

# Punjab Government Civil Secretariat.

## A. PROCEEDINGS.

January 1913.

File No. 8  $\frac{R. \& A.}{A.}$

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**SUBJECT:**—Bill to provide a summary procedure for the redemption of certain mortgages of land in the Punjab.

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Proceedings, Nos. 11-35.

REFERENCES.

*Earlier papers.*

Proceedings, October 1912, Nos. 4-9 A,  
R. & A.

file No. 29, Agri.

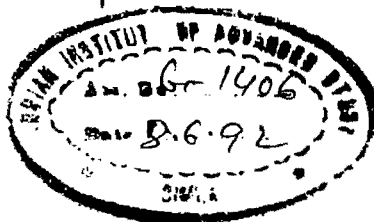
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**Revenue (Agriculture) Department, February 1913, Nos. 11-35**

No. 4710, dated Multan, 28th October 1912.

From—C. J. HALLIFAX, Esquire, I.C.S., Commissioner, Multan division,  
To—The Junior Secretary to the Financial Commissioner, Punjab.

No. 20

WITH reference to your endorsement No. 547 S., dated 10th October 1912, regarding the draft Bill for the redemption of mortgages in the Punjab, I have the honour to forward the opinion of Diwan Bahadur Diwan Narendra Nath, submitted with his letter No. 567, dated 24th October 1912.

I have carefully considered the Bill, and have no criticism to offer.

C. J. HALLIFAX,

*Commissioner, Multan division.*

No. 567, dated 24th October 1912.

From—Diwan Bahadur Diwan NARENDRA NATH, M.A., Deputy Commissioner, Multan,  
To—The Commissioner, Multan division.

No. 21

WITH reference to your office endorsement No. 4519, dated 17th October 1912, forwarding for my opinion a Bill to provide a summary procedure for the redemption of certain mortgages in the Punjab, I have the honour to state that after reading the Statements of Objects and Reasons, I have hardly anything to say against the Bill. My personal view is that nothing will be gained by giving an interim finality to Collector's orders, and that the procedure prescribed by section 11 of the previous Bill, received with your endorsement No. 3819—168, dated 1st November 1909, was more sound. A dissatisfied party, specially the mortgagee, is bound to go to civil court, and if the civil court finds in his favour, the mortgagor will be burdened with costs without any fault of his, and owing to summary nature of the Collector's enquiry.

NARENDRA NATH,

*Deputy Commissioner, Multan.*

No. 705, dated Delhi, 28th October 1912.

From—The Hon'ble Mr. A. MEREDITH, C.S.I. I.C.S., Commissioner, Ambala division,  
To—The Junior Secretary to the Financial Commissioner, Punjab.

No. 22

WITH reference to your letter No. 547, dated 10th October 1912, I have the honour to forward copy of the opinion of the Deputy Commissioner, Rohtak, on the draft Bill to provide a summary procedure for the redemption of mortgages. I have already twice given my opinion on this Bill in its previous stages, and as all the objections I took in my first letter No. 24, dated 18th January 1909, have been covered by the present Bill, I have nothing further to add. I think two of the suggestions of the Deputy Commissioner, Rohtak, might well be incorporated in the Bill:—

(1) That a suit should not be permissible under section 10 unless filed within 30 days of the date of the Collector's order, subject to the usual allowance for time required to obtain a copy of the said order. Unless some such condition is inserted, the final decision of the case is likely to be much delayed.

(2) The deposits with the Collector of the sums alleged to be due by mortgagees should be exempted from attachment by the civil courts. The whole object of this Bill will be defeated, it seems to me, unless a provision is made to this effect.

A. MEREDITH,

*Commissioner, Ambala division.*

No. 169 G., dated 18th October 1912.

From—H. CALVERT, Esquire, I.C.S., Deputy Commissioner, Rohtak,  
To—The Commissioner, Ambala division.

No. 23

I HAVE the honour to forward the opinion called for in your No. 1775, dated the 12th October 1912, on the Redemption of Mortgages Bill.

It so happens that owing to the bumper rabi there has been a marked movement towards redemption of mortgages in this district. A very large number have been redeemed by settlement between the parties; a further large number have formed the

subject of suits for redemption in the Munsif courts, with these the proposed Bill has nothing to do. Besides these, 66 applications were made to me for assistance in dealing with obstinate mortgagors. In all these cases efforts were made to bring the parties to agreement, the Tahsildars being directed to arbitrate between them on the spot. In all cases these efforts proved successful, in two more cases it was agreed to redeem next August. In seven cases the mortgagors failed to appear. Thus in 77 cases out of 65 the provisions of the present Bill were not required. Of the remaining 29 cases the mortgagor failed to appear in three, refused altogether to allow redemption in five, pleaded that the land was under cultivation in three, and claimed more money than was offered in 18 cases. In the majority of these last cases the mortgagor in possession claimed interest in addition to the profits of the land and the mortgagor refused to pay.

3. All these proceedings were purely executive and were carried out under my instructions without any legal authority. The Bill would regularise such proceedings and would give mortgagors a right of application, whereas district officers are disinclined to interfere executively on the lines adopted by me. Where, as in 18 cases here, the mortgagor could claim interest as well as the profits of the land, the Bill would not be of much value, because the Collector is not empowered [as he is in section 6 (i) (b) and section 9 (2), Land Alienation Act] to fix a rate of interest or the sum due according to what he thinks reasonable. He appears to be bound by the terms of the mortgage; though if he could persuade the mortgagor to accept a less sum, he could order redemption. It seems to me that the Bill does not go far enough in this respect. If the Collector is bound by the terms of the deed, he is merely burdening himself with work and saving the parties costs. Considering that the aggrieved party has a right to apply to the civil courts for the full sum due, it seems only fair that the Collector should be empowered to fix a sum which he considers reasonable, payment of which by the mortgagor will secure redemption, unless the mortgagor applies to the civil court within 30 days. In the latter contingency the Collector's order would be modified to the extent decided by the civil court. Ordinarily it would be found that the mortgagor would accept the Collector's decision, if really reasonable, rather than go to the expense of a civil suit. If such a provision is not inserted in the Bill, it will merely regularise what already can be done without it. I do not think this proposal can be considered *ultra radical*; it is on the lines already adopted in the Land Alienation Act, and it is based on the generally admitted fact that most mortgagors do not really understand the terms of the mortgage and are victimised by the greater craft of the mortgagor.

4. The Bill would have proved useful in the three cases mentioned in paragraph 3 above where the mortgagor failed to appear and in the five cases where he refused to discuss the question of redemption at all. If my proposal in paragraph 3 above is not accepted, these 8 cases are the only ones out of the 66 enquired into in which the Bill might have led to a result different from that obtained by the executive action adopted.

5. There is one direction in which the Bill might prove a source of damage to the mortgagors. It not seldom happens that the mortgagor has an unsecured debt in addition to the one secured by the mortgage and when the mortgagor desires to redeem, the mortgagor attempts to credit part of the money to the unsecured debt and only a part towards the mortgage debt and so contrives to hold the land still in mortgage, while securing payment of his book account. If the mortgagor deposits the redemption money in court, it will be open to the mortgagor to institute hastily a civil suit for his book debt or even for the full sum due on the mortgage and have the deposit attached in part satisfaction of the decree; he might even be able to obtain attachment before decree in the money suit. Our astute mahajans would not be slow to discover this advantage, and I think a provision should be inserted exempting such deposits from attachment by any civil court.

6. There is another provision which seems to me desirable to insert with a view to encouraging compromise between the parties. Any unaccepted offer by either party should be considered as having been made without prejudice to any proceedings in a civil suit. An offer made and accepted would, of course, be binding, but it is probable that a mortgagor, to escape the trouble and costs of a civil suit, might agree to accept a sum less than that legally due and less than what he would sue for if driven to the regular courts. He should not be deterred from making such offers by the fear that he would thereby be stopped from claiming the full sum later.

H. CALVERT,

Revenue Commissioner, Rohilkhand.

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Ministry (Agriculture) Department, February 1913, No. 25

Endorsement by the Punjab Government:

No. 206 (Rev. & Agri.—Agri.), dated Lahore, 7th November 1912

No. 24

Copy of Junior Secretary to the Financial Commissioners' letter No. 771, dated 31st October 1912, are forwarded to the Secretary, Legislature Council, Punjab.

Copies of the opinions received from Registrar, Chief Court, Punjab, will follow when printed.

No. 207 (Rev. & Agri.—Agri.)

No. 25

COPY of above endorsement, with 6 spare copies of the papers noted in the margin, forwarded to the Junior Secretary to the Financial Commissioners, Punjab, for information.

No. 3022, G, dated Lahore, 1st November 1912.

From: A. CAMPBELL, Esquire, I. C. S., Registrar, Chief Court, Punjab,  
To: The Revenue Secretary to Government, Punjab.

No. 26

WITH reference to your letter No. 309 S. (Rev. & Agri.), dated the 7th of October 1912, I am

desired to forward a copy of the opinions recorded by the Hon'ble Judges of the Chief Court on the Bill to provide a summary procedure for the redemption of certain mortgages of land in the Punjab.

A. CAMPBELL,

Registrar.

Opinions recorded by the Hon'ble Judges of the Chief Court of the Punjab on a Bill to provide a summary procedure for the redemption of certain mortgages of land in the Punjab.

No. 27

1. I AM not in favour of the proposed legislation, as it is, in my opinion, likely to do no good and much harm.

2. The provisions of the Bill which deal with cases when there is no dispute between the parties are innocuous but unnecessary. If there is no dispute between the parties and they are at one upon all points, it will not be necessary for them to seek the intervention of the Revenue Officer in order to effect the redemption of a particular mortgage. But if they choose to do so, I see no reason why, as the law now stands, they should not appear before the Collector or other Revenue Officer and testify before him to the agreement between them.

3. If, however, the parties are not agreed and there is a dispute between them as to the right of the mortgagor to redeem, or as to the amount to be paid for redemption, I fail to see what good object will be secured by the provisions of the Bill.

The Collector (or Assistant Collector, as the case may be,) will in such cases make a summary enquiry into the subject matter of the dispute, and this enquiry will be conducted by him as a Revenue Officer and not as a Revenue Court. It will necessarily be superficial, and the decision is to be "conclusive" in the sense that there is to be no appeal therefrom. Now, is the party "aggrieved" by such decision at all likely to be satisfied with it? I should say, most certainly not, and I have no doubt myself that in nearly every case advantage will be taken of the provisions in clause 10 which enable the party aggrieved by such decision to have resort to the Civil Court. If this anticipation is well founded, what benefit will result from the proposed legislation? The Civil suit which was inevitable in the ordinary course of things will be an inevitable in the future,

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but the parties will have been put to extra expense, and the party who has to seek the aid of the Civil Courts will have the additional disadvantage of having the burden of proof thrown still more heavily upon him, and this, too, though the decision of the Revenue Officer was given after a mere summary enquiry. But any such decision, given by a Collector of a District, will necessarily carry great weight at all events with the *Munsif* who will in the ordinary course have to determine the Civil suit in the first instance, and the result will in very many cases be that the Appellate Court will have to remand the suit for further enquiry, thus putting the parties to additional expense.

4. It is the mortgagee, however, who will have most reason to complain of the provisions of the Bill, for it is improbable that the Revenue Officer's decision will frequently be in his favour. Indeed the proposed legislation will add very seriously to the difficulties, already sufficiently numerous, of the money-lending class,—a class whose usefulness to the Punjab agriculturist is perhaps somewhat overlooked now-a-days. I quite admit that cases often occur where the money-lender takes advantage of the agriculturist and succeeds in fleecing him. But there is another side of the picture. The Punjab peasant is not the simple-minded bucolic he is sometimes painted, on the contrary, he is (in my opinion) usually well able to look after himself, and the money-lender who hopes to delude him very frequently finds that he has caught a Tartar. First of all, he may find himself hopelessly involved in the pitfalls provided by the Alienation of the Land Act. Then, if he succeeds in evading these pitfalls he will probably have to run the risk of expensive litigation in the form of declaratory suits brought by the sons or other reversionary heirs of the mortgagor, acting in the majority of cases in collusion with the latter, and in these suits he will have the difficult task of proving (contrary to the mortgagor's own evidence) that money advanced by him was for necessary purposes and not for purposes of debauchery and extravagance. The lot of a mortgagee who has to prove "necessity" is very hard and unenviable when he has to defend a suit brought by an infant of two or three years of age who charges his own father, the mortgagor, with debauchery of the worst possible kind and relies upon his father's evidence to substantiate his allegations. But if the ordinary mortgagee's position is even now one of great difficulty, his position, if the Bill becomes law, will be far worse. In the majority of cases, when there is a dispute between the parties, the contention between them will be as to the real amount in dispute. The mortgagee in support of his pleas will necessarily have to depend upon the entries in his *bahis*, and it is with no desire to disparage the enquiry that a Revenue Officer will make, that I venture to say that it is almost impossible for full justice to be done in a summary enquiry of this kind to the mortgagee's claim which depends upon a thorough investigation into elaborate and complicated accounts. And yet the decision so given will make it still harder for the mortgagee to induce the subordinate Civil Courts to listen to his pleas, and the result will be to make him very reluctant to assist the agriculturist by those advances of money without which the peasant community as a whole could hardly subsist.

5. I have not dealt with minor objections to the specific provisions of the Bill, though many such might be urged. The whole principle of the Bill is, in my humble opinion, so unsound that I do not consider it necessary to take exception to details.

H. A. B. RATTIGAN,

The 29th October 1912.

Judge.

I HAVE had the advantage of reading Mr. Justice Rattigan's opinion on this Bill and I concur in the reasons recorded by him for the conclusion that it should be abandoned. It is an attempt at a short cut and its effect will, in my opinion, be merely waste of time and of money. Many redemptions are effected without recourse to the Courts and a party to a mortgage, who does not accept the opposite party's allegations as to the terms on which redemption may be effected, is not likely to accept them merely because the procedure prescribed by this Bill has been adopted.

