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

THE Council met at the Council Chamber on Saturday, the 30th March, 1889.

Present:

The HON'BLE SIR STEUART COLVIN BAYLEY, K.C.S.I., C.I.E., Lieutenant-Governor of Bengal, *presiding.*

The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General.*

The HON'BLE H. J. REYNOLDS, C.S.I.

The HON'BLE T. T. ALLEN.

The HON'BLE SIR HENRY HARRISON, KT.

The HON'BLE SIR ALFRED CROFT, K.C.I.E.

The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.

The HON'BLE C. H. MOORE.

The HON'BLE H. PRATT.

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.

The HON'BLE DR. RASH BEHARI GHOSE.

NEW MEMBERS.

THE Hon'ble Shahzada Mahommed Furrokh Shah and the Hon'ble Dr. Rash Behari Ghose took their seats in Council.

STATEMENT OF THE COURSE OF LEGISLATION.

THE Hon'ble the President said:—"I believe I am following the usual course in making a brief statement regarding the course of legislation which I think should be laid before the Council. I ought to begin by apologising to you for calling you together at this late period of the Session, at the end of March, with five Bills on the list, when you have been attending here without having any work to do in the way of legislation during the whole of the cold weather. But circumstances connected with the Bills have put me in such a position during the whole of these months that I had absolutely no Bill which I could bring before you, and every one of these Bills, as it happened, has been returned to me by the Government of India only within the last week. In the case of some of them this was due to the rule, with which you are all probably acquainted, that those Bills which have to be sent home to the Secretary

of State have to remain in abeyance a couple of months in order to give him an opportunity of expressing any views he might have, with power, in case no reply comes from him within that time, to proceed to legislation. In reference to others there has been a continuous correspondence with the Government of India, and the shape legislation ought to take has only been practically settled within the last week or two. That, gentlemen, is my explanation and apology, but at the same time I must express my regret that I have called you together at the hottest period of the year to ask you to undertake the work of going on with these Bills.

"I may as well deal with the Bills one by one and explain, as far as I can, what my own personal views are as to the progress which we are likely, or which we ought to, make in regard to them. The first Bill on the list is in the hands of the Advocate-General, and it is a Bill for the protection of the rights of fishing in private fisheries. The history of this Bill I propose to give at some little greater length than in regard to the others, as it is one of some considerable importance. It had its origin in a memorial which was sent up to the Government of Bengal last year by the British Indian Association, supported, besides, by a numerous and influential body of zemindars, both European and Native, outside that Association. The memorial was to the effect that an exclusive right in fisheries had always been possessed by zemindars, and the income from these exclusive rights were included in their assets on which the permanent settlement was assessed and on which revenue was levied; but that these exclusive rights which they had always been in the habit of freely exercising, and from which they derived a very considerable income, were now jeopardised by a series of decisions of the courts—decisions which, though they may not have changed the law, yet brought into prominence a reading of the law which left the zemindars without adequate protection, and in consequence of which the memorialists desire that the Government should legislate with the view of securing their rights. On receiving the memorial the Government of Bengal referred it to the Board of Revenue, with the view, if possible, of getting reliable figures to give something like an adequate idea of the value of the interests to be protected. The result of that reference has not been altogether satisfactory as far as getting anything like correct figures is concerned. But it had this effect that we have been able to obtain both from the Board of Revenue and the other officers consulted, who were the leading Commissioners of Divisions, very decided views as to the exceeding

importance of the interests to be protected and the absolute necessity of doing something to protect them. I shall not attempt to go into details in regard to the legal aspects of the case, as these will be laid before you in a very much more efficient way by the Advocate-General; but, briefly put, I may say that whereas the opinion ordinarily held, doubtless by the outside public and certainly by many officers of the Government, was that in private fisheries of all kinds any one taking fish without permission might be punished, yet these decisions made it perfectly clear that that view was an incorrect one, that except where the fish might be enclosed in a tank or other water, in which there was no outlet to enable them to escape, there was no possession such as would enable the person who took them unlawfully, to be punished for theft or criminal trespass. The meaning of that was that there was no punishment or remedy to be found in the criminal courts. Of course no wrong was without its remedy, and people might go if they liked to the civil courts, but I need not tell you that the idea of referring people to the civil courts for their remedy in a case where their fish had been stolen was more than a mockery. It was under these circumstances that the memorialists addressed us. I shall read just one or two paragraphs from the memorial.

"'The result of these decisions, however correct they may be in law, has been to put in imminent jeopardy the rights of landholders and of the Government to fisheries in waters in communication with tidal streams and navigable rivers which, as above shown, are most valuable rights. An impression has gained ground in certain districts that where a julkur is not enclosed, the landholder has no right to the fish, and landholders' complaints of wrongful abstraction of fish from julkurs situated within their estates have since been generally dismissed.

'Your memorialists humbly insist that the right of landholders to julkurs situated within their estates and talooks, whether in the form of enclosed tanks, running streams, or large *jheels* and *bheels* in communication with tidal rivers, is unquestionable, and has been recognized in a long series of decisions.

'This right was recognized by the Muhammadan rulers of the country; and the British Government, in making a permanent settlement of the land revenue of these provinces, expressly incorporated in that settlement the rents and profits realizable from this description of property

"They go on afterwards to say—

'It would be worse than useless for private landholders, or even for the Government to endeavour to protect their rights by bringing civil suits against persons infringing rights of fishery by unlawfully taking fish; and your memorialists respectfully urge that it is,

imperatively necessary for the protection of these rights that such persons should be punishable summarily under the criminal law.

'It has been ably argued, and with much learning, that the taking of fish under such circumstances is not theft; but however that may be, it has generally, as shown above, been looked upon and treated as theft in this country, and your memorialists are convinced that no punishment, short of the punishment of theft, will be sufficient to deter offenders and afford adequate protection to the rights of your memorialists and of the Government.'

"After hearing from the Board of Revenue and the local authorities on the subject, the Government of Bengal applied to the Government of India recommending legislation. That Government assented and asked that the draft Bill be sent up to them. The grounds on which we made our recommendations were these:—

'There can be little doubt, therefore, that the value of julkur property will be seriously impaired, if not altogether destroyed, when the real state of the law becomes generally known and when the mass of the people realize that violation of julkur rights is not a criminal offence; for the people likely to commit such violations belong to the poorest classes, and it would be mere waste of money to sue them in the civil court. The result is that proprietors and lessees of julkurs have practically no remedy when their rights are attacked.

'The zemindars are clearly entitled on equitable grounds to ask that Government should provide adequate protection for property, from which it derives a considerable revenue, and the special character of which has been recognized throughout the entire period of our rule in India. The argument from expediency is equally strong. There can be no doubt that, when the state of the law gets generally known, there will be constant attempts made everywhere to fish in private fisheries without the consent of the owners. The landholding classes, if they find that the law does not afford them adequate protection in such cases, will take other means to protect right to which they attach great value, and there will certainly be many cases in which violence will be used on one or both sides if the law is left as at present. The economic argument is also not without considerable weight, that unless these rights are protected, there will be a serious diminution in the fish supply, owing to the wanton destruction and waste of fish which will result. From this point of view, the promiscuous killing of fish by a crowd of persons is much to be deprecated; for while the benefit to the poorer classes could only be temporary, it would certainly be purchased at the cost of a diminution of the fish supply in the future.'

"The Bill was sent on to the Government of India, with a suggestion on my part that, as probably the same difficulties would be found in other provinces besides Bengal, the Government of India themselves might be willing to legislate on the subject in the Viceroy's Council, but upon that point their reply was in the negative, as the peculiar state of circumstances existed principally in Bengal and Assam. They, therefore, recommend that legislation

[*The President.*]

should be undertaken in this Council. The Advocate-General will tell you what the details of the Bill are, but the punishment provided is very lenient, as for the first offence a fine of Rs. 50 will be inflicted, and for subsequent offences imprisonment for one month and a fine of Rs. 200. I do not think there will be much difference of opinion as to the propriety of this legislation on principle, but I have no doubt there will be certain difficulties with regard to the definition of private fisheries, and it is to this point that the Select Committee will have to devote considerable attention. The Bill, I trust, will be brought in next Saturday and referred to a Select Committee. Its subsequent progress will of course depend upon the view the Select Committee will take of it. The question is one of some importance, and the sooner protection can be given to the zemindar, I think you will all agree, the better. So much for the Private Fisheries Bill."

"The next is a Bill 'to consolidate the Calcutta and the Suburban Police Superannuation Funds.' This is a small technical matter, which Sir Henry Harrison will explain to you, and on which I need not dwell.

"The next Bill is one of more considerable importance. It is in its inception a purely consolidating Bill to bring into one form or Act the law which at present runs through several, and opportunity will be taken to make several alterations and changes. There has been considerable discussion as to whether a considerable alteration should not be effected in the financial position of the Port Commissioners; but this having been negatively decided by the Government of India, the changes really made in a substantive part of the law are not very considerable. This Bill will also be referred to a Select Committee next Saturday, but its future progress is not a matter of immediate urgency, and I shall not urge you to press on with it beyond what the Select Committee thinks fit to advise.

"The next Bill 'for the appointment of a Muhammadan Burial Board in Calcutta' is the outcome of the enquiries and cogitations of a Committee appointed last year to take into consideration the bad state of the many Muhammadan burial-grounds and the difficulties that are to be met with in controlling and in finding more room for the burial of Muhammadans in new burial-grounds. The Committee was a very strong one, for it had representatives of the Muhammadan community as well as officers of the Government and Municipality in it, and their recommendations have been embodied in this Bill which Sir Henry Harrison will explain to you.

[*The President; Sir Charles Paul.*]

"The last Bill is one which I shall have to explain to you at a later period of this morning's business. I may say now that it had its origin in a serious outbreak of cholera last year, in which nearly 600 coolie emigrants to Assam died, and which led to the Local Government putting an end altogether to coolie emigration from some of the labour districts. I will reserve further details till I ask for leave to introduce it; but I wish only to mention now that I look upon this Bill as the most urgent one we have on our list, because the cholera season is now on, and if anything at all is to be done it should be done quickly.

"I have only one thing more to say, and it is a subject which I approach with great regret. It is to inform you that this is the last day on which I believe we shall have the advantage of the mature counsel and experience of my hon'ble friend Mr. Reynolds, who has sat so long in this Council and has assisted it so ably. I am quite sure I am expressing not only my own views, but the feeling of all the Members of the Council in saying that it is with extreme regret we look to his departure, and both this Council and the Government generally will feel the severance of his connection as a severe loss to the public."

PRIVATE FISHERIES BILL.

The HON'BLE SIR CHARLES PAUL moved for leave to introduce a Bill for the protection of the right of fishing in private fisheries. He said:—

"Private rights of fishery as opposed to public rights of fishery may be broadly classed under the following heads: the right of fishing in navigable rivers granted by the Government to private individuals. Rights of this description have been granted according to the law of this country, but have been discontinued since 1868. Secondly, the right of fishing in Government estates granted to private individuals; and thirdly, rights of fishery granted to zemindars on the assessment of revenue which they continue to pay. Civil suits may, no doubt, be successfully maintained for the infringement of private rights of fishery, and where injuries are threatened, or often repeated, I believe the Civil Court would grant an injunction. The remedy by civil suits, however, is dilatory and expensive, and having regard to the class of persons, the poorer classes, who would be likely to infringe these private rights of fishery by fishing and taking fish, it may well be said that the remedy by civil suit would be a mere waste of money. Under these circumstances, it

is evident that, in order to provide an effective remedy against the infringement of private rights, a remedy of a summary and coercive character should exist.

