PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

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1857.

Saturday April 4, 1857.

PRESENT :

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	D. Eliott, Esq.,
Hon. Major General J. Low,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq., and
	Hon. Sir A. W. Buller.

UNCOVENANTED SERVANTS (FORT ST. GEORGE.)

MR. ELIOTT presented the Report of the Select Committee on the Bill "for the more extensive employment of Uncovenanted Agency in the Revenue and Judicial Departments in the Presidency of Fort St. George."

NAWAUB OF THE CARNATIC.

Also the Report of the Select Committee on the Bill "for repealing Act I of 1844."

BOMBAY UNIVERSITY.

MR. LEGEYT moved that the Bill "to establish and incorporate an University at Bombay" be now read a second time.

The Motion was carried, and the Bill read a second time.

ACQUISITION OF LANDS FOR PUBLIC WORKS.

On the Order of the Day for the adjourned Committee of the whole Council on the Bill "for the acquisition of land for public purposes" being read, the Council resolved itself into a Committee for the further consideration of the Bill.

MR. ALLEN moved that the words in Section XVI which related to the costs of arbitrations, be left out.

The Motion was agreed to, and the Section then passed.

MR. ALLEN moved that the following new Section be inserted after Section XVI :—

"The award shall also declare the costs of the arbitration, and by whom and in what proportion they shall be paid. All costs incurred for the purpose only of determining the amount of compensation to be allowed for the land, shall be borne by the Government, unless the Arbitrators shall award as compensation the same or a less sum than shall have been offered by the Collector or other Officer; in which case, each party shall bear his own costs so incurred, and shall also pay a moiety of the fees of the Arbitrators. All other costs of the arbitration shall be in the discretion of the Arbitrators. The Arbitrators, in making their award, shall be entitled to a reasonable fee for their services, the amount of which shall be fixed by the Collector or other Officer, subject to the orders of the Commissioner, or other superior Revenue authority."

MR. PEACOCK said, it appeared to him that the words "all other costs of the arbitration shall be in the discretion of the Arbitrators" were objectionable, and he should move, as an amendment, that they be omitted. It would be rather difficult now to argue why they should be omitted, because the Council did not know upon what principle the other Sections would be settled. Clause 2 of Section IX provided as follows :—

"If there be several persons having distinct and separate interests in the matter in dispute, and they cannot agree in the appointment of an Arbitrator on their behalf, it shall be competent to the Collector (subject to the orders of the Commissioner or other superior Revenue authority) to refer each of such distinct and separate interests to a separate arbitration; or, for the purpose only of determining the amount of compensation to be allowed for the land, to select any one of the persons interested, whose interest appears to him to qualify such person to represent the others; and the person so selected shall appoint an Arbitrator on behalf of all the persons interested in the matter in dispute."

The meaning of this provision he understood to be that the Collector was to have the power to compel persons claiming a separate and distinct interest in land required for a public purpose, to refer the case to arbitration, not merely in order that the Arbitrators might fix the amount of compensation which should be paid for the land, but that they might decide on the several interests claimed. Where the Government wished to take a piece of land for a public purpose, and the amount of compensation to be given for the land was referred to arbitration, it appeared to him that the Government ought to pay the costs of the arbitration if the amount awarded by the Arbitrators was more than that which had been offered by the Collector; and that if the amount awarded was less, each party, as the land would be taken by compul-