The enquiry provided by the Bill will be summary and not calculated to satisfy both parties. Then who is to adjudicate? The Collector is also District Magistrate and many District Magistrates already state that they are so hard worked that they have not time for the very moderate amount of criminal work which this Court demands of them.

It can hardly be asserted that the duties imposed on the Collector by this Bill are of as great importance as the suppression of crime in his district. In many districts therefore the duties under the Bill must be discharged by the Assistant Collector, frequently inexperienced and probably little interested in such work.

The result is that the summary enquiry will indeed be summary, and it can hardly be asserted that the result is more likely than a trial in a Civil Court to satisfy both parties. One party will in all probability have recourse to a Civil Court and the only result of the proceedings under this Bill will be that one party may be prejudiced in the Civil Court by a very possibly hasty and ill-considered judgment against him of the Revenue Officer.

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The objects and reasons for the Bill are, on their face, plausible, but do not bear looking into.

The Bill is, in my opinion, not only superfluous but mischievous, and it should be abandoned.

A. H. S. REID,

Chief Judge.

The 30th October 1912.

I DO not go quite to the length of my brother Rattigan in condemning the Bill root and branch. In my opinion it will still serve a useful purpose if confined to non-contentious matters in connection with mortgage redemptions. It may be said that where there is no dispute between the parties they can easily settle the matter themselves, but it certainly used to be, and probably still is, a common experience that this is not so. The parties though agreed on all essential points raise difficulties about receipt and payment of money, and even go to the absurd length of remitting money through the Post Office to a resident of the same or a neighbouring village in order to secure that there shall be some *quasi*-official record of the transaction. In the meanwhile, before matters reach that stage, time has slipped away over futile haggling, and the complication arises that another agricultural season or year has begun. I believe that in these non-contentious cases a summary procedure such as is contemplated by the Bill would be useful both in bringing the parties promptly to the point and in securing official record of money payments.

2. It is within my recollection that so far back as 1886 or thereabouts proposals of this nature were made with reference to the Land Revenue Bill then under discussion. It was definitely suggested that sections should be introduced into the Bill to deal with these non-contentious cases very much in the manner now proposed. I think it probable that the same necessity still exists and that as it was found impossible to provide for matters of the sort in the Land Revenue Act the opportunity may well be taken of dealing with them by a separate Bill.

3. When, however, we turn to the contentious cases contemplated by the present Bill I am entirely at one with my brother Rattigan and the learned Chief Judge. The complications in regard to mortgages of land are many and I cannot conceive that a decision given summarily by a Revenue Officer on disputed points would ever be accepted by the party aggrieved, without taking the matter further to a Civil Court. Apart from the objections already stated forcibly, to the proposal to give Revenue Officers summary powers to deal with disputes there appears to me to be a further very real objection which has been altogether overlooked by the framers of the Bill. If the Revenue Officer declines to deal with disputes nothing will have been gained and some time and money will have been wasted in useless application to him. If, on the other hand, he does decide a contentious matter and thereon proceeds to hold that the mortgage has been redeemed and puts the mortgagor into possession, and if, as will almost invariably happen, the mortgagee then takes the case to a Civil Court, a sure foundation is laid for fresh litigation of a most harassing character. The mortgagee, if successful, as he may quite possibly be, in the Civil Court will have been unjustifiably ousted from possession for a period which may well extend into years. On the final decision of the Civil Courts in his favour he will be faced by the difficulty that he has again to resume possession and to recover his mesne profits for the intervening period. He will probably be harassed in obtaining substantial justice on both these matters, and on the other hand he will presumably not under estimate his demand for mesne profits. There will almost certainly be fresh litigation to decide the question of mesne profits and it is difficult to see where the troubles of both mortgagor and mortgagee will eventually end.

I am entirely in favour of cutting out altogether the proposed power to the Revenue Officer of dealing in any way with contentious points, and in the interests of all parties concerned I trust that the futility of expecting Revenue Officers to be able to deal efficiently with difficult questions of the sort, to the satisfaction of the parties, will be recognized to the extent of recasting the Bill.

A. KENSINGTON,

Judge.

The 31st October 1912.

My views are substantially the same as those expressed by Mr. Justice Kensington.

F. A. ROBERTSON,

Judge.

The 31st October 1912.

I ALSO agree with all that has been said by Mr. Justice Kensington.

W. CHEVIS,

Judge.

The 31st October 1912.



## Revenue (Agriculture) Department, February 1913, Nos. 11-35.

No. 28

Endorsement by the Punjab Government.

No. 272 (Rev. &amp; Agri.—Agri.), dated Lahore, 12th November 1912.

COPY of letter No. 5022 G.,<sup>\*</sup> dated 1st November 1912, from the Registrar, Chief Court, Punjab, with 30 spare copies, forwarded to the Secretary, Legislative Council, Punjab, in continuation of Punjab Government

<sup>\*</sup>Pro. No. 26 *supra*.<sup>†</sup>Pro. No. 24 *supra*.endorsement No. 266,<sup>†</sup> dated 7th November 1912.

No. 29

No. 273 (Rev. &amp; Agri.—Agri.)

COPY of above endorsement, with 6 spare copies of the paper noted in the margin, forwarded to the Junior Secretary to the Financial Commissioners, Punjab, for the information of the Financial Commissioner, in continuation of Punjab Government endorsement No. 267,<sup>‡</sup> dated 7th November 1912.

From Registrar, Chief Court, Punjab, No. 5022 G, dated 1st November 1912.—Pro. No. 26 *supra*.

<sup>‡</sup>Pro. No. 25 *supra*

No. 30

No. 124, dated Lahore, 29th January 1913.

From—The Hon'ble Mr. S. W. GRACEY, I. C. S., Secretary to the Legislative Council, Punjab;  
To—The Chief Secretary to Government, Punjab.

IN continuation of this office letter No. 244 S,<sup>§</sup> dated 11th October 1912, I have the honour to submit, for the necessary assent, two copies of the Bill to provide a summary procedure for the redemption of certain mortgages of land in the Punjab which was passed in Council at a meeting held on the 14th December 1912.

<sup>§</sup>Proceedings, October 1912, No. 8 A, file No. 29, R. & A.

Agri.

2. I also send spare copies of—

||Pro. Nos. 31 and 32 *infra*.<sup>†</sup>Pro. No. 33 *infra*.<sup>\*\*</sup>Pro. No. 34 *infra*.

(1) Report<sup>||</sup> of the Select Committee, together with the annexure to it 200 copies.

(2) The Bill<sup>¶</sup> as passed in Council 200 "

(3) Extract<sup>\*\*</sup> from an abstract of the proceedings of the Council meeting held on 14th December 1912 ... 75 "

THE following Report of the Select Committee on the Bill to provide a summary procedure for the redemption of certain mortgages of land in the Punjab was presented to the Council on the 14th December 1912.

*Report of the Select Committee on the Bill to provide for a summary procedure for the redemption of certain mortgages of land in the Punjab.*

WE, the undersigned members of the Select Committee on the Bill to provide a summary procedure for the redemption of certain mortgages of land in the Punjab, have considered the Bill at a meeting held on the 19th November, and recommend that it be passed subject to the amendments shown in italics in the annexed draft. With reference to these amendments we would explain as follows:—

*Clause 1 (3).*—We have excluded from the operation of the Bill mortgages under section 6 of the Land Alienation Act for which a separate redemption procedure is provided in section 7 of that enactment. We have provided that *shamilat* rights, which in so many mortgage deeds are included as incidental interests appurtenant to mortgaged land, shall not be taken into account for the purpose of reckoning the limit of 30 acres prescribed by this clause. The ascertainment arithmetically in a summary proceeding of the acreage corresponding to the *shamilat* rights appurtenant to a specific area of proprietary land would present difficulties which, if not removed in the manner now proposed, might go a long way towards defeating the object of the Bill. The amendment will dispel all uncertainty on this account as to the jurisdiction of the Collector.

We have also provided an alternative pecuniary limit of jurisdiction to meet the case of districts in the west of the Province, such as Mianwali, where owing to the cheapness of land considerable areas are often mortgaged for comparatively small sums,

*Clauses 9, 10 and 11.*—The amendments in these clauses (corresponding to clause 9 of the Bill as introduced) are not designed to effect any change of policy, but only to indicate with greater clearness and precision the several contingencies which arise in contentious cases and the course of procedure appropriate to each,

*Clause 15.*—We have, as in the Pre-emption Act, provided for the exemption from attachment of sums deposited with the Collector under the provisions of the Bill.

The Bill was published in the *Punjab Gazette* of the 4th October 1912. As now amended, it will be published in the *Punjab Gazette* together with this report in accordance with rule 10 of the rules for legislation. The Committee do not consider that the Bill has been so altered as to require any further republication.

DATED LAHORE :

The 28th November 1912.

✓ M. W. FENTON.  
 ✓ H. P. TOLLINTON.  
 ✓ M. MUHAMMAD SHAFI.

I sign the report subject to my note of dissent.

✓ SHADI LAL.

## NOTE OF DISSENT.

I REGRET I am unable to agree with my colleagues as to the principle underlying the Redemption of Mortgages Bill. But before stating the reasons for my view, I consider it my duty to point out that the public did not have sufficient time to express their opinion on the Bill as introduced in the Council with the result that the Select Committee did not have a single non-official opinion for consideration. The only officials whose opinions were received and laid before the Select Committee were :—

- (1) The Hon'ble Judges of the Chief Court ;
- (2) The Director of Land Records, who says that the Draft Bill only reached him on 18th October and a reply was asked for by October 23rd, and he did not therefore have time to consider it very thoroughly ;
- (3) The Registrar of Joint Stock Companies, who stated that he had not been able to consider the Bill in detail so as to be able to give an opinion of any value ;
- (4) Five Deputy Commissioners, one for each division, and the Commissioners of the divisions making remarks on the opinions of the Deputy Commissioners.

It is thus clear that the Bill since its introduction in the Council on the 2nd October 1912, has not been fully considered by the officials and the non-officials, and as it is a measure of far-reaching consequences and involves a very important principle, I am decidedly of opinion that no necessity has been shown for undue haste in passing the Bill. The fact that more than 2 years ago, official and non-official opinions were received on a Bill dealing with the redemption of mortgages which the Government was preparing for submission to the Government of India for sanction to introduce it in the Council is, in my humble judgment, not a sufficient ground for not inviting opinions on a Bill which *has been introduced* in the Council with a view to its becoming law and which, in several important matters, is different from its predecessor. I would therefore request His Honour the Lieutenant-Governor to postpone the consideration of the Bill by the Council until non-official opinions have been received and considered by the Select Committee.

2. I differ entirely with the other members of the Select Committee in accepting the principle of the Bill which aims at transferring to a Revenue Officer the legitimate functions of a Civil Court. In 1910, His Honour the Lieutenant-Governor appointed a committee of officials and non-officials to consider a Draft Bill which was prepared for submission to the Government of India and I was a member of that committee. That Bill embraced within its scope all immoveable property without any restriction as to area. I was not then impressed with the necessity for a legislation of this kind and did not like the policy of investing the Revenue Officers with summary jurisdiction to decide disputes as to redemption of mortgages which in other provinces are decided by Civil Courts and was of opinion that we should follow the practice of other provinces and extend to this Province sections 83 and 84 of the Transfer of Property Act which dealt with the redemption of mortgages. My opinion was not accepted and the Draft Bill after important changes as to details was sent to the Government of India for sanction. I am glad to find that they have ordered that the Bill should not deal with urban and village immoveable properties and be confined to mortgages of agricultural land not exceeding 30 acres in area. The majority of the Select Committee have now gone beyond this limit of area by adding a provision in clause 1 that the Bill applies to all mortgages in which, whatever the area, the principal money secured under the mortgage does not exceed Rs. 1,000. This is an indirect method of extending the operation of the Bill and I am opposed to the proposed extension.

3. Though the Bill is restricted in its scope, yet the principle remains the same. In all civilised countries and in all other provinces of this country matters arising out of mortgages are decided by the presiding officers of Civil Courts. In this Province repeated efforts have been made to confer upon Revenue Officers jurisdiction to deal with disputes relating to land. I have not yet been able to understand the *rationale* of these special legislations. I have heard a remark repeated very often that the Revenue Officers are in a better position to deal with disputes concerning agricultural land than the Civil Courts, but I must confess I have not seen the force of that remark. In other provinces of this country, there is agricultural land and *there* the Civil Courts are fully competent to decide all disputes with respect to land. Either there is something peculiar in the character of the land in this province or the Civil Courts of the Punjab are incompetent to discharge the duties assigned to such courts in other provinces. If the latter is the case, it is time that we should take steps to improve them.

4. I am wholly opposed to this Bill and must protest strongly against the policy which directs that the laws of this Province should be different from those obtaining in other pro-

vinces. Sections 83 and 84 of the Transfer of Property Act which provide simple procedure for redemption of mortgages in other provinces should be extended to this Province. I do not see why the Collector should be brought in in redemption of mortgages, more especially when there is a dispute as to the right of redemption or the amount due on the footing of the mortgage. Complicated questions of law and facts then arise and can not be properly disposed of by a Revenue Officer. The Bill not only confers upon him the power to decide contentious cases but authorizes him to dispossess the mortgagee and put the mortgagor into possession of the mortgaged property. This will, in the majority of cases, be a source of long and useless litigation. The dispossession of the mortgagee by the Revenue Officer will, almost invariably, be followed by a suit by the mortgagee to recover possession and then to quote the words of the Hon'ble Mr. Justice Kensington, "a sure foundation is laid for fresh litigation of a most harassing character. The mortgagee, if successful, as he may quite possibly be, in the Civil Court will have been unjustly ousted from possession for a period which may well extend into years. On the final decision of the Civil Courts in his favour he will be faced by the difficulty that he has again to resume possession and to recover his mesne profits for the intervening period. He will probably be harassed in obtaining substantial justice on both these matters, and on the other hand he will presumably not under-estimate his demand for mesne profits. There will almost certainly be fresh litigation to decide the question of mesne profits and it is difficult to see where the troubles of both mortgagor and mortgagee will eventually end."