"On turning to the memorial of the British Indian Association, I find the following statement: "Under British rule, both before and after the passing of the Penal Code, Magistrates have been in the habit, in accordance with the popular view, of convicting of theft persons proved to have unlawfully taken fish," and I find the same view held by two officers of experience, one of whom is Mr. Smith, the Commissioner of the Presidency Division. In his letter of the 21st April, 1888, addressed to the Board of Revenue, he says:—

'To make the offence punishable as theft would be only to legalise what has been the uniform custom of the country until recent decisions have questioned the legality of the practice.'

"Mr. Lowis, Commissioner of the Rajshahye Division, in his letter of the 21st June, 1888, concurs in the same view of the matter. I have not been able to find that this was the law of this country at any time. I have not been able to discover a single case in the Nizamut Adawlut reports, and the Muhammadan law contains no provision constituting the taking of fish out of water which forms the subject of a private fishery a criminal offence. The reference made by the British Indian Association to the Hidaya in paragraph 2 of their letter does not touch the question.

"That being so, I now turn to the decisions of the High Courts. These decisions have been carefully collected for the Bengal Government, and although most of them bear in the same direction, I shall merely refer to a few of them. In a case decided on 20th March, 1873, by Justices Kemp and Pontifex, it was held that the taking of fish from a public navigable river in which another has a right to fish is not theft, nor does the catching of fish in a navigable river render the person so doing liable to be convicted under the Penal Code. That case is reported in the 19th Vol. of the Weekly Reporter, Criminal Rulings, in page 47. I find in a Madras case of 23rd October, 1878, (Indian Law Reports, 5, Madras Series, 391, note) it was held that fish living in open irrigation tanks were not in possession in such a sense as to render their capture and removal a theft. In a Bombay case (Indian Law Reports, 10 Bombay, 193), where the accused were found fishing without permission in a municipal tank, it was held that they could be convicted of theft, as the tank from which the fish were taken was apparently an enclosed tank and the fish were therefore of restrained liberty and liable to be taken at any time according to

the pleasure of the owner, and were therefore subjects of theft. Then a case came before Chief Justice Petheram and Mr. Justice Ghose, known as the Meherpore case, in which it was decided that fish in a *bhil* or natural lake was the property of no one, and until reduced into possession no property could be acquired by any one, and that the capture of such fish in a wild state could not be the subject of theft.

"Then there was another decision of the same two Judges in July, 1887, affirming the same principle; and lastly, there were two decisions of Justices Norris and Ghose, to the effect that fish in a public river could not be said to be the property of the person who may have the fishery right, and that where a tank was dependent on the overflow of a neighbouring channel which was connected with flowing streams for its supply of fish, and that the fish could leave it at pleasure, the taking of fish from such tank was not theft. Now the first decision of the Chief Justice and Mr. Justice Ghose in 1887 was a decision which broadly laid down that there could be no property in fish in a natural state and not restrained of liberty, and I would also point out that although in that case the fish were in a *bhil*, the *bhil* was fed by channels which communicated with natural streams on two sides. Were it assumed in that case that at the moment of time when the fish were captured the *bhil* resembled a tank having no communication at that time with other waters, no conviction for theft in respect of the taking of fish would have been sustainable at the instance of the complainant, who had merely a fishery right in such *bhil*, the *bhil* itself and the water it contained belonging probably to the zemindar.

"Now an elementary principle of English law was laid down thus:—

'There is a principle of our law which will be noticed more fully in its proper place that, in general, no man can make title to animals *feræ naturæ*, for these while they remain wild are accounted *nullius in bonis* (or what amounts to the same thing) as the common property of mankind.' (Stephen's Commentaries, page 684.)

"The Roman law was substantially the same. Sander's Institutes of Justinian, p. 96:—

'Wild beasts, birds, fish, that is, all animals which live either in the sea, the air, or on the earth, as soon as they are taken by any one, immediately become by the law of nations the property of the captor, for natural reason gives to the first captor that which had no previous owner. And it is immaterial whether a man takes wild beasts or birds upon his own ground or on that of another, &c.'

"Deducing a principle from the nature of the subject itself, it appears to me that the elementary principle of law to which I have referred is of general

application, applicable to this country as elsewhere. The Judges who decided these cases in the High Courts merely applied an elementary principle of law of general application. And if I may be permitted to say so, I think their decisions are sound and accurate. The case decided by Justices Kemp and Pontifex in 1873 seemed to produce no alarm, nor was it, as far as I know, the subject of any hostile criticism. But the later decisions in the Meherpore case and in one or two other cases have been objected to, and have been assailed with considerable warmth. I am prepared to admit that the Judges of the High Courts are not infallible, but I think those who endeavour to impeach the decisions of the highest tribunals of this country and the opinions of Judges of experience should put forward a strong case. Such a case might be made by reference to decided cases which contravene the decisions objected to, or by challenging the principle on which the decisions are rested, or by showing that other acknowledged and well-recognised principles apply to the subject itself. Now, those who have made objections have done nothing of the kind. As far as decided cases go, there are absolutely none that could be brought forward. With regard to contravening the principle upon which the Chief Justice based his decision, I may say that the proposition is too elementary and too well-founded to be controverted. No attempt was made to show that any other well-recognised principle of law applied to the case. Under these circumstances the objections, as far as I am aware, resolve themselves into irrelevant arguments, vituperative assertions, and an array of words which exhibit a confusion of thought as to the meaning of 'property' and 'possession,' and demonstrate nothing beyond a want of familiarity with the subject under consideration.

"The propositions which have been laid down by the High Courts are summarised ably and tersely by Mr. Edgar. He says in his letter of 6th September, 1888, as follows:—'The law relating to this subject, as gathered from the series of judicial decisions given in Mr. Beeby's note, may be summarised as follows:—

There is no remedy under the criminal law in the case of the infringement of julkur rights, except where the fish are taken from an enclosed tank in which they had been restrained from their natural liberty. The fact of fish being in a public river does not make the fish in it the property of the person who has the fishery right in such river, and nobody can be said to be in possession of them, as they are *ferœ naturæ*. The right of fishing is not properly of such a nature that a man who infringes it can be said to commit criminal trespass. Fish in a tank enclosed on all sides, but dependent upon the overflow of a neighbouring channel for its supply of fish, are not restrained of their natural liberty at a time when floods

are high, and are consequently under such circumstances *ferœ naturæ*, and their capture is not a criminal offence. Wild fish in a *bhil* are not the property of any person till caught, nor are fish in a creek or in an open tank made for the purposes of irrigation. On the other hand, it is theft to take fish from an enclosed tank where fish are restrained of their natural liberty and are liable to be taken at any time by the owner of the tank.'

"The decisions of the High Court having disposed of the question of taking fish otherwise than from an enclosed tank, and pronounced it not to be theft, it follows that there can be no criminal trespass, viz. trespass done with the view of committing a criminal offence. In the same way all notion of criminal misappropriation disappear, because there must be something appropriated which was the property of some one. There being no property in the fish, it follows that a charge of criminal misappropriation does not lie.

"His Honour the President has already referred to the memorial of the British Indian Association, which appears to me to state the case of the zemindars in a temperate spirit and to be supported by very fair reasoning, although I do not agree in some of the legal positions taken in it. This letter shows what I have adverted to, namely, that, in the present state of the law, there is no sufficient or efficient protection of private rights of fishery. It is therefore necessary that some coercive measure should be introduced by the Legislature for the protection of private rights of fishery; and that will be the object of the Bill I ask leave to introduce.

"The Bill will be a short one, and will be directed to three points, viz. to make the infringement of private rights of fishery punishable under the law, to make trespass penal under the same circumstances, and to prevent persons using contrivances and devices for the purpose of catching fish which they have no right to take. I think the Bill will be sufficient to effect the purposes in regard to which the British Indian Association has addressed the Government."

The Motion was put and agreed to.

POLICE SUPERANNUATION FUNDS BILL.

The Hon'ble Sir Henry Harrison moved for leave to introduce a Bill to consolidate the Calcutta and the Suburban Police Superannuation Funds. He said:—

"As His Honour the President has already stated, this Bill is a small one. It merely amends one or two sections in the existing law, and I can briefly describe the object of it. The Police Forces of the town and suburbs are both under the Commissioner of Police, but by law they are separate forces, and the funds for providing pensions for the lower grades of officers and men for each

of these two forces have hitherto been separate funds, but as a matter of fact the two forces have been practically very closely allied to one another. It is natural that the superior officers of the Police have availed themselves sometimes of the services of the town police in the suburbs and *vice versâ*, and transfers of officers and men between the two forces have been frequent. Some time ago it was found that of the two Police Superannuation Funds, that of the town was apparently quite solvent, while that of the suburbs was falling into a state of insolvency. In a letter which I as Commissioner of Police addressed to the Government in 1886, I pointed out the condition of the two funds, and the reasons for the conditions in which they respectively were. The reason for the different conditions of the two funds was this, that every policeman drew his pension or gratuity from the fund of the Force to which he was attached at the time of his retirement, irrespective of the Force in which his services had been performed. It would probably have been more strictly correct if his services in each force had been counted up, and the pension or gratuity were drawn from the two funds in proportion to the term of his service in each Force. It had been assumed that there would be an equal quantity of give and take, but that had not been the case. In the suburbs the men were more unhealthy, and there was a larger proportion of retirements, and hence while the men drawing pensions from the Town Fund were only a fraction exceeding four per cent., those from the suburbs were more than nine per cent., and the gratuities paid were somewhat in the same proportion. It was pointed out that the fairest course would be to treat the two Forces in law, as they were in fact, as one and the same Force, and to amalgamate the two Superannuation Funds. I think satisfactory reasons have been adduced to show that this would involve no practical injustice to either Force, and after considerable correspondence between the Government of Bengal and the Government of India, it was finally decided that that was the proper course to adopt. The object of the present Bill was simply to unite and amalgamate the two Police Superannuation Funds."

The Motion was put and agreed to.

CALCUTTA PORT BILL.

The HON'BLE MR. REYNOLDS moved for leave to introduce a Bill to consolidate and amend the law relating to the Port of Calcutta and to the appointment of Commissioners for the said Port. He said:—

"The Calcutta Port Trust is a Corporation which has not yet attained to the age of legal majority. It was established, as the Council is probably aware, under

Act V of 1870, and is consequently 19 years of age. But if it is an infant, it is a thriving and vigorous one. No one who remembers the condition of the river foreshore 20 years ago can refuse to the Port Commissioners the right to indulge a feeling of pardonable pride in the improvements they have effected. The reclamation of the river banks, the jetties, the tramway, the tea warehouse, the petroleum depôt, the improved light-ships, the admirable charts of the river which have been issued, are all monuments of the energy and success with which the Port Commissioners have discharged the duties entrusted to them. They are now engaged upon the greatest work they have yet taken in hand—the construction of the docks at Kidderpore. This work is making excellent progress, and it may be confidently anticipated that it will prove a great financial and commercial success. The operations of the Port Commissioners have not been confined to the Calcutta side of the river, for on the Howrah side they have reclaimed a large tract of land, and have made an excellent road along the foreshore. And all these improvements have been effected not only without any addition to the charges upon trade, but with an actual lightening of them. Calcutta from its geographical position can never be a cheap port, the fees for pilotage and towage must always handicap this port when compared with Bombay, but the Port Commissioners have been able to reduce the pilotage charges, and to do away altogether with the port dues which were formerly levied. As a port due produces about Rs. 80,000 for each anna of the rate, the abolition of a four annas port due implies a relief to the shipping to the extent of about three-and-a-quarter lakhs per annum.