sion, should pay his own costs. But if there were two or more persons claiming conflicting interests in the land, and the Collector was to have the power of referring their disputes to arbitration, he did not see why the Government should be called upon to pay the costs of such arbitration. The question between the claimants might be, for example, one of boundary. A might contend that the land was within the limits of his estate, and B might contend that it was within the limits of his. Why should it be in the power of the Arbitrators to impose upon Government the costs of deciding whether the land belonged to A or to B? The Government had nothing to do with the question of right between the claimants. All that Government wanted would be to purchase the land; and, therefore, the only question in which it would be interested, would be the amount of compensation to be paid for it. In England, when land was required for a public purpose, and there was a dispute as to the amount of compensation to be given for it, the question was referred to a Jury or to Arbitrators, who did nothing more than fix the value of the land. If conflicting claims were set up, the amount awarded as the value of the land was paid into Court, and it was left to the Court to determine the rights of the respective claimants to the purchase-money, in the same manner as it would have been left to the Court to determine the rights to the land itself if it had not been taken. The person in possession of the land at the time it was taken, would be presumed to be the owner of the land, and consequently entitled to recover the money to be paid for the purchase of it, unless some one else could prove a better title. It appeared to him (Mr. Peacock) that the same principle should be followed here, and that it would be necessary, therefore, to alter Clause 2 of Section IX so that, if conflicting claims were set up to land required to be taken for a public purpose, the Collector should have the power to refer to arbitration, not the disputes respecting the title to the land, but only the value of the land, and the amount of the compensation to be given for it. But even if the Council should determine that the disputes respecting the right to the land should be referred, he certainly thought that it should not be left to the discretion of the Arbitrators to throw the costs of such arbitration upon the Government.

MR. ALLEN said, he thought it would be more convenient if his Section were agreed to in the present stage in the form in which he had moved it, and the question raised by the Honorable and learned Member discussed on the recommittal of the Bill, when Clause 2 of Section IX might also be further considered.

MR. PEACOCK'S amendment was, on this, withdrawn, and Mr. Allen's Motion agreed to.

The Preamble and Title of the Bill were agreed to.

The Bill having been reported—

MR. ALLEN moved its recommittal.

Agreed to.

MR. ALLEN moved that the following new Section be inserted after Section VI:—

"If, upon the said enquiry, any question arise respecting the title to the land, or any rights or interests therein between two or more persons making conflicting claims in respect thereof, the person deemed by the Collector or other Officer to be in possession as owner, or in receipt of the rents as being entitled thereto, shall be held to be, as between such persons, the person having a valid claim, and interested in the matter in dispute."

MR. PEACOCK said, he thought that this Section required some limitation. He understood the Honorable Member's object to be that the person deemed by the Collector to be in possession should be deemed to have a valid title as between the several claimants themselves, for the purpose of taking the measures necessary for settling the value of the land and the amount of compensation to be paid for it. The Honorable Member, he apprehended, did not mean that the person deemed by the Collector to be in possession should be deemed to be the owner of the land; for in that case, the Collector would decide the question of title to the land, and his decision, whether right or wrong, would be conclusive; because if, after he "deemed" one person to be in possession, the others should seek to contest their rights in the Civil Court, the Civil Court would tell them—"We cannot interfere. The Collector deems A to be in possession;

and the Legislature has enacted that the person whom the Collector deems to be in possession, shall be held to be the owner." That was not, he imagined, what the Honorable Member meant to be the effect of the Section. All that he (Mr. Peacock) understood him to mean, and the utmost that he considered that the Act ought to provide, was, that the person deemed by the Collector to be in possession should be held to be the owner merely for the purpose of taking such measures as were necessary for fixing the value of the land, and the amount of the compensation to be paid for it. He should therefore move as an amendment that all the words after the words "entitled thereto" be left out of the Motion, and that the words "shall, for the purpose only of taking such measures as may be necessary for fixing the value of the land and the amount of compensation to be paid for the same, be held to be the person interested in the matter in dispute" be substituted for them.

MR. CURRIE said, he would remark that Section V provided that the Collector should enquire into the value of the land, and the rights of the persons interested; and that, if he and all the persons interested who appeared before him, and whose claims he considered valid, agreed as to the amount of compensation to be allowed, and the apportionment thereof, he should make an award for the same. It then proceeded to say that such award should be final and conclusive "so far as respects the value of the land and the amount of compensation" It seemed to be obvious from this that the award was intended to be final and conclusive with respect to the value of the land and the amount of compensation, and to nothing else.