5. I have read very carefully the few opinions on the Bill which have been received so far and find that the weight of authority is distinctly against the Bill. The learned Judges of the Chief Court are unanimously against the proposed power to Revenue Officer of dealing with contentious matters. The Hon'ble Mr. Justice Rattigan says "the whole principle of the Bill is, in my humble opinion, so unsound that I do not consider it necessary to take exception to details." The learned Chief Judge is of opinion that "the Bill is not only superfluous but mischievous and it should be abandoned." The opinions of the Press (*vide inter alia*, the *Pioneer* of 31st October 1912, the *Civil and Military Gazette* of 17th November and the *Panjabee* of 23rd November) are against the proposed legislation, and I have not come across a single newspaper which has written in favour of the Bill. The onus is on the promoters of the Bill to make out a strong case for introducing in this Province a law which is different from that obtaining in other provinces, and in my humble opinion no such case has been made out. The onus becomes heavier when it is to be remembered that the Bill is drafted solely in the interests of the mortgagor and will, as Mr. Justice Rattigan forcibly points out, "add very seriously to the difficulties, already sufficiently numerous, of the money-lending class—a class whose usefulness to the Punjab agriculturist is perhaps somewhat overlooked now-a-days." As pointed out in the *Civil and Military Gazette* of the 17th November 1912, it is a class legislation and "no legislation which hits at a class is legitimate unless it is absolutely necessary, not so much in the interests of the class itself as in those of the State." I fail to see any necessity of this kind. No cogent argument has been advanced to confer on the Revenue Officers jurisdiction to decide disputes which are properly within the cognizance of Civil Courts. I am of opinion that the Bill does not serve any useful purpose, has got all the disadvantages of a class legislation, is an encroachment upon the jurisdiction of the Civil Courts, and adds to the burden of District Magistrates who are, to quote the words of Sir Arthur Reid, "so hard worked that they have not time for the moderate amount of criminal work which this Court (*s.e.*, Chief Court) demands of them."

The 5th December 1912.

✓ SHADI LAL.

No. 32

Annexure to the Report of the Select  
Committee.

BILL No. 4 OF 1912.

*A Bill to provide a summary procedure for the redemption of certain mortgages of land in the Punjab.*

WHEREAS it is expedient to provide a summary procedure for the redemption of certain mortgages of land in the Punjab ;

It is hereby enacted as follows :—

1. (1) This Act may be called The Redemption of Mortgages (Punjab) Act, 1911.

(2) It extends to the Punjab.

(3) It shall apply only to mortgages of land—

*Limitation of scope of Act to certain mortgages.*

(a) in which, whatever the mortgage money, the land mortgaged, after excluding the area of any share in the common land of the village or of a sub-division of the village appertaining thereto and mortgaged therewith, does not exceed in area 30 acres ; or

(b) in which, whatever the area, the principal money secured under the mortgage does not exceed 1,000 rupees ;

*India Act XIII of 1900.* Provided that it shall not apply to any mortgage made under section 6 of the Punjab Alienation of Land Act, 1900.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) the expression "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or purposes subservient to agriculture or for pasture, and includes—

(a) the sites of buildings and other structures on such land ;

(b) a share in the profits of an estate or holding ;

(c) any dues or any fixed percentage of the land revenue payable by an inferior landowner to a superior landowner ;

(d) a right to receive rent ;

(e) any right to water enjoyed by the owner or the occupier of land as such ; and

(f) any right of occupancy ;

(2) the expression "Collector" shall mean the Collector of the district in which the mortgaged property or any part thereof is situated, and shall include an Assistant Collector of the 1st grade ;

(3) "prescribed" shall mean prescribed by rules made under this Act.

3. Subject to the provisions of this Act, and the rules thereunder, the provisions of sections 79, 85, 86, 87, 89, 90, 91, 92 and 101 of the Punjab Tenancy Act, 1887, shall, so far as may be, apply to all proceedings of a Collector under this Act.

*India Act XVI of 1887.*

4. The mortgagor or other person entitled to institute a suit for redemption may, at any time after the principal money becomes payable and before a suit for redemption is barred, present a petition to the Collector applying for an order directing that his mortgage be redeemed and where the mortgage is with possession that he be put in possession of the mortgaged property.

*Cf. section 89, India Act IV of 1882.*

The petition shall be duly verified in the manner prescribed by law for the verification of plaints, and shall state the sum which the petitioner declares to the best of his belief to be due under the mortgage. The petitioner shall at the same time deposit such sum with the Collector.

The petitioner shall state in his petition such particulars and file herewith such documents as may be prescribed.

5. When the petition has been duly presented and the deposit has been made, the Collector shall issue to the mortgagee a summons to appear on a date to be therein specified. Every summons shall be accompanied by a copy of the petition, with the date of deposit endorsed thereon.

6. Where the mortgagee appears and the petitioner does not appear when the petition is called on for hearing, the Collector shall, unless he adjourns the proceedings, make an order that the petition be dismissed, unless the mortgagee admits the claim, in which case the Collector shall make an order—

(a) that the mortgage be redeemed ;

(b) that where the mortgage is with possession the mortgagor be put in possession of the mortgaged property as against the mortgagee ;

*Cf. section 2 (8), India Act XIII of 1900.*

REVENUE AND AGRICULTURAL DEPARTMENT.  
AGRICULTURE.

FEBRUARY 1913, NOS. 11-35.

BILL TO PROVIDE A SUMMARY PROCEDURE FOR THE REDEMPTION  
OF CERTAIN MORTGAGES OF LAND IN THE PUNJAB.

File No. 8.

No. 731, dated Lahore, 31st October 1912.

From—H. A. SMITH, Esquire, I.C.S., Junior Secretary to the Financial Commissioners, Punjab,  
To—The Revenue Secretary to Government, Punjab.

No. 11

IN reply to Punjab Government letter No. 3091 S.,\* dated 7th October 1912, regarding the Bill to provide a summary procedure for the redemption of mortgages in the Punjab, I am directed to forward, in original, the correspondence noted in the margin, and to say that as the Financial Commissioner is a Member of the Select Committee, he would prefer to reserve his own opinion for the present and also his comments on those submitted.

\*Proceedings, October 1912, No. 5 A, file No. 29,  
R. & A.

Agri.

The Hon'ble Mr. M. W. FENTON, C.S.I.

Sub-head 411.  
File No. 196.

1. Commissioner Jullundur's No. 5447, dated 18th October 1912, and enclosure.—Pro. No. 12 *infra*.
2. Commissioner Rawalpindi's No. 3225 dated 21st October 1912, and enclosure.—Pro. No. 14 *infra*.
3. Director of Land Records' No. 45 C, dated 22nd October 1912.—Pro. No. 16 *infra*.
4. Commissioner Lahore's No. 799, dated 23rd October 1912, and enclosure.—Pro. No. 17 *infra*.
5. Registrar Co-operative Societies' No. 684, dated 29th October 1912.—Pro. No. 19 *infra*.
6. Commissioner Multan's No. 4710, dated 28th October 1912, and enclosure.—Pro. No. 20 *infra*.
7. Commissioner Ambal's No. 705, dated 28th October 1912, and enclosure.—Pro. No. 22 *infra*.

2. I am to say that it will be convenient if the opinions are printed by a very early date and copies supplied to each Member of the Select Committee. When these and all other opinions received from other sources have been so supplied, Mr. Fenton will summon a meeting of the Select Committee.

H. A. SMITH,

*Junior Secretary to the Financial Commissioners, Punjab.*

No. 5447, dated Jullundur, 18th October 1912.

From—P. J. FAGAN, Esquire, I.C.S., Commissioner, Jullundur division,  
To—The Junior Secretary to the Financial Commissioners, Punjab.

No. 12

IN reply to your No. 547 S., dated the 20th of October 1912, I have the honour to submit herewith a copy of letter No. 354, dated the 15th of October 1912, from the Deputy Commissioner of Ludhiana, in which he gives his opinion on the Redemption of Mortgages Bill. The proposed measure has been already so fully discussed on more than one occasion that it seems needless to say much now. I agree with Mr. Millar in thinking that it promises to be a useful one. The machinery provided by the Bill and the provisions embodied in it are, I think, well adapted to secure the end in view which is in itself a most desirable one.

P. J. FAGAN,

*Commissioner, Jullundur division.*

No. 354, dated Ludhiana, 15th October 1912.

From—T. MILLAR, Esquire, I.C.S., Deputy Commissioner, Ludhiana,  
To—The Commissioner, Jullundur division.

No. 13

WITH reference to your endorsement No. 5347, dated the 14th instant, I have the honour to say that I entirely approve of this short and simple Bill for facilitating the redemption of small mortgages. All the points which occurred to me while reading the previous correspondence have been dealt with in the Bill. I consider it a boon to the

Revenue (Agriculture) Department, February 1913, Nos. 11-35.

mortgagor who will thus in many cases avoid expensive litigation and also consider that there is nothing in the Bill to which any straightforward straight dealing mortgagee can possibly take exception. The rights of both parties are amply safeguarded, and if there is any objection to the Collector's decision, the parties are no worse off than they would have been before the passing of the Bill; they can have recourse to litigation.

T. MILLAR,  
*Deputy Commissioner, Ludhiana.*

**No. 14**

No. 5275, dated Rawalpindi, 21st October 1912.

From—H. J. MAYNARD, Esquire, I.C.S., Commissioner, Rawalpindi division,  
To—The Junior Secretary to the Financial Commissioners, Punjab.

WITH reference to your endorsement No. 547 S., dated 10th October 1912, I have the honour to forward a copy of a letter No. 470, dated 16th instant, from the Deputy Commissioner of Mianwali, containing Mr. Kettlewell's opinion on the draft Bill providing a summary procedure for the redemption of certain mortgages in the Punjab.

2. I concur in the opinion that the value of the mortgage is a better criterion than the area of the land.

H. J. MAYNARD,  
*Commissioner, Rawalpindi division.*

**No. 15**

No. 470, dated Mianwali, 16th October 1912.

From—A. B. KETTLEWELL, Esquire, I.C.S., Deputy Commissioner, Mianwali,  
To—The Commissioner, Rawalpindi division.

I HAVE the honour to acknowledge the receipt of your endorsement No. 5157 of 14th October 1912, asking for my opinion on a draft Bill providing a summary procedure for the redemption of mortgages in the Punjab.

2. In reply, I have only a few remarks to make. In the first place, the scope of the Bill might, I think, suitably be enlarged to at least fifty instead of thirty acres. Mortgages are generally made in this part of the world with kanals as the unit of measurement, and in a district like this, where holdings, though intrinsically of small value, often run into large areas with scattered patches of cultivation, mortgages even by comparatively small proprietors often run on paper into large figures, although the actual area of cultivation and value are quite small. Instead of 30 acres, which represents 240 kanals, I would make the Bill cover at least 50 acres or 400 kanals, a round number. It is also a question for consideration whether a money limit based on the mortgage money would not be more suitable than a limit of area. Thirty acres of land close to a large town might be worth a very large sum in mortgage value, whereas 400 or 500 acres in say the Thal tract of this district are worth very little.

3. There is nothing in the Bill to show whether any evidential value will attach to the Collector's enquiry and decision, if a suit is subsequently filed in court. The Collector's enquiry is of course of a summary nature, but his decision might reasonably be given the same presumptive value in cases under say section 9 of the Bill as attaches to an entry in the revenue records. This will assist the civil court in adjusting the burden of proof as between the parties when issues are framed.

4. I should be inclined to exclude legal practitioners from appearance in proceedings under the Bill. It is true that they are allowed to appear in revenue proceedings, but in cases of redemption the main chance of effecting a settlement is to bring the mortgagor and the mortgagee face to face with as little intervention by third parties as possible, and I doubt whether the appearance of legal practitioners will tend to a settlement in the bulk of cases. Under the Bill as it stands section 86 of the Tenancy Act applies, and consequently appearance by a legal practitioner is permissible. As the parties have full power to resort to the regular courts, if dissatisfied with the Collector's order, the necessity for counsel in proceedings under the Bill is not apparent.

A. B. KETTLEWELL,  
*Deputy Commissioner, Mianwali.*

## Revenue (Agriculture) Department, February 1913, Nos. 11-35.

No. 45 C., dated 22nd October 1912.

From—B. T. GIBSON, Esquire, I.C.S., Director of Land Records and Inspector-General of Registration, Punjab,  
 To—The Junior Secretary to the Financial Commissioners, Punjab.

No. 16

WITH reference to your endorsement No. 549 S., dated the 10th instant, I have the honour to forward the following opinion after consulting my Personal Assistant.

2. The Bill in the proviso to section 6 makes provision for mortgages of which the deeds contain a clause specifying the season or period of the year when redemption will take place. Provision might also be made for land mortgage under no such condition, but which at the time of the presentation of the petition for redemption has been sown or prepared for sowing by the mortgagee, or in respect of the cultivation of which he has entered into a contract with any tenant.

3. Section 10.—A period might be prescribed within which application under this section must be prepared.

4. As the draft Bill only reached me in October 18th and a reply is asked for by October 23rd, I have not had time to consider it very thoroughly.

B. T. GIBSON,

*Director of Land Records and Inspector-General  
 of Registration, Punjab.*

No. 759, dated Lahore, 23rd October 1912.

From—H. A. CASNOV, Esquire, C.S.I., I.C.S., offg. Commissioner, Lahore division,  
 To—The Junior Secretary to the Financial Commissioners, Punjab.

No. 17

I HAVE the honour, in reply to your No. 547 S., dated the 10th instant, to forward an opinion by Diwan Tek Chand on the Bill for summary redemption of mortgages, and to submit the following remarks upon this opinion and upon the Bill in general.

2. Diwan Tek Chand's opinion is not very helpful. His proposal to hand over the summary powers conferred by the Bill to the District Judge can be nothing new. The expedience or otherwise of this course must have been fully considered already. From the point of view of the convenience of the administration I agree with him, but I have no doubt that mortgagors anxious to redeem "land" would prefer the court of the Collector or Assistant Collector to that of the District Judge. I do not agree with the proposal to make the order of the Collector appealable to the Commissioner.