"Honour should be given where honour is due; and I therefore think it right to say that the success which has attended the administration of the Commissioners has been largely due to two individuals: to their first Chairman, Mr. Schalch, who laid down the lines of policy which the Commissioners have steadily followed, and to Mr. Duff Bruce, who was for 17 years the Vice-Chairman and Engineer of the Port Trust. But in bringing out these two names for special mention, I ought to add that their efforts would have had little result if they and their successors had not enjoyed (as I am happy to say they have enjoyed) the confidence and the co-operation of the Chamber of Commerce and of the mercantile community in general. Mr. Schalch may have been the head, and Mr. Bruce the right hand, but the backbone of the Port Trust is, and always has been, the Chamber of Commerce.

"The legislative charter of the Port Trust is Act V of 1870, but this Act was necessarily of a somewhat tentative character, as the establishment of a Port

Trust in Calcutta was at first of the nature of an experiment. The experiment had been tried in another form by Act X. of 1866, which vested the management of the Port in a Committee of the Calcutta Justices. The experiment in this form proved a failure, and hence it was natural that the Act of 1870 should have been somewhat cautiously worded, and should have contained various restrictions. But as the duties and responsibilities of the Commissioners increased, and their administration was shown to be successful, the original Act of 1870 was supplemented by a number of amending Acts, all of which were in the direction of extending the powers conferred on the Commissioners. The most important of these are Act IV of 1880, which deals with the borrowing powers of the Commissioners; Act II of 1885, which authorized the construction of the Kidderpore Docks; and Act III of 1887, which introduced the elective principle into the constitution of the Trust.

"The result is that now we have altogether nine Acts dealing with the Port Trust of Calcutta, and I believe the Council will agree that the time has come when it is advisable, and indeed necessary, that these Acts should be consolidated. The Bill, as I have said, is in the main a consolidating measure, but occasion has been taken to introduce some amendments. I need not at this stage of the Bill go into details, but I should like to call attention to one or two of the more salient provisions of the Bill. I would first ask attention to the title of the Bill which in itself is an acknowledgment of the good work which the Port Commissioners have done. The title of this Bill is to be 'The Calcutta Port Act, 1889.' The title of Act V of 1870 is 'An Act to appoint Commissioners for making Improvements in the Port of Calcutta.' The improvements contemplated by that Act have now for the greater part been made, and the main duty of the Port Commissioners in future would not be to make improvements, but to manage and administer a port which has already been improved. The first Chapter of the Bill relates to the constitution of the Port Commissioners, the number of whom it is now proposed to increase. I may remind the Council that by the original Act nine Commissioners were appointed, but it was very soon found necessary to raise the number to 12, and in 1881 it was raised to 13, with the object of adding a member to represent Howrah. In the Act of 1887 the number was still kept at 13, but it was enacted that two of the Commissioners should be natives. By that Act four of the Commissioners were to be appointed by the Chamber of Commerce, one by the Trades'

Association, and one by the Calcutta Municipality; that made six; and seven were to be appointed by the Government, so that unless some of the elected members were natives, two of the number appointed by the Government must be natives. That restricted the choice of the Government to a very small number of persons, and it was desirable that the Port Trust should contain some one representing the Marine Department and also some representative of the Railways. Under this Bill it was proposed to increase the number to 15, consisting of a Chairman, a Vice-Chairman, seven elected members and six nominated members, and it was still provided that not less than two of the members should be natives. Of the seven elected members, four were to be elected as now by the Chamber of Commerce, one by the Trades' Association and one by the Municipal Commissioners of the town, and the seventh was to be elected by such body or bodies or firms representing the native mercantile houses, as the Lieutenant-Governor might direct. The Council would remember that this proposal was brought forward when the Act of 1887 was under discussion, but it was not then thought that the time had come for introducing a provision of the kind. The only other change proposed in the constitution of the Trust was the section which proposed that the Chairman and the Vice-Chairman should not vacate their offices at the end of two years, like the other Commissioners, who were appointed or elected, but should continue to hold office during the pleasure of the Government. The next Chapter of the Bill dealt with the borrowing powers of the Commissioners, and here no material changes were proposed. The debt of the Port Trust at present might be classified under four heads. First, there was the item of Rs. 17,65,000, which represented the value of the block made over to the Port Commissioners by the Government when the Trust was established in 1870. The principal of that amount was not repayable, but only interest at 4½ per cent. payable half-yearly. The second item was the amount of the unliquidated portion of the sum advanced by the Government to the Port Trust between the years 1870 and 1880, and which is being repaid by a sinking fund, under which the whole amount will be repaid in 30 years; the present amount was about 40 or 42 lakhs. The third item consisted of the public loans which had been raised, of which there were three, aggregating 60 lakhs. These were secured by debentures, which would be repaid at the end of 30 years. And the fourth item consisted of advances made by the Government for the construction of the Kidderpore Docks, the amount

expended up to the present time being about 125 lakhs. The Bill proposed that the amounts due under these several heads by the Port Commissioners should be secured on the entire property and income of the Trust, that principle having been accepted when the Acts of 1880 and 1881 were passed. Some hon'ble members may recollect that when the Act of 1880 was passed, the wording of the Act was considered to be such that it gave to the Government and the Secretary of State some amount of advantage or preference for the recovery of the amount due to them as compared with the public creditor who might lend his money. How far that was really the case, I can hardly say. However, it was sufficient to make the raising of loans unsuccessful, and another Act was passed in 1881 making it perfectly clear that the Government and the Secretary of State would fall under the same category, and have the same rights, as any other creditor, and that was the principle adopted in framing this Bill.

"I do not think there is anything further of much importance that should be mentioned. A few provisions have been inserted in order to enable the Commissioners to give pensions to their servants and to define more clearly the position and duties of the River Police; also some sections relating to the mode of preparing the budget which would merely legalise the practice which has prevailed for many years, but which is not strictly in accordance with the letter of the previous Acts; and there was also a provision defining the liability of the Commissioners in respect of goods whilst in their custody."

The Motion was put and agreed to.

MUHAMMADAN BURIAL BOARD'S BILL.

The Hon'ble Sir Henry Harrison moved for leave to introduce a Bill to provide for the appointment of a Muhammadan Burial Board in Calcutta. He said:—

"As His Honour the President has already explained, this Bill is due to the report of a Committee which sat last year to inquire into the question of Muhammadan cemeteries. The Muhammadan community, as was well known, like the Christian community, disposed of their dead by burying, and as that community in and around Calcutta exceeds 200,000 souls, it was evident that the question of the burial of their dead was well worthy the attention of the Legislature. Hitherto, possibly owing to the wise policy of the Government to abstain to interfere as far as possible in all religious matters, no continuous

action had been taken in regard to Muhammadan cemeteries, but the same cause which made the Government hold its hand had in fact paralysed the Muhammadan community, because they had no power to regulate the affairs of their own cemeteries, and it was quite in accordance with the wishes of that community that what I may call an enabling Act should be passed which would enable them by means of a Board of the Muhammadan community, assisted by some of the local officials, to control and regulate the affairs of their own public cemeteries. There are possibly over a hundred Muhammadan cemeteries of all kinds in Calcutta and the Suburbs. The greater portion of these are private cemeteries, and they are usually well looked after by their owners. But there are about twelve public Muhammadan cemeteries which are under no adequate control. The effect of the Bill would be that a Muhammadan Burial Board would be appointed which would have power to frame rules to control and regulate burials in these public cemeteries and charge fees, and though they would have a hard task before them, the effect would be very beneficial, as they would have the power not only to prescribe the conditions under which burials should take place, but also to extend the ground available for interment."

The Motion was put and agreed to.

EMIGRANTS' SANITATION BILL.

THE HON'BLE THE PRESIDENT moved for leave to introduce a Bill to provide for the sanitation of emigrants during their passage through Bengal to the labour districts in Assam. He said:—

"As I mentioned just now, the immediate urgency of this Bill is the serious outbreak of cholera which occurred last year, leading to more than 600 deaths among coolies, nearly all of whom were emigrants from certain districts. But that was not the only cause; and in order to explain the remoter reasons for the Bill, I shall have to go a little further back. You are all aware that, previous to the introduction of Act I of 1882, all emigration to Assam was controlled by the Government. It was penal to take or assist any coolies to emigrate except under certain specific restrictions. The recruiter who collected coolies was licensed, and before he was so licensed, enquiries were made into his character, and he was registered before a Magistrate, who knew where he could put his hand on him, and who also knew where he could put his hand on the contractor under whom he worked; and, similarly, the garden sirdar got his certificate from his employer, which certificate was

registered before the Magistrate. Then, after the coolies were collected, they were taken to a depôt which was open to the Magistrate's inspection, and was subject to sanitary control. Whether the depôt was in Calcutta or elsewhere, it was constantly supervised and inspected. After being collected, the coolies were placed before the Magistrate of the district in which they were collected. They were detained there a short time by the Magistrate, and there they entered into contracts for labour. When this was done, they went up to Assam under the supervision either of a garden sirdar or of the contractor's people, and in any case they went along a specific route. They stopped at certain specified places where sanitary arrangements were made, they were inspected and looked after, and, where needed, medical services were secured by the Government. The man in charge had a way-bill with the names and numbers of the emigrants, so that they could be traced and enquiries made all along their route, and their sanitation, at all events, was carefully looked after. That was the state of the law until Act I of 1882 came in. That Act maintained the old system practically without alteration in regard to these coolies who were collected by garden sirdars and licensed recruiters, and by contractors who were registered. But simultaneously with that system Act I of 1882 allowed another system to grow up. The framers put in a new section, to say that nothing in this Act should interfere with coolies going up to Assam otherwise than under this Act. Unquestionably the framer of this Act looked forward to a number of free coolies finding their way to Assam, and who, when they got up there, could give their labour to whomever they chose, or, if they did not like to do so, could come back again, and who, to a certain extent, might take advantage of what is termed 'haggling in the market' for what wages they wanted. If the vista which rose before the view of the framers of the Act had been a real one, if what they foresaw had actually come to pass, and a number of free coolies had found their way up, it would have been pleasant for the coolies, it would have been pleasant for the Government, it would have been well for Assam, and it would have been the first step towards getting rid of a penal Act. But what did occur has been the reverse of what the framers of the Act expected. They wanted to get rid of middlemen, the recruiter and contractor, who collected these coolies. They wanted to get rid of these men, and also no doubt to get rid of the expenses which that system involved. But what has happened? The contractor remains, and he is neither licensed or known to the Magistrate; the recruiter remains,

and he is not registered or licensed, and no enquiry into his character made; anybody can go about to do the business, and the natural result is that it has gravitated to the lowest and worst possible characters. The coolies collected under this system are 'free' coolies; they are lodged in the recruiter's depôt: this depôt is not inspected, nor is it under the Magistrate's control, and the coolies may be here to-day and in another place to-morrow. No one has power to supervise them. There is not that opportunity which the Magistrate ought to have of enquiring who the recruiters are, or who their coolies are, and to all intents and purposes they remain outside the control and supervision of the Act. There is no possibility of protection, and there is no sanitary regard for them. Thus they are at the mercy of the recruiters and sirdars, and when once collected they are carried off to Assam without any more sanitary supervision than that of any ordinary passengers.