THE CHIEF JUSTICE said, the Honorable Member in charge of the Bill did not propose to give the Collector the power of saying that the person whom he found in possession was the real owner, so as to bind the question of title between him and other persons. He only proposed to point out that the Collector would be safe in dealing with one whom he found in possession, and that such person should be the one to appoint an Arbitrator to protect the interests of the estate; and the object of the amendment moved by the Honorable and learned Member opposite, seemed to limit the proposed Section to that.

MR. GRANT remarked that Section V applied to cases in which the Collector should agree with the persons interested as to the amount of compensation to be allowed, and its apportionment. Section VI applied to cases in which the Collector and the persons interested should not agree.

MR. PEACOCK said, he also had intended to direct attention to this point. By Section V, if the Collector and all persons interested in the land agreed as to the amount of compensation to be allowed, the Collector should make an award which was to be final and conclusive, as to the value of the land and the amount of compensation to be paid for it. But if they could not agree, Section VI provided that the matter should be referred to arbitration, and in that case the claimants were to appoint one Arbitrator to protect their interests as against the Government, and the Collector would appoint another to protect the interests of the Government.

MR. CURRIE said, he saw no objection to the introduction of the words proposed by the Honorable and learned Member; but he questioned whether the words "as between such persons" should be omitted. Supposing that the property required to be taken was a putnee estate; that A and B made conflicting claims to the putnee; and that C was the zemindar. C would certainly have a valid claim as respects the zemindaree interest. But if, in adjudicating respecting the putnee interest, the Section provided that the person whom the Collector deemed to be in possession should be held to be *the* person interested in the matter in dispute—that is, in the compensation to be awarded for the land—it might shut out the zemindar, as to whose claim there was no question.

After some conversation—

THE CHIEF JUSTICE said, considering that this was a very important question, and that any hasty decision upon it might lead to great inconvenience in taking land for public purposes, and possibly to the necessity of amending the Act by a new measure, he would

suggest to the Honorable Member for the North Western Provinces that the new Sections in question should be seen and carefully considered by the Members of the Council before they were finally settled. He (the Chief Justice) had not had an opportunity of seeing them until this moment: the Honorable and learned Member opposite (Mr. Peacock) had seen them only last night; and he thought it would be better to postpone the final settlement of them until after they should have been circulated. He therefore moved that the further consideration of the new Clauses proposed on the re-committal of the Bill, be postponed.

MR. CURRIE said, in that case, he thought it would be very desirable to arrange that the more important amendment which the Honorable and learned Member on his right (Mr. Peacock) had intimated an intention of proposing with respect to conflicting claims and separate interests, and which affected the whole measure, should likewise be circulated before being brought forward in Committee. He understood the Honorable and learned Member to say that the references to arbitration under the Bill should be limited to the determination of the value of the land and the amount of compensation to be given for it.

MR. PEACOCK said, it would probably be well to take the opinion of the Council now on the question whether there should be forced arbitrations of conflicting claims.

MR. ALLEN said, he was not quite sure what "conflicting claims" might mean. If two men, each having undoubtedly a share in an estate, did not agree as to the value of each share—if, for instance, in a putteedaree estate upcountry, A disputed with B as to his fractional right in the estate—that, he (Mr. Allen) thought, was a case of conflicting claims which should be determined by forced arbitration, subject always to an appeal to the Civil Court, if the appeal were instituted within three months from the date of the award. But if A disputed the right of B to an estate on the ground that he was the legitimate son, and that B was illegitimate—he (Mr. Allen) thought that that was a case in which the parties ought not to be forced to go to arbitration. The Secretary to the Sudder Board of Revenue here had strongly urged that, where there were parties disputing only as to fractional shares in land, their disputes should be settled by arbitration. Something to the same effect was enacted by Regulation IX of 1833 with respect to boundaries, and he (Mr. Allen) had seen the provision operate to great advantage in the North Western Provinces. Section V of the Regulation to which he referred, enacted that—

> "Whenever any judicial question may be depending before a Collector, or other Officer employed in making settlements under the provisions of Regulation VII of 1822, in which the interests of justice may, in the opinion of such officer, require that the case be decided by arbitration, it shall be lawful for him to fix, under the instructions with which he may be furnished by the superior Revenue Authorities, a period within which the parties must produce the award."