3. I observe that the present Bill makes no provision for the summary redemption of mortgages other than those relating to "land." I think that this is rather a pity and may give rise to allegations of class legislation. Occasional over-payments may result from the fact that no provision is made for the Collector satisfying himself that the sum deposited by the mortgagor is not in excess of that rightly due; apparently even if a sum palpably in excess is deposited, the Collector has no option. If the mortgagee admits the claim to redemption, the Collector must hand over the full amount deposited, even if he knows it to be excessive. This seems a little one sided. However, cases of such excess deposits will be rare and need not perhaps be legislated for. I also observe that under section 9 the Collector has no power to make orders as laid down in section 6, if the mortgagee claims a sum larger than that which the Collector considers to be due. Interest no doubt ceases from the date when the full sum found by the Collector to be due is deposited, and in most cases this should suffice to force the mortgagee to accept the sum and to acquiesce in the consequent redemption. He would still retain his right to sue under section 10 for any balance which he considered himself entitled to. Supposing, however, a mortgagee is making more from the usufruct of the "land" than he can lose by foregoing interest subsequent to the date of deposit, will he not wilfully name a sum in excess of what he knows to be due in order to retain possession of the land. The whole object of the Bill is to defeat such tactics and to provide for such cases. I would provide that the Collector may determine the sum which appears to be rightly due, and that even if this is less than the sum claimed by the mortgagee, he may still on that sum being deposited, make the orders laid down in section 6: such orders in cases where the sum claimed exceeds that found by the Collector to be due, not to take effect until the expiration of three months from the date of the orders. If within these three months the mortgagee brings a suit under section 10 to establish his right to a sum in excess of that fixed by

Section 13.



Revenue (Agriculture) Department, February 1913, Nos. 11-35.

the Collector, the effect of the orders to be further postponed until a decision has been obtained on such suit. There is nothing in the Act to guide the Collector as to the date between which redemption orders may be executed. Would it not be advisable to include section 47 of the Tenancy Act among the sections named in section 3 of the Bill?

No provision has been made in the Bill against attachment of sums placed in deposit. This is an important matter; and unless it is held that such attachment can be prevented otherwise than under the Bill, steps should be taken to forestall the danger that the object of the Bill may be defeated by *bond fide* or collusive applications for the attachment of sums so placed in deposit. Subject to the above remarks, I approve of the Bill.

H. A. CASSON,

*Offg. Commissioner, Lahore division.*

No. 413, dated 21st October 1912.

No. 18

From—DIWAN TEK CHAND, B. A., I. C. S., Deputy Commissioner, Gujranwala,  
To—The Commissioner, Lahore division.

IN reply to your endorsement No. 563, dated 18th instant, calling for my opinion on the draft Bill No. 4 of 1912 to provide a summary procedure for the redemption of certain mortgages of land in the Punjab, I have the honour to observe as follows.

2. There are two outstanding features of the Punjab Administration which strike every Revenue Officer. The first is that Deputy Commissioners are overworked, and the second that the Punjabi agriculturist is a very litigious person.

3. The Bill under consideration throws more work on the Deputy Commissioner and the provision of section 10 by which all aggrieved parties are at liberty to institute civil suits, in spite of the summary orders of the Collector, will in the long run tend to foster litigation. Both these results will aggravate the evils referred to in paragraph 2. Revenue courts in the Punjab already exercise far greater powers than in other provinces, and it is a serious question for consideration whether further encroachments should be allowed on the jurisdiction of the civil courts.

4. At the same time the provision of a summary remedy will be very beneficial to petty mortgagors, and the enormous trouble of execution proceedings will be saved. To secure this end, and to remove the objections enumerated in paragraph 3, I would propose that the powers of summary disposals embodied in the Bill may be conferred on the District Judge and Subordinate Judge, 1st grade, instead of the Collector and the Assistant Collector, 1st grade. If this is not considered acceptable, then the summary orders of the Collector should be made appealable to Commissioner, and civil courts debarred from adjudication on points disposed of by Collector and Commissioner. I am anxious to avoid (a) antagonism between revenue and civil courts, and (b) eagerness of the aggrieved party to rush to civil courts after the Collector has passed an adverse decision against him.

5. As the Bill is intended to provide a summary remedy in petty cases only, I was at first inclined to suggest a smaller limit than 30 acres in clause (3) of section 1. But as the colony "square" measures about 28 acres, the proposed maximum may be allowed to stand. In the province, excluding village common and Government lands, the area of average holding is less than 13 acres.

TEK CHAND,

*Deputy Commissioner, Gujranwala.*

No. 684, dated Lahore, 28th October 1912.

No. 19

From—A. LANGLEY, Esquire, I. C. S., Registrar, Co-operative Societies, Punjab,  
To—The Junior Secretary to the Financial Commissioners, Punjab.

WITH reference to your No. 548 S., dated 10th instant, forwarding for opinion a copy of Bill No. 4 of 1912, I have the honour to say that I very much regret that, having been travelling about in connection with the two Conferences in which I am engaged, I have not been able to consider the Bill in detail so as to be able to give an opinion of any value. I very much regret this, as the measure is one in which I have long been interested and which I consider to be very necessary for the agricultural classes.

A. LANGLEY,

*Registrar, Co-operative Societies, Punjab.*

(c) that the mortgagee deposit with the Collector the mortgage-deed, if any, if then in his possession or power, and that it be delivered to the petitioner ;

(d) that subject to the mortgage-deed, if any, being so deposited by the mortgagee the sum in deposit be paid to him ;

Provided that no such order shall be made inconsistent with any condition of the mortgage whereby a season or period of the year is fixed for redemption or for surrendering possession.

7. When the petitioner appears, but the mortgagee does not appear,

*Procedure when petitioner is present and mortgagee absent.*

when the petition is called on for hearing, the Collector shall, unless he adjourns the proceedings, enquire in a summary manner (a) whether the petitioner is entitled to redeem the mortgaged property, and (b) whether the sum deposited by the petitioner is the sum rightly due under the mortgage.

If the Collector is not satisfied that the petitioner is entitled to redeem, he shall dismiss the petition.

If the Collector is satisfied that the petitioner is entitled to redeem, and that the sum deposited is the sum rightly due under the mortgage, he shall make an order as laid down in section 6 (a), (b), (c) and (d) of this Act.

If the Collector is satisfied that the petitioner is entitled to redeem, but is of opinion that a sum larger than that in deposit is due under the mortgage, he shall fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days as the Collector may fix, the Collector shall make an order in manner aforesaid.

If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

8. Where both parties appear when the

*Procedure when both parties are in attendance : order for redemption.*

petition is called on for hearing, the Collector shall enquire from the mortgagee whether he admits that the petitioner is entitled to redeem, whether he is willing to accept the sum in deposit in full discharge of the mortgage debt, and where the mortgage is with possession whether he is willing to surrender possession of the mortgaged property.

If the mortgagee replies in the affirmative, the Collector shall make an order as laid down in section 6 (a), (b), (c) and (d) of this Act,

If the mortgagee admits the petitioner's title to redeem, but demands payment of a sum larger than that in deposit, the Collector shall enquire from the petitioner whether he is willing to pay such larger sum, and if he replies in the affirmative, the Collector shall fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days as the Collector may fix, the Collector shall make an order as laid down in section 6 (a), (b), (c) and (d) above.

If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

9. If the mortgagee raises objection on

*Procedure in contentious cases.*

any ground other than the amount of the deposit, or if the petitioner is not willing to pay the sum demanded by the mortgagee, the Collector may either (a) for reasons to be recorded dismiss the petition, or (b) make a summary enquiry regarding the objection raised by the mortgagee or regarding the sum due.

10. If on enquiry regarding any objection

*Enquiry into objection raised by the mortgagee.*

so raised by the mortgagee the Collector is of opinion that it bars redemption or is a sufficient cause for not proceeding further with the petition, he shall dismiss the petition ; but if he is not of that opinion, he shall, unless he dismisses the petition under section 11, make an order as laid down in section 6 (a), (b), (c) and (d) of this Act.

11. If on enquiry regarding the sum due

*Enquiry regarding sum due.*

the Collector is of opinion that the sum deposited is the sum rightly due under the mortgage, he shall, unless he dismisses the petition under section 10, make an order as laid down in section 6 (a), (b), (c), and (d) of this Act, but if he is of opinion that a sum larger than the sum deposited should be deposited by the petitioner, he shall, unless he dismisses the petition under section 10, fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of the deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days as the Collector may fix, the Collector shall make an order as laid down in section 6 (a), (b), (c) and (d) of this Act.

If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

Cf. section 2,  
Act IV of  
1912.

12. Any party aggrieved by an order made under section 6, 7, 8, 9, 10 or 11 of this Act may institute a suit to establish his rights in respect of the mortgage, but, subject to the result of such suit, if any, the order shall be conclusive.

Notwithstanding anything in this section a mortgagee against whom an *ex-parte* order under section 7 has been made or a petitioner whose petition has been dismissed in default under section 6 may apply to the Collector to have such order or dismissal set aside and the Collector may in his discretion set aside, such order or dismissal on such terms as to costs or otherwise as he may deem fit; provided that the order or dismissal shall not be set aside unless notice of the application has been served on the opposite party.

13. The dismissal of a petition under this Act shall bar any further petition under this Act by the same petitioner or his representative in respect of the same mortgage.

14. If the Collector dismisses a petition under this Act, he shall order that the sum deposited by the petitioner be returned to him.

15. No sum deposited with the Collector by a petitioner under the provisions of this Act shall be attached by any Court or Revenue Officer.

16. When the petitioner has deposited with the Collector the sum declared by him to be due on the mortgage, and such sum is accepted by the mortgagee, or is found by the Collector to be the sum actually due, interest on the mortgage shall cease from the date of the deposit.

Where the Collector finds that a further sum is due and the petitioner deposits such further sum, interest shall cease from the date of such further deposit:

Provided that nothing in this section shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage money:

Provided also that where a suit is instituted under section 12, the court may pass such order as to interest as it deems fit.

17. The Local Government shall have power to make rules, consistent with this Act, for carrying out the purposes of this Act.

S. W. GRACEY,  
Secy., Legislative Council.

**PUNJAB GOVERNMENT.  
LEGISLATIVE DEPARTMENT.  
(BILL AS PASSED IN COUNCIL.)**

BILL No. 4 of 1912.

*A Bill to provide a summary procedure for the redemption of certain mortgages of land in the Punjab.*

**WHEREAS** it is expedient to provide a summary procedure for the redemption of certain mortgages of land in the Punjab;

It is hereby enacted as follows:—

**1. (1)** This Act may be called The Redemption of Mortgages (Punjab) Act, 1911.

**(2)** It extends to the Punjab.

**(3)** It shall apply only to mortgages of land—

Limitation of scope of Act to certain mortgages.

(a) in which, whatever the mortgage money, the land mortgaged, after excluding the area of any share in the common land of the village or of a sub-division of the village appertaining thereto and mortgaged therewith, does not exceed in area 30 acres; or

(b) in which, whatever the area, the principal money secured under the mortgage does not exceed 1,000 rupees;

Provided that it shall not apply to any mortgage made under section 6 of the Punjab Alienation of Land Act, 1900.

**2.** In this Act, unless there is something repugnant in the subject or context,—

(1) the expression "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or purposes subservient to agriculture or for pasture, and includes—

(a) the sites of buildings and other structures on such land;

(b) a share in the profits of an estate or holding;

(c) any dues or any fixed percentage of the land revenue payable by an inferior landowner to a superior landowner;

(d) a right to receive rent;

(e) any right to water enjoyed by the owner or the occupier of land as such; and

(f) any right of occupancy;

(2) the expression "Collector" shall mean the Collector of the district in which the mortgaged property or any part thereof is situated, and shall include an Assistant Collector of the 1st grade;

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(3) "prescribed" shall mean prescribed by rules made under this Act.

**3.** Subject to the provisions of this Act and the rules thereunder, the provisions of sections 79, 85, 86, 87, 89, 90, 91, 92 and 101 of the Punjab Tenancy Act, 1887, shall, so far as may be, apply to all proceedings of a Collector under this Act.

**4.** The mortgagor or other person entitled to institute a suit for redemption may, at any time after the principal money becomes payable and before a suit for redemption is barred, present a petition to the Collector applying for an order directing that his mortgage be redeemed and where the mortgage is with possession that he be put in possession of the mortgaged property.

The petition shall be duly verified in the manner prescribed by law for the verification of plaints, and shall state the sum which the petitioner declares to be the best of his belief to be due under the mortgage. The petitioner shall at the same time deposit such sum with the Collector.

The petitioner shall state in his petition such particulars and file herewith such documents as may be prescribed.

**5.** When the petition has been duly presented and the deposit has been made, the Collector shall issue to the mortgagee a summons to appear on a date to be therein specified. Every summons shall be accompanied by a copy of the petition, with the date of deposit endorsed thereon.

**6.** Where the mortgagee appears and the petitioner does not appear when the petition is called on for hearing, the Collector shall, unless he adjourns the proceedings, make an order that the petition be dismissed, unless the mortgagee admits the claim, in which case the Collector shall make an order—

(a) that the mortgage be redeemed;

(b) that where the mortgage is with possession the mortgagor be put in possession of the mortgaged property as against the mortgagee;

India Act XIII of 1900.

Cf. section 3 (b), India Act XIII of 1900.

Cf. section 85, India Act IV of 1882.

Application of certain sections of Punjab Tenancy Act, 1887, shall, so far as may be, apply to all proceedings of a Collector under this Act.

Petition for redemption.

Verification.

Deposit.

Particulars to be contained in petition.

Mortgagee to be summoned.

Procedure when petitioner is absent and mortgagee present.

(c) that the mortgagee deposit with the Collector the mortgage-deed, if any, if then in his possession or power, and that it be delivered to the petitioner;

(d) that subject to the mortgage-deed, if any, being so deposited by the mortgagee the sum in deposit be paid to him:

Provided that no such order shall be made inconsistent with any condition of the mortgage whereby a season or period of the year is fixed for redemption or for surrendering possession.