"The difference between them and the ordinary passengers is that they go in hundreds and have to stay wherever the contractor's men wish to stay; they cannot easily escape, their communications with the outer world are, to a great extent, cut off, and if cholera breaks out among them they are helpless. As I said before, cholera broke out among them last year. Advice was asked for and was received from the Sanitary Commissioner and from the Superintendent of Inland Emigration. Under their advice the officers of Government used what powers they had to examine and control the sanitary condition of the depôts wherever they were found, and some arrangements were made by the Government railways for providing medical attendance and sanitary supervision of the coolies on their railways; but these executive arrangements had but little legal basis and were at the best insufficient, and ultimately the flow of emigration had to be stopped entirely both from Raniganj and from Chota Nagpur. It was in July last that I addressed the Government of India on the subject. The sanitary condition of affairs was the urgent and immediate need; but I also took the opportunity, perhaps unfortunately, of suggesting that the matter of the registration and licensing of these middlemen and agents should be taken up and dealt with by the Legislature at the same time. The result of my bringing the two subjects together in the same letter, and recommending legislation on both of them, was that the question of the registration and supervision of middlemen, which necessitated unquestionably the alteration of Act I of 1882, was referred to the Chief Commissioner of Assam, and after some correspondence was postponed to be dealt with when the report

of the Chief Commissioner should be received as to the working of the Act generally with the view of considering what alterations in Act I of 1882 were necessary. This discussion has practically taken up a good deal of the last part of the current year. In the meantime the sanitation part of the subject was for the time being postponed. Finally, I proposed that the Government of India might approve of a temporary Sanitary Act which might bring all middlemen taking free coolies to Assam under the same rules as those which now apply to garden sirdars and their recruits.

"I ought to have mentioned before that, whereas, two years after Act I of 1882 was passed, the number of coolies who went up the Brahmaputra valley under registration, that is to say, under the contract section of the Act, was about 13,000: the number of those who took advantage of the new section was in 1884 about the same number, viz., 12,000. Gradually, however, the free coolies, as they are called, as might be expected, gained very largely over the contract coolies, that is to say, the advantage of not being put under any supervising or controlling power, and of putting your coolies under contract on arrival at Dhubri instead of here in the district, is obviously found more convenient to those who collect coolies than to have them registered at the place of collection and carried on under the supervision and control of the Act; so that at the present day something like 85 per cent. of free coolies arrive not under the control of the law. During the last year the number of coolies recruited under the supervision section was 3,800, whereas the number of free coolies was 21,800; in other words, the free coolie system is rapidly displacing the other one, and I think I have sufficiently shown that all the conditions require them to be brought under sanitary supervision just as much as coolies under contract, and fully justify the measure which I ask for leave to bring in. As I have said, I sent up a suggestion to the Government of India this year for bringing them under the same rules as garden sirdar-coolies, and after a little consideration the reply from the Government of India was that this would involve a distinct alteration of Act I of 1882 which this Council is powerless to pass, and they suggested instead that the Bill should take another shape, that is, the shape in which it has been now drafted, which they assure me is within the scope of this Council. They have sent up a sketch of the Bill in order to show the shape which it might take without encroaching upon the special power reserved to the Viceroy's Council. The Bill really requires the Lieutenant-Governor to make rules for all necessary

niatation. I propose, if the necessary power of this kind is given me, to exercise it by merely taking the rules as they now exist with regard to garden sirdars, and by making the necessary alterations and bringing the two classes as closely as possible under the same sanitary supervision. The Bill does not go beyond sanitary supervision, and under the circumstances it is just as well it does not. I am very anxious that the whole subject should be very carefully considered, for if any general Bill is passed it must be passed in the Viceroy's Council, and not in this, but in the meantime I feel there is a very urgent and serious responsibility laying upon us not to allow the cholera season to pass without at least doing all in our power to check the grievous mortality and the sufferings to which I have alluded, and now it is my duty to ask you to assist me by allowing me to introduce the Bill which will be laid before you next week with the necessary papers on the subject."

The Motion was put and agreed to.

The Council adjourned to Saturday, the 6th April, 1889.

CALCUTTA;
The 4th April, 1889.

C. H. REILY,
Assistant Secretary to the Govt. of Bengal, Legislative Dept.

E. J. H.—Reg. No 192G—900—29-4-89

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

THE Council met at the Council Chamber on Saturday, the 6th April, 1889.

Present:

The HON'BLE SIR STEUART COLVIN BAYLEY, K.C.S.I., C.I.E., Lieutenant Governor of Bengal, *presiding.*
The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General.*
The HON'BLE C. P. L. MACAULAY.
The HON'BLE P. NOLAN.
The HON'BLE T. T. ALLEN.
The HON'BLE SIR HENRY HARRISON, KT.
The HON'BLE SIR ALFRED CROFT, K.C.I.E.
The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.
The HON'BLE C. H. MOORE.
The HON'BLE H. PRATT.
The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.
The HON'BLE DR. RASH BEHARI GHOSE.

NEW MEMBER.

The Hon'ble MR. NOLAN took his seat in Council.

PRIVATE FISHERIES BILL.

The Hon'ble SIR CHARLES PAUL introduced the Bill for the protection of the right of fishing in private waters, and moved that it be read in Council. He said:—

"After obtaining leave at the last meeting of the Council to introduce this Bill, it is unnecessary that I should enlarge on the subject, or repeat the reasons which exist for the introduction of the measure. Under the existing law private rights in fisheries are not sufficiently or effectually protected. By the law as it is, any infringement of these private rights is not punishable. These rights are very valuable; large sums of money are paid for, and great profits arise out of, the exercise of these rights. It is therefore necessary to

protect these valuable rights, and it was for that purpose that this Bill has been introduced. The Bill, following the lines of English legislation on the same subject, is directed to three principal points: namely, first, to the offence of fishing in private fisheries; second, to the offence of erecting places and constructing appliances for the purpose of catching fish, without the permission of the owner, in private fisheries; and, thirdly, to make trespass upon these lands for the purpose of committing these depredations a criminal offence. The fifth section of this Bill provides that offences committed under this Act shall be considered cognizable offences, so that the police may arrest offenders then and there. I think this Bill will be found sufficient for the purposes which I originally explained, and under these circumstances I move that it be read in Council."

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble SIR CHARLES PAUL also moved that the Bill be referred to a Select Committee consisting of the Hon'ble Mr. Nolan, the Hon'ble Mr. Allen, the Hon'ble Raja Rameshwar Singh, the Hon'ble Dr. Rash Behari Ghose, and the Mover.

The Motion was put and agreed to.

POLICE SUPERANNUATION FUNDS BILL.

The Hon'ble SIR HENRY HARRISON introduced the Bill to consolidate the Calcutta and the Suburban Police Superannuation Funds, and moved that it be read in Council. He said:—

"It is unnecessary, as leave was granted at the last meeting of the Council to introduce the Bill, to say more than that there is a point pending whether any guarantee is necessary for the solvency of the funds, but I understand that upon that question the Local Government is still in correspondence with the Supreme Government, so that there is no necessity to say anything more now."

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble SIR HENRY HARRISON also moved that the Bill be referred to a Select Committee consisting of the Hon'ble Mr. Allen, the Hon'ble Dr. Rash Behari Ghose, and the Mover.

The Motion was put and agreed to.

CALCUTTA PORT BILL.

The Hon'ble SIR HENRY HARRISON introduced the Bill to consolidate and amend the law relating to the Port of Calcutta and to the appointment of Commissioners for the said Port, and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble SIR HENRY HARRISON also moved that the Bill be referred to a Select Committee consisting of the Hon'ble Mr. Macaulay, the Hon'ble Mr. Allen, the Hon'ble Mr. Moore, the Hon'ble Mr. Pratt, and the Mover.

The Motion was put and agreed to.

EMIGRANTS' SANITATION BILL.

The Hon'ble MR. NOLAN introduced the Bill to provide for the sanitation of emigrants during their passage through Bengal to the labour districts in Assam, and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble MR. NOLAN also moved that the Bill be referred to a Select Committee consisting of the Hon'ble Mr. Allen, the Hon'ble Mr. Moore, the Hon'ble Dr. Mahendra Lal Sircar, the Hon'ble Dr. Rash Behari Ghose, and the Mover, with permission to report thereon within a fortnight. He said :—

"In explanation of the somewhat unusual provision giving the Select Committee power to report within a fortnight, I desire to state that there is no wish to bind the members to do their work more quickly than they may themselves find convenient; but it seems advisable to give them power to report, if they think fit, before the usual period of one month has expired. There is every reason for expediting the consideration of the measure, so far as can be done without precipitancy; for cholera, which, as His Honour the President informed you when asking leave to introduce this Bill, carried off six hundred emigrants last year, has recently, I much regret to state, broken out again. And it is hoped that no protracted period will be required for the examination of a Bill which merely embodies the simple principle that emigration should be subject to sanitary supervision, and that such supervision should be exercised in accordance with rules to be made by Government, and altered from time to time, so

that they may always be in accordance with the varying necessities of the hour. This policy has been accepted without question for a quarter of a century: it was applied by this Council in the Acts of 1865 and 1870 to the special case with which we are now dealing, that of emigration to Assam, and by the Governor-General in Council in three well-known enactments to emigration to the Colonies, Burma and the Straits Settlements. That it was not consciously abandoned by the framers of the present law, Act I of 1882, may be inferred with the utmost certainty from the elaborate provisions made in that enactment, and in the rules framed under it, for the sanitary supervision of the only class of emigrants whom it dealt with; as also from the absence of any intimation in the voluminous correspondence and discussions by which the measure was preceded of a desire to dispense with such supervision. They could hardly have wished to enforce strict rules on a minority, while neglecting the greater number, travelling under precisely the same conditions; and had they intended thus to alter an established policy, they would certainly have given some reason for so doing.

"The explanation of the action taken in 1882, which this Bill intends to supplement rather than to alter, is to be found in the last statement, that the conditions are the same. Emigrants passing through Bengal to Assam are divided into two classes—the minority, who have already executed labour contracts under the Act, and the majority, who have not done so as yet: the health of the former is fully protected by law, and rules having the force of law, while for the latter nothing whatever is done. It was anticipated in 1882 that those who had not signed engagements, being as yet free from any legal bond, would be able to take care of themselves, just like other travellers, and if this expectation has not been fulfilled, the result has to some extent been produced by arrangements not contemplated in 1882—in particular by the facilities afforded to employers for putting labourers under contract as they pass through Dhubri, after leaving Bengal. However this may be, it is now matter of daily experience that emigrants of the two classes are obtained and despatched in the same way, being originally recruited in Chota Nagpur and Behar by planters' sirdars, or the contractors' men, or by *arkatis*, as they are called, working on their own account; being collected in depôts, and there detained until a sufficient number has been got together; being then forwarded in large batches, at their master's expense and under his complete control; and their destination being in both cases to work on tea gardens under statutory contracts. That these contracts

are, in regard to one class, executed in Assam at the end of the journey, in regard to the other, here in Bengal, at its commencement, is a matter quite irrelevant when we are dealing with a question of physical health, and one which cannot properly, I submit, be made the ground for a distinction in the sanitary systems adopted for the two classes. A recruit drinking from a tainted well in an unlicensed depôt may imbibe the seed of cholera, although he has never put his mark to a contract; he may develop the fatal germs and spread them among hundreds, although he is called a free emigrant.

"But whatever the requirements of consistency, no change would be proposed in the law if existing arrangements did not work badly in practice. There have been complaints as to the food furnished to emigrants on their journey, the absence of clothing, the abandonment of the sick, and failure to bury the dead; but it is to the state of the depôts that the greatest importance is attached, and it is in these that the greatest improvement may be reasonably expected. The attention of Government was drawn to this point, by those most interested, in a letter which I might be permitted to read:—

'Dated Calcutta, the 22nd August, 1888.