By subsequent Sections, if the parties refused or neglected to produce the award within the term fixed, the Collector or other Officer might summon a Punchayet for the trial of the matter; the decision of such Punchayet to be final, unless the Commissioners, subject to the control of the Sudder Board of Revenue, should think proper, for any special reason, to refer the case to another Punchayet. This Bill proposed that the award of the Arbitrators should not be final.

MR. PEACOCK said, if the award of the Arbitrators were to be final, there would probably have been some good in making the parties go to arbitration. But the Honorable Member did not propose that the award should be final. Either party might institute a suit in the Civil Court for the purpose of setting the award aside. What benefit would be derived from compelling them to go to arbitration when the award of the Arbitrators was not to be final; and why should the Government force such a tribunal upon them because it wanted to buy the land, when it could not force it upon them if it did not want to buy the land? Suppose neither of the parties wished to go before Arbitrators, and did not intend to abide by their decision. Why should the Government compel them to go through what he must call an unnecessary form, which might involve considerable delay and expense? If it did not want the land, it could not make

them contest their claims before Arbitrators: and it seemed to him that it would be very arbitrary to make them do so, because the Government wanted to purchase the land by compulsion. The object of the Bill was to enable Government to acquire land for public purposes. This was not a Bill to prevent persons from being litigious. All that the Legislature had to provide was that the fair value of the land required to be taken, should be fixed, and that, when it was fixed, as the land could not have been run away with by a wrongful owner, so the money which would be substituted for the land, should be so secured that the right of the real owner to it would be protected. The way to do that, where there were conflicting claims to the land, was to deposit the money in the Civil Court, and leave the claimants to prove their title there. That, as he had said before, was the principle adopted in England. If the amount of compensation which should be given for a piece of land required for a public purpose could not be agreed upon, the question was referred to a Jury who assessed the amount. But the Jury had no power to determine the title of persons claiming separate and distinct interests in the land. If there was any dispute as to right or interest, the Act provided that the amount assessed should be deposited in Court; that the person in possession should be deemed *primâ facie* entitled; and that, after due notice, the money deposited should be paid over to him, unless some other person should come in upon the notice and make out a better title.

MR. ALLEN said, he was perfectly aware that, theoretically, he had not a leg to stand upon; but practically, he thought he had. Two persons might be cultivating a piece of land without any dispute as to their interests. If, in taking the land for a public purpose, we deposited the purchase-money in Court, we should force them into litigation. It was a point of honor amongst Natives not to give up a claim without a decree. If the Collector gave a decree either way, the parties would submit, and not proceed further. At present, the Collector decided summarily with whom settlements of land revenue should be made, and he (Mr. Allen) knew of very few instances in which these decisions had been litigated in a Court of Law.

THE CHIEF JUSTICE said, he conceded to the Honorable Member for the North Western Provinces that it was very desirable to keep the money out of Court, if that were possible, and also that the deposit of it in Court might force the parties claiming interests in the land into litigation; because a claimant out of possession, who might have been lying by for some cause or another, might, when the money was paid into Court, be stimulated to come forward and litigate his title; and the party in possession would naturally take proceedings to get the money out of Court, which would bring the other claimant forward; and if this did not happen, then, as Mr. Trevor said, each might be afraid of the other, and the money might be left unprofitably in Court. For these reasons, he had no objection to give every facility to try disputes as to separate and distinct interests by voluntary arbitration. On the other hand, if the Honorable Member insisted upon forced arbitration, then, to attain his object, he should go farther than the Bill proposed to go, and should make the award of the arbitrators final. Otherwise, the party dissatisfied with the award might do what he could have done in the first instance if this Bill had not been passed —namely, resort to a Civil Court; and therefore, this Bill, instead of substituting, as it intended to do, a cheap and expeditious procedure for the determination of conflicting interests, would add the expense and delays of an arbitration to the expense and delays of a regular suit.

