not meet their case."

The Hon'ble BABU JOY GOBIND LAW said:—"I desire to make a remark with reference to what was said as regards this being an enabling Act. We know what an enabling Act is. As soon as local authorities get powers to raise loans, I am quite sure pressure will be brought upon them to exercise that power. They will have no option in the matter. How can they be opposed to authorities to whom they owe their very existence. So far as regards that clause which I do not think of much importance. But questions have cropped up in the course of this discussion to which it is necessary that more attention and consideration should be given than can be given at the present moment. I would, therefore, take this opportunity of suggesting to the Hon'ble Member in charge of the Bill whether it would not be the best thing under all the circumstances to refer the Bill to a Select Committee before it is finally passed. If the Hon'ble Member in charge of the Bill is willing so to refer it, I shall withdraw the amendment that I made, but if he is not willing, of course the amendment must stand.

The Hon'ble Sir JAMES WESTLAND said:—"I understand that the objections which have been taken to the Bill are that the Bill enables the Government to do certain things which, as I have explained, it has no intention of doing, and to exercise certain powers over Municipal and Local Boards which it is expressly declared it has no intention of exercising. The Bill is intended purely to enable

local bodies to borrow funds for the purpose for which they already have legal power to apply their funds, and to fulfil obligations which for want of actual cash balances they are unable to fulfil. If there is any doubt as to the meaning of the words of the Bill, it will be better that the Bill be referred to a Select Committee in order that its language may be made perfectly clear. I would, therefore, propose, if the Hon'ble Mover of this amendment will accept of my motion, that the Bill be referred to a Select Committee composed of the Hon'ble Sir John Woodburn, the Hon'ble Mr. Chalmers, the Hon'ble Rai Bahadur Ananda Charlu, the Hon'ble Mr. Playfair, the Hon'ble Babu Joy Gobind Law and myself, with instructions to report at the next meeting of the Council."

The Hon'ble BABU JOY GOBIND LAW withdrew his amendment.

The motion was put and agreed to.

INDIAN STAMP ACT, 1879, AMENDMENT BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Bill to amend the Indian Stamp Act, 1879, be referred to a Select Committee consisting of the Hon'ble Mr Chalmers, the Hon'ble Rai Bahadur Ananda Charlu, the Hon'ble Mr. Sayani, the Hon'ble Mr. James and the mover, with instructions to report at the next meeting of the Council. He said :—"It is desirable if the Select Committee approve of the Bill that it should be passed this Session. I may mention what I did not mention when asking for leave to introduce the Bill that the questions involved in this Bill have been under discussion with Local Governments for a long time. They have been approved of by the Local Governments, and there is, therefore, no necessity to refer the Bill separately to the Local Governments and to get their opinion on it as it stands, because I shall be able to lay before the Select Committee sufficient evidence of the opinions of Local Governments on the matter generally."

The Hon'ble BABU JOY GOBIND LAW said :—"It strikes me that there will be some injustice done by this Bill. It is in regard to the transfer of a lease. Why should the transfer of a lease cost more money in stamps than a lease land? That is the objection which occurs to me. Why should it be charged with a conveyance stamp? There are some leases which are charged as conveyances, but there are others which are charged with a five-rupee stamp. That is the only objection I have to make."

[11TH MARCH, 1897.] [*Sir Griffith Evans ; Sir James Westland.*]

The Hon'ble SIR GRIFFITH EVANS said:—"As a matter of fact, in this country a lease does not always bear the same meaning in India as it does in England. In the Transfer of Property Act a perpetual lease, as they call it, that is a right to hold land for ever subject to an invariable rent, such as putnee, is called a lease. In England that would be called a conveyance of real property. It would not be considered a lease at all, and it would be charged with a duty on the perpetual rent. These things are now dealt with as leases because they are called leases in this country, and it is, therefore, necessary to take some steps for the protection of the revenue in regard to this class of property. I understand the matter is going into Select Committee and will be considered there."

The Hon'ble SIR JAMES WESTLAND said:—"The Hon'ble Sir Griffith Evans has correctly expressed the intention of the law which we propose. It is really to make what in any other country is called a conveyance of real property subject to the duty with which a conveyance is properly chargeable. In this country leases have a different meaning to what they have in other countries. A large quantity of property is held under leases given by Government and there are other leasehold properties such as putnees and the like in Bengal. These properties are very valuable. The value is not in any way represented by the annual payment made, and the transfer of these properties, when made, is often made for a very valuable consideration. The point which has been brought before the Council by the Hon'ble Joy Gobind Law will, no doubt, be considered by the Select Committee."

The motion was put and agreed to.

The Council adjourned to Friday, the 19th March, 1897.

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

CALCUTTA;
The 12th March, 1897.

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