From—G. M. Barton, Esq., Assistant Secretary, Indian Tea Association,

To—The Secretary to the Government of Bengal, General Department.

'I am directed by the General Committee of this Association to hand you herewith printed copy of a letter, dated the 18th of June, from Surgeon-General A. C. C. DeRenzy, C.B., to the Secretary of the Indian Tea Districts Association, London, on the subject of the recent outbreak of cholera among coolies proceeding to Assam.

'It will be noticed that reference is specially made to the state of the depôts and the water-supply at Raniganj, and it is suggested that the Government of Bengal should depute a competent medical officer to report on the state of things at that place and at the halting-places between there and Dhubri, and to advise as to the measures that are required to put them in a good sanitary condition.

'The Committee are aware that the Government is already considering certain suggestions for the sanitary supervision of all coolie traffic to Assam; but they are of opinion that the recommendations of Dr. DeRenzy are worthy of attention, and they therefore beg to bring them to the notice of the Government.'

"The enclosure to the Association's letter begins—

'Dated 18, Clyde Road, Dublin, the 18th June, 1888.

From—Surgeon-General A. C. C. DeRenzy, C.B.,

To—Ernest Tye, Esq., Secretary, Indian Tea Districts Association.

'Cholera has been so fatal this season among the coolies in transit up the Brahmaputra that the Government, I believe, have found it necessary to suspend coolie emigration

altogether. As this step must inflict immense injury on the tea interest in Assam, I venture to suggest that the Indian Tea Districts Association should take the opportunity of pressing on the Bengal Government the necessity of measures for preventing a repetition of such a disaster. It ought surely to be fully understood that cholera is the most preventible of all epidemic diseases; and when epidemics, such as have lately prevailed among the coolies occur, it may be assumed with absolute certainty that they are due to gross sanitary neglect somewhere.'

"I may quote another passage from Dr. DeRenzy's letter as to the Raniganj depôts:—

'A gentleman who has recently been there describes the state of things as follows: He says:—'It would be a miracle if cholera were not bred at that place. The coolies recruited in the Chota Nagpur districts are collected there in depôts before being despatched by railway. The depôts are under no supervision whatever. Depôts that have space for 100 have frequently 900 crammed into them. The water-supply is from three wells, but is mainly drawn from tanks, which are foul in the extreme. The coolies defœcate anywhere and everywhere a yard from the depôts, and on the margins of the tanks. In fact, it is the Calcutta depôt system of 25 years ago.'

"Previous to the receipt of this communication the Lieutenant-Governor had, through the Commissioner of Police, Calcutta, secured the inspection of the free depôts in this town, with the result that three out of seven were found to be in an unsatisfactory state. The entries in a statement before me as to these three depôts are:—

'The sanitary arrangements of the building are bad, the compound and nearly all parts of the building are in a filthy state, the floors of the rooms are undermined by rats: altogether the place is quite unfit for a coolie depôt.

'This place is also in a very bad state: the supply of water for bathing and other purposes is insufficient, and the building is too small for the number of persons accommodated.

'The building is a pucca two-storied one; the compound is not well kept, and the drain round the building is filthy. The accommodation is insufficient.'

"At the request of the Tea Association, Dr. Gregg, the Officiating Sanitary Commissioner, was deputed to inspect the mofussil depôts. He reported that two out of three free depôts visited by him in Chota Nagpur derived their water-supply from wells, the mouths of which were below the surface level, and which were therefore liable to receive the surface drainage. 'On the whole,' he writes, 'the present free depôts are of the most unsatisfactory kind, and should, I think, be placed as soon as possible under proper management and supervision.'. As to Raniganj, he observes:—

'There is no doubt that the sanitary arrangements of the coolie depôts at Raniganj are very defective: the water used in them is drawn in many cases from tanks that are not

over-clean; the cooking of the food is not properly attended to; and, in fact, there is an absence of that controlling supervision which has been found to be so necessary in respect of the coolie depôts situated in the Suburbs of Calcutta, in connection with Inland and Colonial Emigration. The depôts belonging to known persons number from 20 to 25, and there are many private depôts besides, in which the so-called free emigrants are accommodated until disposed of by persons whose livelihood depends upon such transactions, and with whom at present there cannot legally be any interference. I also admit that there was a foundation for complaints made by these managers in their turn, that their coolies were not sufficiently provided for on the lines of railway, and I take the opportunity of stating that the Railway authorities and Superintendent of Inland Emigration have recently made arrangements to limit the number of emigrants to be carried daily, so as to prevent overcrowding, to provide suitable carriages, good drinking water, to help the travellers at places suitable for refreshment or repose, and to secure adequate medical inspection and treatment.'

"I hope that in reading these extracts, which I think it my duty to place before the Council, I have not conveyed the impression that there is any very gross or scandalous neglect at these depôts. Dr. Comins, the Superintendent of Inland Emigration, who has just completed an inspection more detailed than had been previously made, informs me that he was rather surprised to find that they were no worse; that since attention has been prominently directed to the subject there has been some improvement; and that the managers seem disposed to act on his advice, though he has at present no legal position in regard to them. He did not, however, find that when care was taken in sanitary matters, it was always exerçised according to knowledge; for instance, in one case where a brick drain was made at some expense from a latrine, it was given its outlet in a tank, the water of which is used for drinking purposes by the emigrants. I have also to acknowledge that there was much truth in counter-complaints made by the coolie contractors that the arrangements on railways, over which they had no control, were deficient. This is a matter to which the Lieutenant-Governor has recently given much attention with the result that steps have been taken to prevent overcrowding, to secure the use of suitable carriages, to establish medical inspection on the route, and afford medical assistance, as also to provide for necessary halts, for food and repose. It is well known that coolies when first taken away from their homes are, for reasons easily understood, peculiarly liable to cholera, and, therefore, need special care to guard them against infection, the results of which cannot be prevented by any subsequent treatment. And it is also obvious that as coolies from different depôts are brought together in the train, at Dhubri, and on the

Assam steamers, any outbreak of cholera among one batch is likely to spread widely, so that the most careful master may suffer for the neglect of his neighbour. For instance, the depôts for coolies recruited according to the Act are, by all accounts, kept in excellent order under Government supervision, but their inmates can have no exemption from cholera on the journey if they are massed with men coming from an infected depôt. It is the case of the chain-cable no stronger than its weakest part; to provide for the safety of the ship we have to test every link. Such being the circumstances, I hope that this Council, and those interested in the great tea industry, as also the public generally, may accept a Bill which, though it does not purport to deal with the whole question of the supply of labour to Assam, is, I submit, sufficient for its purpose, and can hardly fail to effect an immediate and appreciable improvement in the sanitary condition of the places where cholera is too often generated."

The Motion was put and agreed to.

MUHAMMADAN BURIAL BOARD'S BILL.

The Hon'ble SIR HENRY HARRISON introduced the Bill to provide for the appointment of a Muhammadan Burial Board in Calcutta, and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble SIR HENRY HARRISON also moved that the Bill be referred to a Select Committee consisting of the Hon'ble Sir Alfred Croft, the Hon'ble Mr. Allen, the Hon'ble Dr. Mahendra Lal Sircar, the Hon'ble Shahzada Mohammed Furrokh Shah, and the Mover. He said:—

"With your Honour's permission, I should like to add that permission to report thereon be given within a fortnight. With reference to the explanation which has fallen from the hon'ble member opposite, I think it would be advisable if leave were given to this Committee also to report in a fortnight if it sees its way to do so. Although the rules which may be framed under the Bill may require a great deal of care and consideration, the Bill itself is of a somewhat simple character, and I think it quite possible for the Select Committee to report within a fortnight; and as it has been represented that the appointment of the Board is urgently required within the present year, it seems desirable to pass the Act as soon as possible."

[*The President.*]

The Hon'ble the PRESIDENT—"If no one objects, I shall give the permission."

The Motion was put and agreed to.

The Council adjourned to Saturday, the 20th April, 1889.

CALCUTTA;
The 11th April, 1889.

C. H. REILY,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg. No. 1973—300—29-4-89.

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

THE Council met at the Council Chamber on Saturday, the 20th April, 1889.

Present:

The HON'BLE SIR STEUART COLVIN BAYLEY, K.C.S.I., C.I.E., Lieutenant-Governor of Bengal, *presiding.*

The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General.*

The HON'BLE P. NOLAN.

The HON'BLE T. T. ALLEN.

The HON'BLE SIR HENRY HARRISON, KT.

The HON'BLE SIR ALFRED CROFT, K.C.I.E.

The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.

The HON'BLE C. H. MOORE.

The HON'BLE H. PRATT.

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.

The HON'BLE DR. RASH BEHARI GHOSE.

The HON'BLE RAJA RAMESHWAR SINGH, BAHADUR.

NEW MEMBER.

The HON'BLE RAJA RAMESHWAR SINGH BAHADUR took his seat in Council.

EMIGRANTS' SANITATION BILL.

The HON'BLE MR. NOLAN presented the report of the Select Committee on the Bill to provide for the sanitation of emigrants during their passage through Bengal to the labour districts in Assam, and moved that the Bill be considered.

The Motion was put and agreed to.

The HON'BLE MR. NOLAN also moved that the Bill be passed.

The HON'BLE MR. MOORE said:—"The main interests affected by this Bill are the interests of those connected with Tea, and I should like quite briefly to give their views about it. Before the Select Committee met, I discussed it with the leading representatives of the Indian Tea Association, and of the Chamber of

Commerce to which the Association is affiliated. The purport of the Bill was approved by both bodies, and they had no suggestions to offer for its improvement. Its measure of usefulness will depend upon the rules framed under it, and I trust great care will be taken to confine them to the strict purport of the Bill, and not to go beyond it. In this connexion in Select Committee I proposed the elimination of clause (*j*), section 3 of the Bill, as I considered the wording was so general as to admit of the introduction of the system of way-bills, which would seriously hamper free recruiting by garden sirdars. No restriction would be considered too severe to suppress the various villainies and illegitimate recruiting practised by arkatties, but it is an almost insurmountable difficulty to keep them in check by rules which would not seriously interfere with legitimate free recruiting by garden sirdars, which it is only desired to encourage. On my proposing the elimination of the clause, the legal authority in the Committee showed that there were legal technicalities necessitating its retention, and the Mover of the Bill gave me an assurance that there was no intention of imposing the way-bill system. I therefore withdrew my proposal, and I only raise the point now to say it would be satisfactory if that assurance could be repeated here. I have also to ask whether the Government will agree to publish its proposed rules before making them law, to give those interested in Tea an opportunity of expressing an opinion upon them. As both they and the Government have but one object in common, *viz.*, the preservation of labourers from mortality by preventible disease, it seems to me that that course has everything to recommend it, and nothing to the contrary. I would add that just before coming here to-day, a paper was sent to me by the Tea Association, pointing out that one most essential point was the prevention of overcrowding in railway carriages. The paper consists of two Minutes on the subject by Tea Agency Firms which I will read—

'(1). As regards the supervision and sanitation of free emigrants *en route* to the labour districts, some legislation is undoubtedly wanted, and I think that in this connexion we should call the attention of Government to what I consider to be at present the worst feature of the journey, *viz.*, overcrowding in railways, which in the months of April to June is simply cruel.

(2). The crowding in the railways is one of the worst features of the coolies' journey, and the railways are allowed to act as if they had absolutely no responsibilities towards emigrants, nor do they seem to be required to make any of the ordinary provisions of accommodation accorded to the third-class passengers either in the trains or at the stations.'