With respect to conflicting interests in land, there might be the case of A and B each claiming an exclusive interest in the same subject, but A being in possession, and B out of possession; then there might be the case of A and B claiming interests of a different nature in the same subject—a Putneedar and a Zemindar, or a landlord and tenant for instance; and then, again, there might be the case of A and B claiming joint interests in one subject. All these interests might admit of different considerations and different reasons for not being included in this Bill. For the second class of interests, he under-

stood that the Honorable Member in charge of the Bill proposed a separate and distinct arbitration. The first was a class of interests which he understood the Honorable Member to say he thought should not be included in the Bill. He (the Chief Justice) was prepared to allow parties in either case, if they agreed to submit to an arbitration, to have their disputes settled by Arbitrators; but he was not prepared to allow forced arbitration.

After some conversation, the Chief Justice withdrew the Motion he had made, and Mr. Peacock moved the following as an amendment on the new Section moved by Mr Allen:—

"That the Bill be referred back to the former Select Committee, with instructions to settle the same upon the principle of leaving it optional to persons having conflicting claims to refer such claims to arbitration or not, and that the further consideration of the Bill be postponed until after the Bill, as proposed to be amended, shall have been circulated amongst the Members of the Council."

Agreed to.

BOMBAY UNIVERSITY.

MR. LEGEYT moved that the Bill "to establish and incorporate an University at Bombay" be referred to a Select Committee consisting of the Chief Justice, Sir Arther Buller, and the Mover.

Agreed to.

Moved by the same that the Standing Orders be suspended to permit the Select Committee to present their Report at the expiration of four weeks from the date of the publication of the Bill.

The Chief Justice seconded the Motion, which was then agreed to.

NOTICES OF MOTIONS.

MR. ELIOTT gave notice that he would, at the next Meeting of the Council, move for a Committee of the whole Council on the Bill "for the more extensive employment of Uncovenanted Agency in the Revenue and Judicial Departments in the Presidency of Fort St. George."

Also for the adoption of the Report of the Select Committee on the Bill "for repealing Act I of 1844."

On the motion of the CHIEF JUSTICE, the Council adjourned till Saturday the 18th Instant.

The Chief Justice

Saturday, April 18, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. Major General J. Low.	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq.,
D. Eliott, Esq.,	and
	Hon. Sir A. W. Buller.

SONTHAL DISTRICTS.

THE CLERK presented a Petition of David Andrew and of Hindoo Inhabitants of Kankjole praying that certain districts now subject to the provisions of Act XXXVII of 1855 (entitled "An Act to remove from the operation of the general Laws and Regulations certain Districts inhabited by Sonthals and others and to place the same under the superintendence of an officer to be specially appointed for that purpose") may be restored to the jurisdiction of the Regulation Courts.

Also a Petition from two Zemindars of Pergunnahs Ashwar and Sultanabad, with a like prayer.

Also a Petition of Inhabitants of Thannah Nurai, with a like prayer.

CIVIL PROCEDURE (BENGAL).

Also a Petition of Zemindars, Ryots, and Mahajuns of Beerbhoom against such portions of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bengal" as relate to the jurisdiction of Moonsiffs.

Also a Petition of Zemindars, Mahajuns, and residents of Midnapore praying that provision might be made in the above Bill for retaining a Moonsiff in that Town.

MR. PEACOCK moved that these Petitions be printed, and referred to the Select Committee on the Bill.

Agreed to.

HINDOO POLYGAMY.

THE CLERK presented a Petition signed by the Honorary Secretary to the Association of Friends for the promotion of Social Improvement praying (with certain reservations) for the abolition of Hindoo Polygamy.