7. When the petitioner appears, but the mortgagee does not appear, when the petition is called on for hearing, the Collector shall, unless he adjourns the proceedings, enquire in a summary manner (a) whether the petitioner is entitled to redeem the mortgaged property, and (b) whether the sum deposited by the petitioner is the sum rightly due under the mortgage.

If the Collector is not satisfied that the petitioner is entitled to redeem, he shall dismiss the petition.

If the Collector is satisfied that the petitioner is entitled to redeem, and that the sum deposited is the sum rightly due under the mortgage, he shall make an order as laid down in section 6 (a), (b), (c) and (d) of this Act.

If the Collector is satisfied that the petitioner is entitled to redeem, but is of opinion that a sum larger than that in deposit is due under the mortgage, he shall fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days as the Collector may fix, the Collector shall make an order in manner aforesaid.

If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

8. Where both parties appear when the petition is called on for hearing, the Collector shall enquire from the mortgagee whether he admits that the petitioner is entitled to redeem, whether he is willing to accept the sum in deposit in full discharge of the mortgage debt, and where the mortgage is with possession whether he is willing to surrender possession of the mortgaged property.

If the mortgagee replies in the affirmative, the Collector shall make an order as laid down in section 6 (a), (b), (c) and (d) of this Act.

If the mortgagee admits the petitioner's title to redeem, but demands payment of a sum larger than that in deposit, the Collector shall enquire from the petitioner whether he is willing to pay such larger sum, and if he replies in the affirmative, the Collector shall fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days as the Collector may fix, the Collector shall make an order as laid down in section 6 (a), (b), (c) and (d) above,

If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

9. If the mortgagee raises objection on any ground other than the amount of the deposit, or if the petitioner is not willing to pay the sum demanded by the mortgagee, the Collector may either (a) for reasons to be recorded dismiss the petition, or (b) make a summary enquiry regarding the objection raised by the mortgagee or regarding the sum due.

10. If on enquiry regarding any objection so raised by the mortgagee the Collector is of opinion that it bars redemption or is a sufficient cause for not proceeding further with the petition, he shall dismiss the petition; but if he is not of that opinion, he shall, unless he dismisses the petition under section 11, make an order as laid down in section 6 (a), (b), (c) and (d) of this Act.

11. If on enquiry regarding the sum due the Collector is of opinion that the sum deposited is the sum rightly due under the mortgage, he shall, unless he dismisses the petition under section 10, make an order as laid down in section 6 (a), (b), (c), and (d) of this Act, but if he is of opinion that a sum larger than the sum deposited should be deposited by the petitioner, he shall, unless he dismisses the petition under section 10, fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of the deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days as the Collector may fix, the Collector shall make an order as laid down in section 6 (a), (b), (c) and (d) of this Act.

If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

*Cf. section 8,  
Act IV of  
1882.*

12. Any party aggrieved by an order made under section 6, 7, 8, 9, 10 or 11 of this Act may institute a suit to establish his rights in respect of the mortgage, but, subject to the result of such suit, if any, the order shall be conclusive.

Notwithstanding anything in this section a mortgagee against whom an *ex-parte* order under section 7 has been made or a petitioner whose petition has been dismissed in default under section 6 may apply to the Collector to have such order or dismissal set aside and the Collector may in his discretion set aside, such order or dismissal on such terms as to costs or otherwise as he may deem fit; provided that the order or dismissal shall not be set aside unless notice of the application has been served on the opposite party.

13. The dismissal of a petition under this Act shall bar any further petition under this Act by the same petitioner or his representative in respect of the same mortgage.

14. If the Collector dismisses a petition under this Act, he shall order that the sum deposited by the petitioner be returned to him.

15. No sum deposited with the Collector by a petitioner under the provisions of this Act shall be attached by any Court or Revenue Officer.

16. When the petitioner has deposited with the Collector the sum declared by him to be due on the mortgage, and such sum is accepted by the mortgagee, or is found by the Collector to be the sum actually due, interest on the mortgage shall cease from the date of the deposit.

Where the Collector finds that a further sum is due and the petitioner deposits such further sum, interest shall cease from the date of such further deposit :

*Cf. section 8,  
Act IV of  
1912.*

Provided that nothing in this section shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage money :

Provided also that where a suit is instituted under section 12, the court may pass such order as to interest as it deems fit.

17. The Local Government shall have power to make rules, consistent with this Act, for carrying out the purposes of this Act.

S. W. GRACEY,

*Secy., Legislative Council.*



THE REDEMPTION OF MORTGAGES (PUNJAB BILL.)

THE Hon'ble Mr. FENTON :—" Your Honour, I beg to present the Report of the Select Committee on the Bill to provide a summary procedure for the redemption of certain mortgages of land in the Punjab ; and at the same time to move that the Bill be taken into consideration. I notice that there are a couple of amendments on the agenda paper, of which the Hon'ble Mr. SHADI LAL has given notice. These amendments do not go very far ; the first is a trifling matter. The second no doubt is of some importance, but it does not embrace the whole question of whether the Bill should or should not be passed. In connection with these amendments it will be possible to confine the scope of the debate, but it is just possible that the Hon'ble Mr. SHADI LAL may have in contemplation a motion that the Bill be rejected in connection with the motion, which I shall subsequently move, that it be passed into law. Our legislative rules do not require any notice whatever to be given of a motion that a Bill be rejected, although it does require notice to be given of specific amendments.

" However, I cannot overlook the fact that, appended to the Report of the Select Committee, there is a lengthy Note of Dissent by the Hon'ble Mr. SHADI LAL, and it is just possible that he may follow up that Note of Dissent by an attack on the whole principle of the Bill. On the other hand, it is just possible that he will consider discretion to be the better part of valour and shrink from exposing what I may call the weak and defective arguments in that note to the full criticism of the Council. However, I am not going to anticipate any arguments which would be advanced to meet and defeat those of the Hon'ble Mr. SHADI LAL. It will be time enough to do so when he does present them. Meanwhile, in moving that the Bill be taken into consideration, I think it will suffice to express the anticipation that the particular arguments which he may advance will be amply met when the time comes. My motion therefore is that the Bill be taken into consideration. "

His Honour the PRESIDENT to the Hon'ble Mr SHADI LAL :—" I suppose your amendments would come on when the Bill is taken into consideration ? "

The Hon'ble Mr. SHADI LAL : " Yes, but may I repeat the request I have made in my Note of Dissent that the discussion of the Bill be postponed and that official and non-official opinions be invited ? The measure is a very important one and involves a principle of vital importance, and it is, therefore, necessary that we should give the public sufficient time to express their views. The Bill, after its introduction in the Council, has not been circulated to non-officials and only a limited number of officials were selected to give their opinions, and they too complained of the shortness of time within which they had to record their views. This is hardly a satisfactory state of affairs.

" It will perhaps be urged that before the Bill was submitted to the Government of India it was subjected to the criticism of officials as well as non-officials. My answer to that is two-fold. In the first place, the Bill before the Council is materially different from the Bill which was circulated. In the second place, it is one thing to give opinion on a Bill which is yet in a preliminary stage and about which there is no knowing whether it would be accepted by the Government of India and whether it would be introduced in the Council at all, and it is quite a different thing to give opinion on a Bill which has been introduced in the Council and is about to become law. The two frames of mind are quite different.

" I, therefore, submit that there is no necessity to rush the Bill through the Council, and that the Bill be returned to the Select Committee for obtaining opinions. "



The Hon'ble Rai Bahadur HARI CHAND.—“ Your Honour, I respectfully submit that the Bill is a very important one. It affects of course no doubt one very important class and I submit we are not in a position to know what opinions have been taken ; Members of the Select Committee know. But as I hear from the Hon'ble Member that no non official opinion has been taken on the Bill ; only five Deputy Commissioners were consulted ; so, as the Bill is a very important one, it should be postponed and circulated, and the opinions of the non-officials, as well as officials, taken.”

The Hon'ble Mr. MUHAMMAD SHAFI :—“ It will be within the recollection of the Hon'ble Members that this Bill, as originally drafted, was circulated throughout the province to a very large body of persons, official and non-official. As regards non-official opinions, opinions of thoroughly representative persons were sent to Government in connection with the Bill. That Bill was placed before a committee of officials and non-officials. I might remind my learned friend that he and I were the two non-official members of that committee, and the committee fully considered the opinions of the officials as well as of the non-officials which had been submitted to Government. And perhaps it will be within the recollection of my Hon'ble friend that the majority of non-official opinions pointed out that the Bill as originally framed would not carry out the object of avoidance of unnecessary trouble to the mortgagor or the mortgagee as both the parties would appear before the Collector and only in case of mutual agreement will the Collector order redemption to take place. The majority of non-official opinion, so far as I recollect—and I think the Hon'ble Mr. FENTON will bear me out that my recollection is probably correct—was strongly to the effect that something more than that was needed in order to facilitate the redemption of mortgages. It was in deference to the opinions, which were expressed by the majority of officials and non-officials of this province, that the Bill was drafted on the lines on which it now stands and was fully considered by the Committee. With your permission I would submit one fact that my learned friends, who represents the non-agricultural Hindu community, and myself, who might be said to have a claim to represent to a certain extent the Muhammadan community of this province, were members of that committee. Subsequently the Bill, after having been approved by the Government of India, was introduced in this Council in September last and has been published in the Gazette as well as in the principal newspapers which take any further interest in this measure. It was drafted in accordance with the opinion of the majority of the people of this province and has been circulated. It is not the fault of Government that only so very few opinions have now been sent. The fact that so very few opinions have been sent up leads to the conclusion that the Bill as now framed represents the majority of public opinion in this province and the public opinion is satisfied that the Bill as at present framed does not require any further comment.”

The Hon'ble Nawab Sir BAHRAM KHAN spoke in Urdu, a translation of which is as follows:—“ The Bill, which has been introduced by the Hon'ble Mr. FENTON, is a very useful one. It deals with the redemption of mortgages of lands with which the Revenue Officers have the most to do. I think I can speak with some authority and after full consideration I can say that the powers conferred upon the Revenue Courts by the present Bill will be very useful and the Collector will be a better man for this purpose than the District Judge. Even intricate cases can be disposed of by the Deputy Commissioners and Assistant Commissioners who have revenue powers better than the District Judge who is always at the head-quarters. The Deputy Commissioners and Assistant Commissioners will possess an additional advantage that they will be going on tours and would thus be able through their influence to settle the disputes on the spot.”

The Hon'ble Sardar SUNDAR SINGH, Majithia—“ Your Honour, I think I may say a few words in connection with this Bill, belonging as I do to the agricultural community of the Punjab. I think the measure put forward by my Hon'ble friend Mr. FENTON is a laudable measure which provides a great want of the agricultural community, particularly of those who have

mortgaged their lands. As the Hon'ble Mr. FENTON put it when he introduced the Bill, the trouble of mortgagors, who wanted to redeem their lands, was very great, and I think it is mainly to the good that there is something put forward. To my mind this Bill is a very good one, and I think it would be liked by the agricultural community. Under the circumstances I respectfully submit that the Bill should be passed."

The Hon'ble Lala SULTAN SINGH :—"Your Honour, this Bill introduces an important principle of transferring the power of the Civil Court to the Revenue Officers. This is also a measure which I believe does not exist in any other province in the country."

The Hon'ble Mr. FENTON :—"I rise to a point of order. The sole question is whether the Bill be referred back to the Select Committee."

His Honour the PRESIDENT :—"Or whether it be taken into consideration. I think the Hon'ble Member is in order."

The Hon'ble Lala SULTAN SINGH :—"Sufficient publicity to this Bill has not been given, and as to the few opinions recorded, the weight of these opinions seems to me to support the motion of the Hon'ble Mr. SHADI LAL that the Bill be reconsidered."

The Hon'ble Mr. FENTON :—"Sir, I would respectfully and emphatically traverse the contentions of the Hon'ble Mr. SHADI LAL that the Bill in its present form is very different from the previous Bill which was widely circulated throughout the province. The main principle of the Bill is to provide a summary procedure for redemption of mortgages of land and to bring the mortgagor and the mortgagee together. In regard to that principle there has been ample opportunity for examination and scrutiny by critics of every class, officials as well as non-officials. I would just like to call attention to a few of the non-official opinions which have been received, Lala Gola Ram and Payare Lal, Pleaders, Muzaffargarh, say that the proposed legislation is extremely desirable as it provides in the first instance a summary process in the way of the settlement of the dispute as to the mortgage money."

"Munshi Ghulam Bari, Pleader, Lyallpur, says :—"The measure now under consideration of the Punjab Legislative Council will surely check such litigation which is really unnecessary and the real cause of which can be seen as the outcome of the mortgagee's unfair attempt to go on with the mortgage as long more as possible."

"Lala Prabh Dyal, Pleader, Lyallpur, says :—"I have gone through the draft Bill of Redemption of Mortgages of immoveable property in the Punjab and have considered the sections of the Bill carefully. The provisions seem to have been considered well. The object of the Bill is no doubt a laudable one indeed."

"Rai Bahadur Lala Sheo Parshad, Rais and Honorary Magistrate, Delhi, says :—"I think the legislation proposed is a good one and will be appreciated by the class of persons whom it is intended to benefit."

"Munshi Abdul Ghani, Pleader of Karnal, is of opinion that a summary procedure to enable the mortgagor to get back his property has long been needed in the Punjab."

"Lala Jai Lal, Pleader, Chief Court, Punjab, Simla, says :—"In my opinion the proposed legislation is a real necessity which is often felt by the mortgagors and I strongly support the proposed Bill."

"Lala Barkat Ram, Pleader, Chief Court, Punjab, and Honorary Sub-Registrar, Gujranwala, says :—".....There is no question as to the utility and prospective beneficial effects in bringing the mortgagor and the mortgagee to an easy settlement, or to enable the mortgagors to understand their contracts by the enactment of some law on the lines of sections 83 and 84 of the Transfer of Property Act....."

" Lala Gopal Das, Bhandari, Pleader, Amritsar, says :— ' The new Act shall prove in every respect a most useful provision for the settlement of the matters between the mortgagor and the mortgagee in a most convenient, speedy and less expensive way.'

" Mr. A Muir Masson, Secretary, Punjab Banking Company, says :— ' That in the opinion of our Managing Director all the provisions of the Act seem just and reasonable.'