"The point is not specially named in the Bill, but no doubt could and will be brought in under clause (*c*). I have nothing further to say than to express the hope that the Council will pass this Bill, and to thank the Government for their promptitude and decision regarding it from the time it was placed in their hands."

The Hon'ble MR. NOLAN said :—"You, Sir, will have heard, we all heard, with satisfaction the approval of this measure expressed by the hon'ble member who represents among us the views and interests of the mercantile community. Seeing that the immediate consequence of the Bill will be to subject to supervision persons engaged in supplying labour for a great industry, to impose new duties on them, and render them liable to charges, it is most satisfactory to learn, from the hon'ble member's statement, that our proceedings are endorsed by those who would be the first to resist any action of the kind if it were not necessary and beneficial. In regard to what he has said in deprecation of requiring agents to make out way-bills, you, Sir, will be in a better position than I to give a satisfactory answer as to the future intentions of Government, but I may say that had the requisition of way-bills been contemplated, the Bill would have been differently drafted, so as to indicate that important fact clearly. I doubt if it is really possible to secure the use of way-bills for unregistered emigrants; although, where it is practicable, the system is very useful.

"The support which the measure has received from those most concerned diminishes to some extent the practical importance of an objection taken to it by an experienced journalist that it merely empowers the Lieutenant-Governor to make rules at discretion without clearly defining the character of those rules. It may, perhaps, be convenient to explain, in reply to this observation, that the Bill fixes the responsibility for protecting the health of emigrants on particular persons, it specifies the points on which their conduct shall be subject to control, and assigns a limit to the penalties to be imposed upon them in case of neglect: if it leaves to the Executive the power to specify the actual arrangements to be made on the journey, that is done solely for the sake of convenience. I have a draft of the rules to be issued on the table before me, it was read to the Select Committee, and any portion of it could, had that body so pleased, have been transferred to the Bill. But who would be a gainer by such transfer? Take, for instance, rule 9 of the draft, which runs—

[*Mr. Nolan.*]

The agent, or person appointed as aforesaid, must take every care of the emigrants during the journey. He must give them a cooked meal before they start; and, if the journey is likely to occupy more than six hours, he must distribute biscuits and sugar in the proportion of two biscuits and one ounce of sugar to each emigrant of and above ten years of age, and one biscuit and half an ounce of sugar to each emigrant under the age of ten years; and if more than eight hours, dry provisions must be supplied, such as *choora*, *sutto*, and the like, in such quantity as may be determined by the Superintendent of Emigration or other authorised officer It must be seen that the clothing provided is worn by the emigrants whenever the weather renders such a precaution necessary. At the close of every day's march, or of a train journey, the emigrants must be properly housed and provided with a cooked meal and wholesome supply of water for drinking and ablution purposes.'

"That is the regulation now in force under Act I of 1882, and it answers very well as a rule; but who would care to put it on our statute book? In dealing with these details, rules are far more convenient than laws, as they are more easily altered on objection, or when they do not work well. In fact, the procedure of leaving the widest discretion to the Executive is incorporated in the present emigration law, to which our Bill is supplementary, it was adopted in the previous law, and as far as I can ascertain in all the numerous emigration laws and abortive Bills as to emigration which have ever been passed or rejected by the Indian legislature. It also prevails to some extent in regard to arrangements made for the protection of the health of persons who are not emigrants; for instance, the hon'ble member opposite, who is Chairman of the Calcutta Municipality, could inform you that here in this town we are all liable to be bound by such sanitary rules as may commend themselves to the body over which he presides.

"The criticism to which I have referred touches a matter of form only, important, no doubt, on general grounds, but having no very special application to the present measure: if we can guard effectually the health of emigrants, it is of no great consequence to them whether this is done by law or by rules having the force of law. But I am aware that the Bill has given rise to a genuine feeling of disappointment among a section of the public by reason of its limited scope: it deals very well, they say, with sanitary matters, but we want very much more than that. In illustration of what I mean, I may, perhaps, quote from a journal published in the recruiting districts: "Though Sir Steuart Bayley correctly describes some, though not all, the evils of that Act, no effort whatsoever has been made in the Bill just introduced to grapple with these evils with a view to their remedy, the only measure

contemplated by the Bill being certain sanitary precautions to be observed during the passage of the coolies to the land of slavery. The system of kidnapping which has grown up under Act I of 1882, and to which Sir Steuart Bayley himself in some of his published Resolutions on the administration of the different districts of Bengal made pointed reference, is not even attempted to be touched. The Bill, as at present framed, will not satisfy the public." As far as our Council is concerned, the reply to this objection is simple and obvious: we have only to state a fact, with which our critics may not be acquainted, to dispose of the matter at once. We have not altered Act I of 1882, because we have not the power to do so: that Act was passed by a superior Legislature, and by that Legislature only can it be amended. We do what we can, as well as we can, and as quickly as we can; for what lies outside our province we can only disclaim responsibility. But in thus indicating the limits of our jurisdiction, I must not be understood to concede that the whole question of emigration and statutory contracts could have been dealt with effectually by any other authority during the present season. The tea industry of Assam has been established by an outlay estimated at fifteen millions sterling: it has settled in that province an immigrant population of 323,000 persons, and 36,000 new recruits leave Bengal every year, attracted solely by the employment which it affords. It has contributed more, perhaps, than any other known factor to the solution of the great problem, how is India to find occupation for a population increasing rapidly? It is thus a most important industry, and, resting as it does on the basis of labour obtained from a great distance, under a peculiar system of statutory contracts, it is an industry of a very special kind. The grounds for action have only recently been established even from the Bengal point of view, and there are others to be consulted—persons who have every right to speak. This is, I submit, a case, if there ever was one, for caution, for deliberation, for the application of the maxim addressed to the ideal English statesman:

'Not quick, or slow to change, but firm,
And in its season bring the law.'

"But, it has been said, we might have expedited matters had we refused to remedy by this Bill immediate and glaring evils until the question could have been dealt with as a whole. As I have read in some journal, we may, by giving an instalment of reform, defer the revision of the whole Act, and thereby do evil; in other words, we should have left the foul wells to do their work a

little longer, in order to make the situation intolerable and to bring pressure to bear. This, Mr. President, is, I submit, a suggestion which bears its condemnation stamped in broad characters on its forehead. Even the most cynical controversialist would hardly, on consideration, adopt it with all its consequences: he would scarcely venture to say in plain language to our 36,000 emigrants: "Sicken yourselves again at the contaminated tanks, your illness will help my argument; spread cholera throughout the land, its progress will give point to my declamation; die, and strengthen my case against Act I of 1882." Such a policy can be stated only to be condemned; and its rejection is a sufficient justification for passing the Bill now submitted to the judgment of this Council."

THE HON'BLE THE PRESIDENT said:—"Before I put to the Council the motion which stands on the paper, I wish to add one or two words in reply to my hon'ble friend who first spoke. He desired to know what the intentions of the Government were with regard to the introduction of way-bills under the rules, and, as I understood, he asked for some sort of pledge, as far as it could be given, that they were not to be introduced. The correct answer has been given by the Hon'ble Mr. Nolan in regard to these way-bills, namely, that we cannot introduce them. If I were to speak merely for myself, I might say that the same conditions which required way-bills in the case of coolies who have been registered and are sent up by garden sirdars would equally demand way-bills in the case of coolies who have not been registered and have been sent up by garden sirdars. But the fact of registration makes all the difference. In the one case you have the means of making out a way-bill, in the other you have not the means. I mentioned the matter in discussing this question with the member of the Government of India in charge of the case, and we came to the conclusion that way-bills, though admirable in themselves, could not be introduced under this Bill. Therefore, I may say most distinctly and definitely that, as this Bill stands, there is no intention of introducing way-bills. But as to what may be done hereafter I can give no pledge, because, as I have explained, it is my firm hope and trust that this Bill is merely a temporary measure. It is a Bill by means of which we expect to deal with a difficulty which has arisen pending a more complete and better consideration of the question in various aspects which this Council is not in a position to deal with; and whether, when the occasion comes for the amendment of Act I of 1882, I shall recommend, or whether the Government of India will accept such recommendation as the introduction of way-bills, as in the case of garden

sirdars, is a question regarding which it is more than I can give a shadow of a pledge at present. So far on the question of way-bills.

"One other point my hon'ble friend asks above is as to the publication of the rules. It is our object to get the rules into force at the earliest possible moment. Here they are drafted, though not possibly in their final form. I shall ask the Hon'ble Mr. Nolan to submit them informally to-day to those who are chiefly interested, and to ask them to give us their opinions within a week, and I shall delay the publication of them in the meantime, if that will satisfy my hon'ble friend, Mr. Moore.

"In regard to the overcrowding of railways, my hon'ble friend on the right (Mr. Nolan) has explained, I think, quite as clearly as I can, what has been done. One of the most serious evils to which objection has been taken is the overcrowding in the railways, and I think it is an objection which is perfectly justified. A Conference was held not very long ago at which the Government in the Sanitary Department and the Managers of the Railways were represented, and certain rules were agreed to. Those rules it is within my power to enforce on the Eastern Bengal Railway, and they will be strictly enforced, and I have no doubt I shall have no difficulty in the matter, and steps have already been taken to introduce them on the East Indian Railway. Although I have no doubt that, under this Bill as drafted, we could pass rules which will have the force of law, and can insist on the management of the East Indian Railway carrying them out, at the same time as they have willingly come forward and agreed to what is required, I shall be unwilling to make any rules on the subject unless I see any real necessity for it. I think I have now answered all the questions which the hon'ble member has asked."

The Motion was put and agreed to.

ADJOURNMENT OF COUNCIL.

THE HON'BLE THE PRESIDENT said:—"There is one word more to say before the Council rises. Of the other Bills which are before the Council, I understand the Select Committee has decided to postpone until the next cold weather the consideration of the Bill to consolidate and amend the law relating to the Port of Calcutta, and to the appointment of Commissioners for the said Port. They do not propose to go on with it at present. There are two Bills on which the reports of the Select Committee are practically ready—the Muhammadan Burial Board's Bill and the Fisheries Bill. With regard to

another Bill—the Police Superannuation Bill—there are certain points with regard to which I have to consult with the Government of India before proceeding; but in respect of the two Bills of which the reports are practically ready—the Burial Board's and the Fisheries Bill—I propose that the Select Committee's reports be circulated to members at the earliest possible date. I myself shall not be here on the 4th of May, which is the earliest date on which the Council could receive the reports and consider them. I do not think it is worth asking the Council to meet merely for the sake of receiving the reports. But I propose that the Council shall meet on the 11th, and then take into consideration the reports which you will have by that time had in your hands for more than a week."

The Council adjourned to Saturday, the 11th May, 1889.

CALCUTTA;
The 24th April, 1889.

C. H. REILY,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg. No.229G—300-8-5-89.

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

THE Council met at the Council Chamber on Saturday, the 11th May, 1889.

Present:

The HON'BLE SIR STEUART COLVIN BAYLEY, K.C.S.I., C.I.E., Lieutenant-Governor of Bengal, *presiding.*

The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General.*

The HON'BLE P. NOLAN.

The HON'BLE T. T. ALLEN.

The HON'BLE SIR HENRY HARRISON, KT.

The HON'BLE SIR ALFRED CROFT, K.C.I.E.

The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.

The HON'BLE C. H. MOORE.

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.

The HON'BLE DR. RASH BEHARY GHOSE.

The HON'BLE RAJA RAMESHWAR SINGH BAHADUR.

PRIVATE FISHERIES BILL.