" Sardar Kharak Singh, Pleader, Chief Court, says :— ' It cannot be denied for a moment that there is a pressing need for the proposed piece of legislation to be brought into force in the Punjab, inasmuch as the present legislation does not provide any means for redemption of mortgages and for ejection of the usufructuary mortgagees.'

" The Manager, Punjab National Bank, Limited, Lahore, says :— ' I agree with the principle and the procedure adopted in order to facilitate the redemption of immoveable property in the Punjab.'

" Rai Bahadur Ram Saran Das of Lahore says :— ' I beg to say that in my opinion the measure proposed will be a very useful one, and will in many cases afford to mortgagors a speedy way of getting back the mortgaged property.'

" and so on and so on.

" There are perhaps 50 or 60 opinions of this sort in favour of the principle of the Bill. It is impossible therefore to say that there has been no consideration by non-official persons of the main principle which this Bill designs to enforce. There is no wonder then that the Government of India have said that ' after careful consideration of the provisions of the draft Bill they are ready to accept the general outlines of the draft and that the need of a summary means of coming to a decision in cases between small peasant mortgagors and their creditors is very generally acknowledged, and there appears to be no more satisfactory method of meeting the want than that put forward in the Bill.'

" The only change of importance that has been made in the Bill since all these numerous non-official persons have seen it has been the substitution of Collector for the District Judge and the reasons for the substitution will be referred to later as the Hon'ble Mr. SHADI LAL will move an amendment for the restoration of the original court. I think the contention cannot at all be maintained that the principle of the Bill has not been sufficiently discussed and canvassed by non-official critics. I should just like to ask what are the non-official members of this Council for. Is it not their duty to ascertain between the date of introduction of the Bill and the date of its coming forward for debate, what is the opinion of the non-official world with which they are in touch and to represent in this Council any views so ascertained? Furthermore, do the Deputy Commissioners, whose opinions have been received, not represent non-official opinion? Are they not more in touch with the classes for whose benefits the Bill is to be passed than the representatives of what may be called non-rural constituencies. I think every one knows that the Collector as the head of a district is in a better position for voicing the opinion of the agricultural population of his district in regard to a legislative measure of this sort than the great majority of those who never move outside the circles of their urban constituencies. I therefore very strongly deprecate any further consideration of the Bill under consideration."

The motion that the Bill be taken into consideration was put and agreed to.

The Hon'ble Rai Bahadur SHADI LAL moved that sub-clause 3 (1) of clause 1 be omitted. He said :— " The amendment, Sir, which stands in my name deals with an important change which has been effected by the Select Committee in the Bill as it was introduced in the Council. As the Hon'ble Members are aware, the Bill is confined to mortgages of land where the area does not exceed 30 acres. That was the order of the Government of India, and

a one-square grant in a colony, consisting of about 27 acres, the value of that runs from Rs. 8,000 to Rs. 7,000, so that it would be quite feasible to effect a mortgage of property up to Rs. 7,000 without going outside the scope of the Bill. That being so, what objection can be taken to a money limit of a thousand rupees simply because the area exceeds 30 acres. The practical effect will be that where the value of the mortgage money exceeds Rs. 34 an acre, the acreage limit will apply, and it is only where the land is very cheap, for instance when a large portion of it is uncultivated, that the money limit will come into operation. The addition that has been made is not of very great importance. It is only an expedient for meeting this objection of Mr. Kettlewell. If the Council think that another pecuniary limit would be preferable, or that the acreage limit should be raised, I have no objection. But I do think that the owners of the poorer land in the West of the province ought not to be excluded from the scope of the Bill. Therefore I am in favour of adhering to the recommendation of the Select Committee."

His Honour the PRESIDENT:—"I think the matter is entirely one on which Hon'ble Members should pronounce an opinion as they feel advised. When the Bill was under discussion, the question as to whether an acreage limit should be taken or a pecuniary limit of value should be taken was frequently debated. Personally, I was myself rather in favour of the pecuniary limit of value so as to secure some equality throughout the province, but it was pointed out to me that the whole of this procedure is intended to be summary and simple and can in no way trench on the province of the Civil Courts, and that if we fixed a limit of value, we might be involved in very long and intricate enquiries as to what was the real value, and that thereby the provisions of the proposed measure might to a certain extent be defeated. It was also pointed out that it was highly desirable in the case of the colonies, as Mr. FENTON has told you, to assume some limit which would cover the one-square grant to the peasant *abadkars*. On the whole I deferred to the majority of opinion in favour of having an arbitrary limit of area. Of course the difficulty that a limit of area introduces, which is now under discussion, was foreseen at the time; but on the whole we thought that 30 acres might possibly meet the case. It now appears that in the West of the province very large areas in that direction are mortgaged for very small sums, and the question really now before Council is whether we should still adhere to the area of 30 acres which the Government of India has approved, because it has this merit that it does include the small peasant colonist, or whether we should try to modify slightly the Bill so as to confer the benefits, if there be benefits in it, upon the proprietors of these poorer lands in the West of the province which are mortgaged at small amounts. I do not think I need say any more; I have only made these remarks just to make it clear why this clause has come into existence in its present form."

✓ The amendment was put and lost.

The Hon'ble Mr. SHADI LAL moved that sub-clause 2 and clause 3 be omitted and the words "District Judge" be substituted for the word 'Collector' in clauses 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 16. He said:—"Your Honour, I beg to propose my second amendment. The object of that amendment is to substitute the Civil Court for the Revenue Officer. The Hon'ble Mr. FENTON mentioned a few minutes ago that the Bill, which was originally drafted and which was submitted for opinion to the officials and non-officials, did not invest the Revenue Officer with jurisdiction to decide those matters which had to be decided in the Civil Court. That change was made by the sub-committee which sat at Simla. I regret to say that I was against that change, but it was carried and the Bill, as altered by that committee, was submitted to the Government of India. Since the change has been made, it must be admitted, that the Bill has not been circulated to the non-official persons of this province. No non-official opinions have been given and my contention is that the change makes all the difference in the world so far as this Bill is concerned. If it was the Civil Court that was invested with jurisdiction to take this summary procedure, I would be entirely in favour of the Bill. My point is, you are taking away jurisdiction of the Civil Courts, and you are investing Revenue Officers

in pursuance of that order the Bill was confined to those areas. Now the Select Committee has gone beyond that. The Select Committee has taken not only the area as the test of jurisdiction, but has also taken the mortgage money, I should say the principal mortgage money, as the test of jurisdiction. This clause, which I want to be deleted, lays down that, irrespective of area, if the mortgage money does not exceed Rs. 1,000, then the provisions of the Bill will apply. My humble contention is that, in a measure of this great importance, the Select Committee ought not to have gone beyond the limit which has been laid down by the Government of India, more especially without obtaining the previous permission of the Government of India, and without obtaining the non-official opinion with respect to the change. It is a very important matter and should not be lightly considered. There was only one Deputy Commissioner who made that suggestion, and on the strength of that suggestion, this change has been made in the Bill. His argument, as far as I understand it, was to the effect, that in some places there is land which is not very valuable and a larger area than 30 acres is sometimes mortgaged for less than one thousand rupees, and it is necessary that this Bill should apply to those mortgages. That argument overlooks the fact that there are a large number of mortgages which were executed long ago, which affect large areas in places where the land is by no means cheap, but as those mortgages were effected a long time ago, the principal mortgage money is one thousand rupees or less than that. Since then it is quite possible that the amount due has become much more than Rs. 1,000. In connection with those mortgages complicated questions of law and fact arise, and it is very undesirable that the Revenue Officers should go into all these disputes between the mortgagor and the mortgagee and settle them at once and should turn out the mortgagee and ask the mortgagor to take possession of the property. Therefore I think that this change which has been effected by the Select Committee should not be accepted and the Bill should be confined to the original purpose for which it was intended."

The Hon'ble Mr. MEREDITH :—"With your permission, Sir, I should like to ask the Hon'ble Member in charge of the Bill whether it has been considered that this clause may afford inducement to mortgagors to enter fictitious sums as the consideration. There seems to be every inducement for people to enter a sum just over the thousand rupees, so as to bring it outside this Bill. I imagine that the number of deeds for Rs. 1,001 will possibly be very numerous. We have precedents for this in the Law of Pre-emption, and also in the Law of Registration, where the number of deeds executed for Rs. 99 is very large; and in pre-emption cases it is a very common thing for fictitious sums to be entered as consideration money, and it seems to me that there is that objection to the introduction of this clause in the Bill."

The Hon'ble Mr. FENTON :—"With reference to the Hon'ble Mr. MEREDITH's enquiry, I would remind him that the clause is not operative at all if the area mortgaged is 30 acres or less. It is only when the area mortgaged is over 30 acres that the question of the thousand-rupee limit has been imposed. The reasons for this additional limit are given in Mr. Kettlewell's opinion on the Bill. He says in the first place, the scope of the Bill might suitably be enlarged to 50 instead of 30 acres. Mortgages are generally made in this part of the world with kanals and in a district like this, where holdings, though intrinsically of small value, often run into large areas with scattered patches of cultivation, mortgages even by comparatively small proprietors often run on paper into large figures, although the actual area of cultivation and value are quite small. Instead of 30 acres which represents 240 kanals I would make the Bill cover at least 50 acres or 400 kanals, a round number. It is also a question for consideration whether money limit based on the mortgage money would not be more suitable than a limit of area. Thirty acres of land close to a large town might be worth a very large sum in mortgage value, whereas 400 or 500 acres in say the Thal tract of the district are worth very little. The limit of 30 acres was suggested by the Punjab Government simply as a round figure and because it would cover the one-square holdings in the colonies. Now, if a peasant proprietor mortgages

with powers which ought not to be with them. In all other provinces of India we have got Revenue Officers and we have got Civil Courts, and suits in respect of mortgages are decided by the Civil Courts. There are two sections of the Transfer of Property Act, sections 83 and 84, which provide summary procedure for the redemption of mortgages. Why not apply those sections to the Punjab? There is a contention that the Civil Court acting under the sections of the Transfer of Property Act does not decide the matter summarily, but the mortgagor is asked to go to a regular court and file a suit for the redemption of mortgage. If you want to make an advance in that direction, by all means give the Civil Court summary power to decide these contentious matters; but I am certainly opposed to giving these powers to the Revenue Officers. Revenue Officers, if I may be allowed to submit, have neither the time nor, if I may say so, the experience to decide these complicated questions of law and fact. This matter has been considered by the Hon'ble Judges of the Chief Court, and may I be allowed to read the opinion of the Hon'ble Mr. Kensington. He says: 'I am entirely in favour of cutting out altogether the proposed power to the Revenue Officer of dealing in any way with contentious points, and in the interests of all parties concerned I trust that the futility of expecting Revenue Officers to be able to deal efficiently with difficult questions of the sort, to the satisfaction of the parties, will be recognized to the extent of recasting the Bill.' This is a very weighty opinion, and it has been agreed to by other Judges of the Chief Court.

"There is no precedent in other provinces of this country, and I have not been able to find out any argument at all, why this departure is going to be made in this province. I am entirely in favour of the view that the laws in this province should not materially differ from the laws of other provinces and we should not make legislative experiments. If there is really a case for helping the mortgagors in redeeming their lands, by all means invest the Civil Courts with summary jurisdiction. But what is the case for taking away that jurisdiction from the Civil Courts and conferring it on the Revenue Officers? I must say I have not been able to find out any cogent argument in favour of that contention. The Hon'ble Mr. FENTON did not mention any reason why the change has been made, and so far I myself have not been able to find out one. I therefore beg to propose this amendment."

His Honour the PRESIDENT:—"This is a matter that the Hon'ble Mr. SULTAN SINGH might speak on if he likes."

The Hon'ble Lala SULTAN SINGH:—"In view of all the remarks which have fallen from the Hon'ble Mr. SHADI LAL, I beg to accord my hearty support."

The Hon'ble Mr. MEREDITH:—"May I make a few remarks. In referring to sections 83 and 84 of the Transfer of Property Act it seems to me that the Hon'ble Mr. SHADI LAL has ignored the references in the opening speech of the Hon'ble Member in charge of the Bill, in which it was distinctly said that these sections did not confer possession upon the mortgagor, and that there was a reason why it was considered that the application of these two sections to this province would not afford a remedy for the evil that the present Bill seeks to remedy. He also objects that the reference of this question to Revenue Officers is not advisable because the officers who will deal with the questions have neither the time nor the experience to deal properly with them. I must say that my experience of the Deputy Commissioners of this province, who will be the officer to deal with these questions, does not correspond with that of the Hon'ble Member if he considers that they have not sufficient experience to deal with the question. I have always seen that the care and pains which they take to elucidate difficult revenue questions is deserving of all praise, and I think they may be safely trusted with the decision of this point. As to their not having sufficient time I presume that may be left to Government, who will afford them relief in other departments if it is found that the decision of these questions leaves them no time for other work.

"With regard to the objection that there is no reason why the Punjab should have a different procedure from other provinces in India, that argument

appears to me to be somewhat misleading. Surely we may leave other provinces to set their own house in order, and if we find a measure that will relieve a large number of the poorer mortgagors and which is considered necessary for this province, it is our duty to introduce it and to leave other provinces to settle their own affairs, or to follow our own example if they think fit."

The Hon'ble Mr. FENTON :—" I have to thank the Hon'ble Mr. MEREDITH for pointing out that the Hon'ble Mr. SHADI LAL has ignored what I have said in my remarks in introducing the Bill as to the reasons justifying the measure. I there pointed out that the Bill is needed in order to avoid the delay and also the expense involved in the present procedure of redemption by suit in the Civil Court. But as regards his contention that the procedure under this Bill is more appropriate to the Civil Court than to a Revenue Officer, I would ask whether it is not the case that the procedure under this Bill differs but little from that already carried out by mutation officers. In other words, this is nothing more than a special kind of mutation procedure. Decisions on questions of title in a very large number of cases are now given by the mutation officer and, but for one circumstance, there is nothing in the present Bill which could not be effected in the course of mutation proceedings; but that one circumstance is quite sufficient to justify a special measure. Now in introducing the Bill, I pointed out how very important it was that all questions connected with redemption should be settled promptly, and how very often it is the case that time is of the essence of the situation. Our mutation rules do not require Revenue Officers to visit a village more than once a year. There is no provision for mutation at other times, and accordingly the mortgagor who is in a hurry to redeem before the expiry of the month or two months during which, under the terms of the contract, redemption is permissible, cannot afford to wait on the chance of the mutation officer coming round to his village in time. It would be a very serious inconvenience if he had to suffer another year's delay in consequence of the Revenue Officer not coming round in time. It is for this, and not for any other reason, that the existing mutation procedure is insufficient to meet the requirements of the situation in which mortgagors are so often placed. Otherwise there is nothing in this Bill which is not already part and parcel of our present mutation procedure. Throughout the province mutation officers every day are passing orders in summary proceedings in which questions of title are decided, and in the course of those proceedings they are, as in this Bill it is contemplated that they should be, empowered to place in possession the persons whom they may consider best entitled. Now in connection with such mutation proceedings we are not told, as we are now being told by Mr. SHADI LAL, that the functions of the Civil Courts are being encroached upon. As a matter of fact they are not encroached upon, and they are not encroached upon under this present Bill. The provisions of this Bill in every way safeguard the Civil Courts and empower them to set aside any orders that may be passed by Revenue Officers, just as Civil Courts are empowered to pass orders which conflict with the decision of mutation officers. It is, therefore, a strange misreading of the provisions of the present Bill to describe it, as the Hon'ble Mr. SHADI LAL does, as an encroachment upon the functions of the Civil Court. Then he proceeds to say that we are departing from the practice of other provinces, and that there is no precedent in other provinces for legislation of this kind. This idea that in the Punjab we are departing from the policy of other provinces by allowing the Revenue Officers to encroach upon the functions of the Civil Courts is entirely without foundation. There is not a single Act in our statute book for which a counterpart could not be found in the codes of other provinces. Our revenue jurisdiction is practically identical with the revenue jurisdiction exercised by the Revenue Courts in the United Provinces. The giving of decisions on questions of title in mutation cases is a feature of the legislation of, I believe, every province. Our Land Alienation Act has been copied. In the United Provinces in four districts and in part of the fifth—the Sadr district of Allahabad—the Bundelkhand Alienation of Land Act is in force, and is almost an exact copy of our Act XIII of 1900. There are Acts and enactments which go very far beyond anything that we have ever done in this province in the way of ousting the jurisdic-

tion of the Civil Courts. I refer to the Sind Encumbered Estates Act, the Bundelkand Encumbered Estates Act, and Kaira and Broach and the Chota Nagpur Encumbered Estates Acts. These all provide a most drastic procedure for liquidating the debts of proprietors without any interference of the Civil Courts; and in the course of such procedure Revenue Officers are empowered to dispossess mortgagees without paying any redemption money.

"Other examples of what the Hon'ble Mr. SHADI LAL would doubtless regard as objectionable encroachments by the Revenue Department could be cited from the Provincial Codes. I may just refer to one such—a recent piece of legislation, the Bombay Mamlatdars' Courts Act of 1906—which in some respects resembles the Bill now under consideration, as it empowers the Revenue Officers, who correspond to our Tahsildars, to decide certain questions of title and give possession in accordance with such decisions subject to the right of the dissatisfied party to bring a suit in a Civil Court.

"I would also like to remind the Council that, so far from the tendency of legislation in this province being to enlarge the jurisdiction of Revenue Officers, it has been quite the reverse. For some 40 years all civil cases were decided by Assistant Commissioners and Tahsildars and appeals went to Deputy Commissioners and Commissioners; and in those days the Chief Court Bench was recruited from the ranks of Commissioners, and very good judges they made. It is only necessary to mention the names of Barkley and the two Smiths. For nearly 40 years that was the condition of the province. But gradually the Judicial Department began to be specialised; first of all came the Munsifs, and then Extra Assistant Judicial Commissioners and Additional Commissioners. In 1884 a wholesale transfer of work from Revenue Officers to specialised civil officers took place when District Judges and Divisional Judges were created. Quite recently we have gone in for further specialisation, and above the seventh grade of Extra Assistant Commissioner in the Provincial Service the line has been kept quite apart. It is therefore impossible to say that our tendency has been towards enlarging the functions of the Revenue Officers. What the policy has been is that each department has been enabled to specialise in particular work, and as Revenue Officers are best qualified to dispose of a particular class of cases, it is most desirable that they should do so.

"The Hon'ble Mr. SHADI LAL in his Minute of Dissent says that 'he does not see the force of' the remark that Land Revenue Officers are better qualified to dispose of such cases. It is really not the *force* of the remark, it is the *truth* of the remark that is important, and that Revenue Officers are best qualified to dispose of such cases is, I think, the verdict of all experience."

The Hon'ble Nawab Sir BAHRAM KHAN spoke in Urdu, a translation of which is as follows:—"Your Honour, I have to say something in connection with the Bill for Redemption of Mortgages which the Hon'ble Mr. FENTON has introduced and the Hon'ble Rai Bahadur SHADI LAL has opposed. The Hon'ble Mover has in his tours been impressed with the necessity of such a law and has therefore brought forward this Bill in its present form. The Select Committee has after consideration admitted its necessity and has introduced the necessary amendments. I have considered the Bill in all its aspects in the capacity of a zamindar and cannot find anything to justify its postponement. Though it has been published in the Gazette and the papers also, the public has not so far in any way opposed it. It is just possible that its postponement might create fictitious difference. So far as my experience goes this Bill would be equitable and useful for both the mortgagor and the mortgagee. I therefore respectfully and strongly recommend that this Bill be passed."

The Hon'ble Mr. SHADI LAL:—"I would like to make a few remarks in answer to the Hon'ble Mr. FENTON. I am afraid perhaps I did not make myself quite clear. There is no argument advanced in the opening speech of the Hon'ble Mr. FENTON as to why jurisdiction has been conferred on the



Revenue Officers, and why the District Judges are not invested with that jurisdiction. We were told by the Hon'ble Mr. FENTON that the original Bill, which was circulated for opinion, conferred that jurisdiction on the Civil Courts."

The Hon'ble Mr. FENTON :—" Also on Revenue Officers,—section 23 of the original Bill."

The Hon'ble Mr. SHADI Lal :—" In any case the Civil Courts were authorised to deal with these matters. Why is the jurisdiction of the Civil Courts taken away? No answer has been given to my question. My contention again is that in other provinces you will not find a single instance where the Revenue Officers are authorised to deal with mortgage disputes. Disputes in connection with mortgages raise complicated questions of law and fact. The question of limitation arises, the question of right to redeem arises and there is the question of how much money is due, and these questions are not properly within the cognizance of the Revenue Officers. The Hon'ble Mr. FENTON has suggested that in other provinces also the jurisdiction of the Revenue Officers is very much the same as in this province. With all due deference to him, I beg to demur to that statement. If the Hon'ble Mr. FENTON will compare the Punjab Tenancy Act with the Tenancy Act of the United Provinces, he will find that the jurisdiction in the Punjab is much more extensive than the jurisdiction of the Revenue Officers in the United Provinces. Then he cited several Acts which deal with encumbered estates. I submit the analogy does not apply. Encumbered Estates Acts correspond to what is called Court of Wards Act in this province, and I submit that Court of Wards in this province has got similar powers to those which are exercised by the Courts under the Encumbered Estates Act.

"Then he said that, in this province, far from there being a tendency to transfer jurisdiction to the Revenue Officer, the tendency has been just the other way, and the Hon'ble Mr. FENTON used these words:—'That there has been a transfer of work by the Revenue Officers to the Civil Courts.' With all possible respect to him, I must say I was rather surprised to hear that remark from him. The mere fact that certain functions, Civil as well as Revenue, were united in one person, and since then there has been a separation of those functions, does not mean that there has been a transfer of jurisdiction from Revenue Officers to the Civil Courts. We even now find that the Deputy Commissioner is the District Magistrate and Collector. That does not mean that the Revenue Officer is exercising magisterial jurisdiction—far from it. The only thing that happens is that the same functions are united in one person. They may be separated at any time, but that does not at all mean, if their separation takes place, that there has been a transfer of jurisdiction from the Revenue Officers to the Courts. That transfer has taken place in many other places and many countries, but this certainly does not mean a transfer of work from the Revenue Officers to the Civil Courts. I still hold that no sufficient ground has been made out for making a change in this province. There are other provinces of this country which have gone on very well with their mortgage redemptions. In this province also redemptions have so far taken place, and I do not see why in the year of grace 1912, we should be taking this retrograde step."

His Honour the PRESIDENT :—" I might easily point out that there are very special reasons in this province for adopting measures which are perhaps somewhat special, and that is that the province is a province of peasant proprietors, and consequently there is an enormous amount of petty litigation and petty disputes concerning land, which is very largely in excess of that which exists in any other province. Also the agricultural classes unfortunately are singularly ignorant in this province; at any rate as far as education goes, and they therefore stand in need of special protection in the matter of disposal of land. I think those two reasons are amply sufficient to justify any special measures we may take in this province in regard to land legislation. The Hon'ble Mr. SHADI Lal, notwithstanding the Hon'ble Mr. FENTON's remarks,

has said that he does not find any argument put forward on behalf of the change made in the Bill as amended, providing for Collectors being substituted for the Civil Court. I must confess that I thought the Hon'ble Mr. FENTON's remarks on mutation procedure were singularly to the point in that respect. If the Hon'ble Member will again refer to the provisions of the Bill dealing with the procedure which takes place after the parties have appeared before the Collector, he will find that it is almost exactly the same as when the parties go before the mutation officer; and further, in section 9 'If the mortgagee raises objection on any ground other than the amount of the deposit, or if the petitioner is not willing to pay the sum demanded by the mortgagee, the Collector may either (a) for reasons to be recorded dismiss the petition, or (b) make a summary enquiry regarding the objection raised by the mortgagee or regarding the sum due.' Now if any of these very difficult points of law in regard to a particular case, which the Hon'ble Judges and the Hon'ble Member have raised, do occur, it is really almost inconceivable that the Collector will, with the possibility of the whole of the facts being gone into again in a regular Civil Court, worry out the case. This Act is intended to deal with the more simple classes of mortgage; indeed there are probably 99 of them to perhaps one of these difficult cases. As Settlement Officer of Gurdaspur, which has perhaps the largest amount of mutation work in the province, I had to deal with literally hundreds of thousands of these mutations. The number of petty disputes that are disposed of in these mutation cases and never come into court at all, is really very large, and I apprehend that if this Bill becomes law, the same thing will happen in regard to mortgages. There will probably be 99 out of a 100 mortgages in which the question which will really be about the amount of money or about some other petty matters which the Collector would be perfectly able to dispose of, and probably these cases would never come into Court at all. There will perhaps be one per cent. of difficult and intricate cases involving very lengthy enquiries and difficult points of law, in which the Collector will very probably and properly refuse to proceed with the enquiry, and refer the persons to a civil suit.

"It is stated, for the sake of argument, that the Collectors are desirous of gathering into their net, not only the revenue of the Government, but all other functions. I do not believe that that is the attitude of Collectors at all. If we have an officer who is desirous of amusing himself and wasting his time by going into these intricate questions, and if he gives a wrong decision, it is perfectly open to the party to go to the Civil Court and get his decision upset. And as regards the dreadful things that are anticipated as to the loss of prestige of the Collector on his order being upset by the Civil Court, I am afraid that these things would not in the least distress him. He passes orders in mutation cases which are very often upset and yet his prestige has not been very seriously affected, and I do not think it will be very seriously affected if, under this Act, his orders are upset by a Civil Court. Therefore I must confess that, personally, I am rather inclined to agree with the arguments which have been adduced why, in this summary procedure, the jurisdiction of the Collector is in some respects preferable to that of the Civil Court, without going in the slightest degree into the merits of the two forms of tribunal as to which would deal best with intricate questions."

✓ The motion was put and rejected.

The Hon'ble Mr. FENTON:—"I have now, Sir, to move that the Bill be passed."

The Hon'ble Mr. SHADI LAL:—"Sir, the amendment which I considered the most important one has been rejected, and I am afraid I have no alternative but to oppose the Bill. I do not want to repeat what I already stated in my Note of Dissent, and in spite of the very pertinent observations which have been made by Your Honour, I am still of opinion that this is a matter which ought to be decided by Civil Courts and not by Revenue Officers. I therefore endorse every word stated by the learned Judges, and I am of opinion that this measure ought not to be passed. I know my view is not acceptable to the Member in charge of the Bill and a large number of the Members of this Council, but

I feel that I have a duty to perform, however unpleasant that duty may be, and however infructuous my attempt may prove to be, and it is in discharge of that duty that I venture to place my remarks before the Council. One of the Hon'ble Judges, the Hon'ble Sir Arthur Reid, has gone so far as to describe this Bill not only as superfluous but as mischievous. Having regard to these remarks coming from such a high authority and to the remarks the other Judges have made, I am still inclined to think that we must give due weight to the opinion of the learned Judges and should not pass this Bill; therefore I oppose this motion."

The Hon'ble Mr. MUHAMMAD SHAFI:—"Your Honour, I have great pleasure in supporting the motion now before the Council. An examination of the opinions recorded by representative gentlemen of all classes, official and non-official, upon the Bill as originally framed and again upon its modified form on the lines adopted by the Committee which sat at Simla in September 1910, discloses a preponderance of opinion in favour of the necessity for the enactment of a law calculated to facilitate redemption of mortgages in this province. Those who have expressed opinions against the proposed enactment constitute a small minority. But in view of the weight which ordinarily attaches to the opinion of some of the high judicial authorities who have pronounced against the adoption of this measure, it is necessary to analyse the grounds upon which their opposition is based. Now, the main arguments advanced against the enactment of the proposed law are—(a) that it constitutes an unjustifiable encroachment upon the jurisdiction of the Civil Courts; (b) that in view of the complicated nature of the questions involved in redemption suits, the handing over of these disputes to Revenue Officers for summary decision is open to serious objection; and (c) that the proposed enactment will necessarily result in further injury to the money-lending classes who are already suffering considerable hardship in consequence of certain principles of the Punjab Customary Law as well as of recent legislation.