The HON'BLE SIR CHARLES PAUL presented the report of the Select Committee on the Bill for the protection of the right of fishing in private waters, and moved that the report be taken into consideration in order to the settlement of the clauses of the Bill.

The Motion was put and agreed to.

The HON'BLE SIR CHARLES PAUL also moved that the clauses of the Bill be considered in the form recommended by the Select Committee.

The Motion was put and agreed to.

The HON'BLE SIR CHARLES PAUL also moved that in line 17 of section 3, after the word 'imprisonment' the words 'which may be simple or rigorous' be inserted. He said:—"I find that the Act for shortening the language of Acts of the Bengal Council does not, as the analogous Act of the Viceroy's Council does, define the word 'imprisonment;' it is therefore necessary to add the words 'simple or rigorous' after 'imprisonment.'"

The Motion was put and agreed to.

[*Sir Charles Paul; Dr. Rash Behary Ghose.*]

The HON'BLE SIR CHARLES PAUL also moved that in clauses 1 and 2 of section 4, for the words 'obstruction or' the word 'fixed' be substituted. He said:—"As the section stands it is not very grammatical; the amendment would include everything that is required."

The Motion was put and agreed to.

The HON'BLE DR. RASH BEHARY GHOSE moved that for clause (2) of section 3, the following proviso be substituted:—'Provided that nothing herein contained shall apply to acts done by any person in the exercise of a *bonâ fide* claim of right, or shall prevent any person from angling with a rod and line, or with a line only, in any portion of a navigable river.'

He said:—"The amendment which stands in my name consists of two parts. The second part, which makes a concession in favour of the disciples of Isaac Walton, comes before the Council with the recommendation of the Select Committee in favour of it. I need not, therefore, say anything as regards this part of the amendment, except that, as we all know, the gentle art is practised more frequently for sport than for gain, and that at any rate by confining the right to navigable rivers we shall be well within the maxim *de minimis non curat lex*. As regards that part of the amendment which says that 'nothing contained in the Act shall apply to acts done in the *bonâ fide* exercise of a claim of right,' it will be enough to remind hon'ble members that it only formulates a well-known maxim—I had almost said axiom—in Criminal Jurisprudence: 'There can be no offence, no crime, unless there is a guilty mind.' I will only refer to a well-known text-book on this subject—Maxwell on the construction of Statutes—in which the result of the authorities is thus stated:—'*Mens rea*, or a guilty mind is, with few exceptions, an essential element in 'constituting a breach of the criminal law; a statute, however comprehensive 'and unqualified it be in its language, is usually understood as silently requiring that this element should be imported into it, unless a contrary intention be 'expressed.' It may be said—indeed it has actually been said—that the effect of introducing this proviso will be to render the whole law a dead-letter, which would therefore only cumber the Statute Book, without ever having any practical operation. Now those who raise this objection seem to forget that a *bonâ fide* claim of right is not the same thing as a mere pretence set up simply for the purpose of avoiding the jurisdiction of the Magistrate. A *bonâ fide* claim must rest on fairly reasonable grounds; and although a man may not, if I may use the expression, have, in respect of a particular act, a guilty conscience, and therefore

in one sense may be said not to have acted dishonestly, yet he would not succeed on a plea of *bonâ fide* claim of right, unless he could show that the conclusion at which he had arrived was based on reasonable grounds. Then, again, it seems to me that those who take exception to this amendment forget that there is substantially the same limitation in the definition of theft in the Indian Penal Code; and yet I think it will be allowed by everybody that the Indian Penal Code has not been a dead-letter. It is worthy of notice that those who are opposed to the amendment seem to think, or certainly at one time thought, that acts made punishable under this Bill were punishable under the Indian Penal Code. But it is clear that a person who acted in the exercise of a *bonâ fide* claim of right could not have been convicted under the Penal Code; and certainly the owners of private fisheries in public rivers are not entitled to a larger measure of protection than the owner of a fishery in a tank or other enclosed piece of water. There may possibly be a distinction between fish confined in a tank and fish in a river, but the distinction, if there is one, is certainly not in favour of a larger measure of protection being given to the owners of fisheries in rivers, or in waters where the fish are neither reared nor preserved by the owners of the fisheries. Difficult questions of law are, moreover, sure to arise. I may here refer to an instance which came a few years ago within my experience. An action was brought by a well-known landowner in the district of Rungpur to restrain certain tenants of his from fishing in a *bheel:* the tenants set up an immemorial custom under which they and their forefathers before them for several generations had been in the habit of fishing in the lake on a particular day in the year. The case was heard by a Subordinate Judge of considerable experience, and he came to the conclusion that the tenants were entitled to exercise the right set up by them. The action was heard in appeal by a District Judge, also of considerable experience, and he too came to the same conclusion. In appeal, however, to the High Court both these judgments were set aside on the ground that the right set up by the tenants was not recognised by the English law, and that there was no reason why the Courts in this country should refuse to follow the English law on the point. Now, if the amendment I propose is not carried, the result will be this. These men, who thought they were not doing anything wrong in exercising the right of fishing, and who might well be pardoned for thinking so, seeing that the Subordinate Judge and the District Judge were also of that opinion, would be punishable as criminals,

[*Dr. Rash Behary Ghose; Mr. Allen.*]

I submit that it ought not to be so: and that, as soon as the Magistrate is satisfied that there are reasonable grounds for the claim set up, he ought to hold his hands and leave the matter to be decided by the ordinary civil tribunals. Another objection has been suggested to the amendment which I will notice, and that is this—that it is not necessary to have an amendment of this kind, because no Criminal Court will punish a man who made out a *bonâ fide* claim of right. I will only say in answer to this objection that it only shows that the amendment, although sound in principle, is superfluous and unnecessary. But I think that, although no doubt in olden times the Judges used to take a great deal of liberty with Acts of Parliament, when the art of draftsmanship was in a rudimentary state, it would now be a very strong thing for a Judge or Magistrate to say that, although an Act says that a man who without being legally entitled to fish in certain waters, fished in them, is liable to punishment, he must not be punished because we must not impute to the Legislature an intention to punish *bonâ fide* mistakes. I think that, when we have a written law, the whole of the law ought to be contained in the Statute, and that no one should be allowed to set at naught the intention of the Legislature by referring to some unwritten rule of construction drawn from books of reports extending, at least in England, over more than five hundred years, not to say anything of the perplexity occasionally caused by conflicting decisions. With these observations I move the amendment which stands in my name."

The HON'BLE MR. ALLEN said:—"It appears to me that this question is simply one of practical bearing. The Bill is a Bill for the protection of the right of fishing in private waters, and I suppose the hon'ble member will not pretend that his amendment is likely to assist in the protecting private rights of fishery. It is rather in derogation of the general objects of the Act itself. It comes in at the tail of section 3 of the Bill, the first clause of which says—'Any person who fishes in any private waters, not having a right to fish therein shall be guilty of an offence'; and then comes the amendment, which says that 'nothing herein contained shall apply to acts done by any person in the exercise of a *bonâ fide* claim of right.' It seems to me that the amendment takes away very materially from the effect of the first clause, which protects rights of fisheries in private waters, by making it a criminal act to fish without a right; but the hon'ble member says that it is to be no offence if only you put forward what you imagine to be a *bonâ fide* claim of right. There is no word which is probably used more often *mala fide* than

that expression *bonâ fide*. It generally represents the view an individual takes of what is for his own interest. As a protection for those who have *bonâ fide* rights, I think the amendment is perfectly unnecessary. It is a principle underlying all criminal jurisprudence that, where there is a *bonâ fide* claim of right, the jurisdiction of the Criminal Courts is ousted. But the introduction of this amendment into the Bill is likely to have, not a *bonâ fide* effect, but on the contrary is likely to afford additional excuses for Magistrates to throw off their own hands, work which must form an exceedingly disagreeable duty. Nothing can be more troublesome than these questions of criminal trespass, and such like, where the contending parties are disputing about interests in land or water. It is not the case that Magistrates are eager to grasp at jurisdiction improperly. As the result of my experience, I should say Magistrates are only too ready to refer parties on any possible pretence to the Civil Court. The real object of this Bill is to provide a speedy and inexpensive mode of obtaining redress against a class of people against whom civil suits are practically valueless. Those who fish without possessing a right are not people of substance—zemindars or others: on the contrary, they are nocturnal wanderers, *machwars*, and the like, who for the most part make their livelihood by such forms of trespass, and it is necessary that there should be a speedy means of redress, and what is the redress given? It is a fine of Rs. 50—call it, not a fine but damages; and what is there to object to? The Magistrate is just as likely to do justice in such cases as a Munsif, and more so, because he is not trammelled by a Code containing over six hundred sections to guide his procedure. Therefore it appears to me that, as a protection of *bonâ fide* rights, this amendment is not necessary. Claims of right are already recognised, but the introduction of this amendment may have the effect of neutralising the whole Act."

The Hon'ble Mr. Nolan said:—"Mr. President, the hon'ble member who moved this amendment did so in a speech so full and lucid that it is quite unnecessary that I should attempt to give him the support which, as the only person who acted with him on the Select Committee, I feel bound to afford, otherwise than by removing any misapprehension as to the facts of the case which may have been created by the last speaker. As that speaker remarked, this is a practical question, and in dealing with such questions it is above all things desirable that we should clearly understand the facts. The hon'ble member has informed us that the persons who will be prosecuted under this Bill are nocturnal wanderers, who make a livelihood by poaching on fisheries

belonging to others; and if this were a correct statement, little importance would attach to the amendment. It will not, as the hon'ble member seems to suppose, enable such wanderers to escape the consequences of their trespass, for under it they will be required, not merely to set up a colourable title, such as the jealousy of the law has made a sufficient defence in England, but to establish to the satisfaction of the Magistrate that they have a *bonâ fide* claim to the fishery, the burden of proof will rest on their shoulders, and, poor poachers as they are, they will be altogether unable to make out a right to the satisfaction of a Court. In regard to them, if any such men there be, the amendment can do neither harm nor good; to their circumstances it is simply irrelevant. But the papers showing the origin of the Bill contain no reference to such wanderers, and the decided cases regard a class of persons altogether different. The whole bearing of the Bill, and the importance attributed to this amendment, will be misunderstood unless we turn our attention from casual trespasses to concentrate it on the disputes which everywhere exist as to the rights of fishery exercised in Bengal. In illustration of these rights I may refer to the great Chandpore Julhan in Tipperah, as to which Government has recorded a Resolution:—

'The Sudder Court, in a decision of September 1859, pronounced that the best right made out to this julkar (which is there described as not 'above the ebbing and flowing of the tide,' and as 'an arm of the sea,') was that of the public. In the face of this decision it is impossible for the Government to make over the fishery to any individuals to the exclusion of the public generally. The Government is now bound to do all in its power to throw open the fishery as a common right to the public, and to take care, as the guardian of the public interests, that it is not monopolised by any single individual or party.'