"Now, as regards the alleged encroachment on the jurisdiction of the Civil Courts, it must be obvious to all Hon'ble Members that if there were any reasonable fear of such an undesirable result being brought about, I would be the first Member of this Council to move the rejection of this Bill. But if what is meant by this objection is that, as a result of the enactment now before the Council, there will be a substantial decrease in the number of redemption suits which, under existing conditions, are instituted in and decided by the Civil Courts who will thus be deprived of the pleasure of adjudicating upon the interesting issues involved in such cases, I have no hesitation in admitting that this result will certainly be produced by the operation of the law which we are about to place upon the statute book of this province. These, however, are suits which, but for the tenacity with which the mortgagee sticks to the land in his possession, ought never to come before the Courts at all and, in consequence, their disappearance from the battle-field of the Civil Courts will not constitute an unbearable disaster either to the Courts themselves or to the population at large. Curtailment of unnecessary and frivolous litigation is an object which the Legislature should invariably have in view, and the substitution of a summary remedy for prolonged and ruinous litigation, absolutely uncalled for, can, in no sense, be regarded as an encroachment upon the jurisdiction of the Civil Courts. Cases of real *bond fide* contest between the parties to a mortgage transaction will still find their way into the ordinary courts of law and, in consequence, no one need be apprehensive that these tribunals will, by the enactment of this measure, be deprived of the legitimate exercise of their powers in deciding questions which arise in really contentious suits for redemption.

"Turning now to the second objection raised against the Bill, i.e., that the complicated nature of the questions involved in these cases makes it undesirable to confer summary jurisdiction upon the Revenue Courts in respect thereof, a careful examination of the position thus taken up by the opponents of the Bill will make its fallacious character abundantly clear. The questions involved in redemption suits may, generally speaking, be divided into two

groups,—(a) those relating to the right and title of the person seeking redemption, and (b) those concerning the settlement of accounts between the parties to these proceedings.

“ Now, in the first place, section 9 of the Bill empowers the Collector to refer the parties to their ordinary remedy at law in cases involving decision of really complicated questions. But what, after all, is the real nature of the so-called complicated questions which ordinarily present themselves for decision in disputes with which the proposed enactment is concerned? Suits for redemption between the original mortgagor and mortgagee seldom involve a determination of the plaintiff's right to redeem, for it is a well known rule of law that the mortgagee cannot deny the title of his mortgagor. It is only where the claimant for redemption is a person other than the original mortgagor that it, sometimes, becomes necessary to decide questions of this description. Generally speaking, these may involve adjudication upon the *locus standi* of the claimant or may raise a bar to redemption on the ground of limitation.

“ As regards the claimant's *locus standi* to redeem what the opponents of the Bill really lose sight of is the fact that the Bill does not seek to confer upon the Revenue authorities summary jurisdiction which they are not already possessed of under the existing law. The plaintiff, in such cases, will almost invariably be found to be either one who claims to be the representative of the mortgagor on the ground of inheritance or who seeks to redeem as transferee of the equity of redemption. In either of these two cases, the claimant's right, whether as heir of or transferee from the original mortgagor, has already been summarily determined by the Revenue authorities under the provisions of the Land Revenue Act relating to mutations. Section 34 of Act XVII of 1887 makes it incumbent upon a person acquiring by inheritance, purchase, mortgage, gift or otherwise, any right in an estate as a landowner . . . . . or tenant having a right of occupancy to report his acquisition of the right to the *Patwari* of the estate. And after the proceedings specified in sub-section (3) of that section have been gone through, a Revenue Officer is, under sub-section (4) empowered to inquire into the correctness of the entries made and to pass such orders as he thinks fit. And under section 36 of that Act, the Revenue Officer is, in disputed cases where he is unable to satisfy himself as to which of the parties thereto is in possession, empowered to ascertain by summary inquiry who is the person best entitled to the property and to direct that that person be put in possession thereof. A careful study of these provisions makes it perfectly clear that, in this respect, the jurisdiction sought to be conferred upon the Revenue authorities by the present Bill is practically already vested in them under the Land Revenue Act and, at all events, is in no way wider in its nature than that which they, at present, enjoy under the existing Revenue law.

“ And the plea of bar by limitation stands on no better footing. In the first place, to those who have practised at the Bar as long as I have done, it is a well-known fact that suits in which limitation is pleaded by the mortgagee as a bar to redemption are extremely rare. In the whole of the Punjab Record from the year 1866 to 1911, covering a period of 45 years, there are only 16 judgments in which the question of bar by limitation in redemption suits came before the Chief Court for decision, 14 out of these judgments dealing with the question of sufficiency of acknowledgment within the meaning of section 19 of the Indian Limitation Act. And experience shows that, with the lapse of time, the number of such cases has been growing less and less. Since the beginning of the year 1901 only 2 redemption cases have been published in the Punjab Record involving questions of limitation. The reasons for this state of things are obvious. With increased material prosperity in the country due to conditions brought into existence by the British rule, the growing knowledge of their rights by the agricultural classes and the rising value of agricultural land owing to extended irrigation, landowners will no longer permit their right of redemption to lapse by neglecting to redeem within the long period of 60 years allowed by statute.

" Moreover, there is another aspect of this question which ought to be borne in mind. Questions of limitation involved in these suits are not always so very complicated as not to be capable of being correctly decided in a summary proceeding. The determination of the original date of mortgage is, generally, a simple question of fact and, that having once been ascertained, the rest is, in the majority of cases, a simple matter of arithmetical calculation.

" For these reasons, it seems to me to be abundantly clear that the position taken up by the opponents of the Bill on the ground of the alleged complicated nature of the legal questions involved in redemption suits is absolutely untenable, particularly when the Bill does not seek to deprive the Collector and the parties of the benefit of legal advice and help.

" Your Honour, in the vast majority of redemption suits the principal point in issue between the parties will be found to be one of settlement of accounts. Now this, in the majority of contentious cases, is not so complicated as to be difficult of decision in a summary inquiry by the Collector, which term includes also an Assistant Collector of the 1st grade. On the contrary, it is the Revenue Officer who is in the best of positions to determine the question correctly. The reasons for this statement are not far to seek. In all usufructuary mortgages under the terms of which the mortgagee in possession does not receive the whole of the income in lieu of the entire amount of interest due upon the principal mortgage money, he is bound by law to keep a correct account of the income and expenditure, and it is his duty to take as much care of the mortgaged lands as a prudent owner would, if the lands were in his own possession. But experience shows that the so-called accounts kept by many a mortgages consist of a maximum of expenditure and a minimum of income so as to swell the balance in order to make redemption impossible or, at any rate, highly expensive. And, in these cases, Courts have to institute independent inquiries as to the income which the lands are capable of yielding. Who is in a better position to make a correct estimate of this than a Revenue Officer? Does not the Chief Court, even now, when remanding cases to original Courts for the determination of this matter often direct them to appoint an experienced Revenue Officer to make this inquiry on the spot? Obviously then, the Revenue Officer is the proper person to deal with this all important question, and the very fact that the Civil Courts often refer this matter to him for inquiry shows that while these matters may be too complicated for themselves, they are not so for the officers whom this Bill seeks to invest with summary jurisdiction. And the same process of reasoning applies, *mutatis mutandis*, to cases in which the mortgagee in possession claims, under the conditions embodied in the mortgage-deed, compensation for improvements alleged to have been made by him in the land during the period of his possession.

" The next contention advanced by the opponents of the Bill is, in my humble judgment, equally unsound. The apprehension entertained in certain quarters as to the injurious effects of this enactment upon the professional money-lender is, to my mind, the result of a nervousness for which there is in reality, no ground whatsoever, and is based upon an assumption entirely unjustified by facts. The restrictions imposed by the Customary Law of this province and by the Punjab Alienation of Land Act have no relevancy whatsoever to the real issue involved in this part of the discussion. All that the mortgagee is entitled to is the recovery of his debt, secured upon the land in his possession, and upon the payment thereof he is legally bound to restore the land to the mortgagor. So long as he obtains his pound of flesh it is immaterial to him whether the agency which uses the knife is a Civil or a Revenue Court. And if, as a result of the summary inquiry by the Collector, he fails to get what is really due to him, the doors of the Civil Court will still be open to him to question the validity of the order passed by the Revenue authorities.

" But what I desire, in particular, to impress upon the Council in this connection is the entirely one-sided nature of this untenable position. The advocates of this view lose sight of the injuries which the unfortunate mortgagors have to suffer under the existing conditions. After the exercise of strict

economy extending over a number of years or by borrowing money upon somewhat easier terms the mortgagor manages to collect funds sufficient to redeem his lands. The conditions embodied in the mortgage deed allow redemption only in the month of *Jeth*. By resort to various subterfuges, of which he is a past master, the astute money-lender avoids the final settlement of accounts during that month. His books happen to be in Court in connection with a pending litigation; he himself is away at the head-quarters of the District attending to a case or has gone on a pilgrimage to Hardwar! And if the mortgagor issues a registered notice, the postal peon returns it with the usual report that the addressee is away from home! The mortgagor is thus compelled to institute a suit for redemption. He must pay full court-fee on the principal mortgage money; the suit takes its weary course through a number of courts, original and appellate, and several years must elapse before the unfortunate zamindar obtains his decree for redemption. Then comes what has often been truly characterized as the beginning of the litigant's real trouble, *i.e.*, the execution of decree. And very often the decree thus obtained is of no use to the poor agriculturist. For, the money scraped together by the mortgagor has been spent in this protracted litigation, and the decree being conditional on payment of the sum found due by the Court, he is not in a position to execute it. The result is a second suit for redemption after the lapse of a further term of years. Meanwhile, the mortgagee continues in possession and is thus successful in defeating the ends of justice by keeping the mortgagor out of his estate. All this will, in the majority of cases, become impossible if the proposed enactment receives legislative sanction, and this is the real reason of the opposition to the Bill by those of our Indian friends who have the interests of the money-lender at heart.

"That the enactment of the proposed law will curtail civil litigation does not admit of any doubt." The exercise, by the Collector, of the summary jurisdiction vested in him under the provisions of this law will, *ipso facto*, shut out all frivolous litigation of the type I have just described from the Civil Courts of this province, and from this point of view the proposed enactment will prove of the highest benefit in reducing agricultural indebtedness. The majority of the agriculturists in this province are small farmers, and it is they who need most the relief which this Bill is intended to afford. The larger landowner will, in no way, be affected by its provisions, and his dealings with the money-lender will continue as before. It is the smaller agriculturist of this province who forms the backbone of the country. This enactment, while involving no real hardship to anybody, will release him from a tyranny under which he has been groaning ever since the intricacies of our legal system have enabled certain classes to hold him tight in their clutches and will bless the first Council under the Reform Scheme for having afforded him a much-needed relief.

"Your Honour, I have considered it necessary to meet, at some length, the criticism advanced against this measure for the reason that I feel a certain amount of personal responsibility in connection with this Bill. When some three years ago the Bill as originally drafted was circulated for opinion, I ventured to point out that to enable the mortgagor to have the mortgagee summoned before the Collector and to obtain redemption only if the two were agreed as to the sum under the conditions of the mortgage deed, would not only fail to achieve the end in view, but would create unnecessary trouble and worry for both parties. And when that Bill was placed before a Committee which met at Simla in September 1911, I pointed out that the existing Civil and Revenue Law of the land afforded precedents which ought to be adopted in the present instance if it was intended really to provide a speedy and an inexpensive remedy for redemption of lands held in mortgage. I instanced the cases of objections to attachment of property in execution of decree under the Code of Civil Procedure and of contested mutations under the Land Revenue Act, and proposed that the adoption of a summary inquiry of the kind with similar consequences was the proper remedy to be adopted in the case. All the members of that Committee, with the single exception of my friend

the Hon'ble Mr. SHADI LAL, accepted my suggestion and the Bill was drafted accordingly. The adoption of the present measure, therefore, is a source of peculiar gratification to me, and I rejoice to have had a hand in the enactment of a law which, I am convinced, will be of the utmost benefit to the majority of the population of this province."

His Honour the PRESIDENT :—"There is only one slight remark I might make before I put this motion to the Council, and that is from some of the remarks that fell from the Hon'ble Mr. HARI CHAND, it seems he is under the impression that this is class legislation, - a charge which has also been made against the Bill elsewhere. I would only point out that the Bill refers to all agricultural land, and that it has been frequently impressed upon us that there are money-lenders among the agriculturists as well as among the non-agriculturists. Consequently it can hardly be said to be class legislation."

✓ The motion was put and agreed to.

Revenue (Agriculture) Department, February 1913, Nos. 11-35.

No. 52 (Rev. & Agri.—Agri.), dated Lahore, 17th February 1913.

No. 35

From—The Hon'ble Mr. H. P. TOLLINGTON, I.C.S., Revenue Secretary to Government, Punjab,  
To—The Secretary to the Government of India, Legislative Department.

WITH reference to the correspondence ending with your letter No. 2418,\*

\*Proceedings, October 1912, No. 4 A., file No. 29,  
R. & A.

Agri.—

dated 12th August 1912, I am directed to submit, for the assent of the Governor-General under section 40 of the Indian Councils Act, 1861, an authentic copy of the Bill to provide a summary procedure for the redemption of certain mortgages of land in the Punjab as passed by the Council of the Lieutenant-Governor of the Punjab on the 14th December 1912, and assented to by the Lieutenant-Governor on the 8th February 1913.

2. The meetings of the Council in connection with the Bill were held on the 2nd October 1912, and 14th December 1912.

- (i) Bill as introduced on 2nd October 1912.
- (ii) Statement of Objects and Reasons.
- (iii) Report of the Select Committee together with the annexure to it.
- (iv) Bill as passed in Council.
- (v) Extracts from Proceedings of Council relating to the Bill at meetings held on the 2nd October 1912 and 14th December 1912.

3. Forty copies each of the papers noted in the margin are forwarded herewith.