"This is no isolated instance of the existence of public rights in important fisheries, over which individuals desire to establish a monopoly. The most valuable fisheries in Bengal are those in tidal rivers, and it has always been the policy of Government to keep these open, free of any rent or revenue, for the common use of all. Claims to a monopoly have, indeed, been advanced from time to time by the owners of neighbouring estates, but these are generally regarded as invalid, and are not enforced in practice. Leaving the great rivers, to consider the state of things on our principal lakes, I find that, in the opinion of the local officers, no monopoly of fishing rights has ever been granted in the well-known Chilka inland water, the largest and most valuable of the province. In the open waters of that lake the fishing is in practice free,

[*Mr. Nolan.*]

while in the creeks and inlets exclusive rights are claimed, but disputed, so that there has been much friction, and no little litigation. As to the minor pools, I will read an extract from a letter which I received yesterday from a manager in charge, on behalf of the Court of Wards, of the largest estate in Bengal, a public servant of unrivalled experience:—

'Judging from my knowledge gathered from an intimate acquaintance with the districts of Purneah, Dinagepur, Maldah, Bhagulpur and Rajshahye, I can say that a very well-defined customary right to fish in *jheels* and other pieces of private waters does exist which every villager is cognisant of, and has exercised hitherto without let or hindrance year by year. The custom I allude to is that, which permits any villager residing within the mouzah in which a *jheel* may be situate to fish in that particular *jheel* between the date of the *Holi* festival and the date when the first flow of new water from the river enters the *jheel*. This right, whether it be one enforceable by the law or not, is probably older than the times in which the zemindar was created and became the possessor of the land; and might in point of antiquity and uninterrupted user be fitly compared with the rights of common, and similar privileges, preserved by law to the poorer inhabitants of a parish in England.'

"But the evidence most appropriate to the present occasion is that afforded by the abstract of decided cases laid before this Council when the Bill was introduced. In the first of these cases the prosecutor could not prove that he had proprietory rights; the second regarded what is described as a *disputed* fishery; to the third, which runs as follows, I would draw your special attention:—

'A and B asserted their prescriptive right to fish in a lake free of rent, and C had failed to establish the relationship of landlord and tenant in a suit brought by him under Act X of 1859 to get rent from them.

'Glover. J, held that to convict A and others under section 441 of the Penal Code, it must be shown that they entered upon property in the possession of C with intent to commit an offence. The element of intention was wanting. A and others asserted, and had all along asserted, a prescriptive right to fish in the lake without the payment of rent. Considering that they had vindicated their claims and had a right to fish as they had done before, and that they were acting *bonâ fide*, and not exceeding their supposed privileges, C's notice, warning them not to fish, did not change the state of affairs so far as section 441 was concerned, and that therefore there could be no conviction for criminal trespass.'

"I might cite other cases from the abstract, but it is enough to add that none of them contain any reference to trespass by mere wanderers, and that, taken as a whole, they establish with perfect clearness the fact that this Bill owes its origin to prosecutions in many of which the alleged proprietor of the fishery could

show no right to the monopoly he claimed, and the alleged thief or trespasser was an honest fisherman plying his trade openly, and in good faith, in waters where he had, or believed that he had, a legal title to fish.

"It is with reference to these facts that the amendment has been framed, for the protection of fishermen exercising genuine rights, against persons attempting to establish a monopoly without a title, or on a doubtful title. And, the circumstances once understood, I am in a position to give an assured reply to the assertion of the hon'ble member on my right (Mr. Allen) that the adoption of the present proposal is not consistent with the principle of a Bill for the protection of rights in fisheries. On the contrary, the amendment is necessary if such rights, in their most useful form, that is to say, when appertaining to the actual fishermen, are to be protected from usurpation and encroachment. It is by no means fair to such men that they should be compelled to defend their ancient privileges from the dock, before courts accustomed to deal only with alleged criminals. I cannot for a moment believe that this Council will subscribe to the opinion of the hon'ble member, that such Magistrates will decide better as to complicated questions as to the existence of a monopoly in open waters, or of easements over private waters because exempted from the operation of the Civil Procedure Code, which has been framed in all its details so as to provide adequate safeguards for the due examination of all causes.

"The hon'ble member states it, as a general principle of all law, that a person acting *bonâ fide* cannot be subject to penal consequences; and he considers that the magisterial courts of this province are inclined to push this doctrine to extremes. These statements are relevant only if we are prepared to say that the principle in question is so universally accepted that any special provision in penal laws to make it clear that the acts for which they provide punishment must be committed wilfully, maliciously, or dishonestly, is unnecessary and superfluous. Now that, Sir, is a view opposed to all approved practice in drafting laws, whether for England or for India. For instance, the English statute on this subject limits the offence to those who fish *unlawfully and wilfully*; the Indian law now applicable to stealing fish from tanks provides that the act must be committed *dishonestly*, and proceeds to explain that this means, with the intention of causing wrongful loss or wrongful gain. Are we to override precedent by providing a punishment for the mere deed, without reference to the intention, without any statutory safeguard for the protection of those

who act in good faith? It is true that if we do so the highest court of the province may eventually supply the deficiency, reading the general principles which should have guided us in legislation into the curt provision of the Bill as it stands, that 'any person who fishes in any private water not having a right to fish therein shall be guilty of an offence.' But we would abandon our proper functions were we to trust the exemption of the innocent from penalties of our own creation to such a contingency. It is our plain duty in this matter to say what we mean, and if we desire that the amendment shall in fact be operative, to pass it as part of the law. That all Magistrates, of all classes, are unduly disposed to acquit persons accused of such offences is a proposition startling from its novelty. I will ask the Council to decide it, not on my experience, or on that of the hon'ble member, but on the evidence of the cases in the summary before them, which is little more than the account of a series of improper convictions.

"In conclusion, I must express a hope that the hon'ble and learned member in charge of this Bill (with which my connection is that only of a member of this Council) will be able to accept the amendment, which is identical with a recommendation which he himself made to Government at an early stage in the preparation of this measure. The law passed will then be useful, as affording protection to real proprietors against wilful trespassers, without giving to those desirous of establishing a monopoly of the right of fishing in public waters a weapon for attack on industrious fishermen exercising their rights, according to law and immemorial custom."

The Hon'ble Sir Henry Harrison said:—"I must say I entirely concur with the learned Legal Remembrancer that this amendment will go very far, if not entirely, to neutralise the effect of the law, and that the arguments which were chiefly used in support of it, if carefully analysed, are more or less wide of the mark. The very first argument which the hon'ble member opposite (Mr. Nolan) adduced showed that, in the large rivers of Bengal, there was a right of fishing; but it did not need a provision of this kind to give the fullest possible security to those who chose to exercise it. 'Private fishery' is defined in the Bill to mean private waters in which any person has an exclusive right of fishery, and in which fish are not confined; but have means of ingress or egress. Consequently, if there is any possible question whether there is a right of fishing, it is perfectly plain that the prosecution must

prove completely that there is an exclusive right of fishery. So far as such claims exist, they will have the amplest means of asserting themselves. Then as regards the injustice of criminally punishing a person who acts *bonâ fide*, it can hardly be said that under this Bill a man will be punished criminally in any real sense of the word. The object is only to give fair protection to rights which exist. The person punished is not really in danger of being sent to jail, merely because under a *bonâ fide* error he is infringing another man's right. If a person does make a mistake of that kind, possibly it might seem a very dangerous doctrine, but it seemed to the speaker that no great moral wrong would be done if he were fined a rupee for his mistake. The last and most important point is this:—It is said that the Magistrates look on this plea of *bonâ fides* with very great suspicion. That was not his experience, and a case which occurred in Calcutta would go far to illustrate this. No one in Calcutta is authorised to carry on a market without a license, except in the case of the older markets which require only to be registered. The owner of a market having a quarrel with a neighbour, thought he would annoy his friend by removing the fish stalls in his market, and placing them directly to the south of his friend's house, and giving him the benefit of all the stench from the fish; and he did so. On this the person thus injured brought the matter before the Commissioners, and on looking up the market license it was clearly seen that the fish stalls were to be in another place; so the license was withheld until the fish stalls were brought back to the place where they were originally intended to be. The owner of the market refused to remove the fish stalls, and the first time the municipality prosecuted for holding a market without a license, the defender got off on the plea that he had his municipal license-tax. As the offence continued, the Commissioners again prosecuted, drawing attention to the legal objection which they knew was invalid, and asked for a summons, so as to have the point of law determined. The summons was granted by the Stipendiary Magistrate, who overruled the objection, and the hearing was again before the Honorary Magistrates. The case ran a marvellous course, and though the simplest possible, it was postponed from week to week. At last, in a moment of inspiration, it struck the market-owner's pleader to urge that his client had throughout acted *bonâ fide*—a plea which was instantly accepted, and the case dismissed."

The HON'BLE MR. MOORE said:—"I believe I am the only person present who signed the original memorial to your Honour, which is the origin of the

production of this Bill. I am not personally interested in the question, but acted on behalf of a gentleman who is largely interested in julkur rights, and I therefore wish generally to express my view without entering into special arguments. The memorialists prayed for legislation to make criminal this offence against private rights, which the existing law failed to do. This Bill was drawn, and it was a sound and healthy one as originally submitted to us. But the creators of it have since apparently got frightened at what their healthy young infant may propagate, and now deliberately propose to submit it to a process of emasculation. Now, I object to this altogether. I cannot follow the mover of the amendment in his sentimental pleas not to prosecute certain offenders criminally, and it seems to me he makes them a direct invitation to weave pretty little romances to condone their offences. I wish to preserve for this Bill its pristine vigour, and I therefore intend to vote against the amendment, and I sincerely hope it will be lost."

The Hon'ble Sir Charles Paul said:—"I think there is some misconception as to the effect of this section. The last speaker seemed to think that the introduction of this section would altogether emasculate the Bill. By that I understand him to mean that in every case there will be a plea of *bonâ fide* claim set up, and that the plea is sure to succeed. If that should be the result of the amendment, we should stultify ourselves, if we accepted it. But it is quite obvious that that cannot be the case. In the case of the maraudors referred to by the Hon'ble Mr. Allen, they would not have the effrontery to come before the Court with a *bonâ fide* claim of right. The question, however, is not altogether free from difficulty. The section says—'Any person who fishes in any private waters, not having a right to fish therein.' That requires the Magistrate to try and punish as an offence what is essentially a civil matter. That being so, if the Magistrate were capable by learning and experience to decide a difficult question of right, and his decision when appealed against and upheld by the High Court resulted in finality, I should be free to admit that the Bill should be allowed to stand without amendment. But unfortunately there can be no such finality, because either party will be able to re-agitate the same matter in the Civil Court. The Magistrate might thus try a case, and his decision might be confirmed in appeal, and yet the whole matter might be taken up to the Civil Court. Therefore when a case is brought which clearly shows that a man has a right which he may fairly put forward in a civil suit, it seems necessary and just that it

should not proceed further in a Magistrate's Court. In order to make my observations clear, I shall give an illustration to show that there may be cases the Magistrate should not try. Suppose in a navigable river X has a right to fish from point A to point B, and Y has a right to fish from B to C, and the question arises from where the line from B is to be drawn. X says it should be drawn from a certain point; Y says it should be drawn from a certain other point; and thus a boundary dispute arises. The Magistrate would then have to try a boundary dispute. It would not, in my opinion, be proper for the Magistrate to have to try a boundary dispute of that sort, and it would be unjust to the man who produces fifty witnesses to say that he has always regarded the particular place as within his boundary, that he should be punished by the Magistrate for fishing within that boundary. It cannot be an offence to do on one particular day what a man has done for twenty-five years in the *bonâ fide* belief that he had the right to do so. I think the arguments in favour of the amendment are so strong, and have been so lucidly and ably stated by the hon'ble mover of the amendment, that anything I might say might rather detract from their force than add to them. I therefore support the amendment."

The HON'BLE DR. RASH BEHARY GHOSE said in reply:—"It was said by the learned member who spoke first in opposition to my amendment that this was a Bill for the protection of private fisheries, and an amendment like this cannot therefore have any place in the present Bill. Now, the Indian Penal Code, I take it, is a Code enacted for the protection, amongst other things, of rights of private property. That Code says that if you take property from another it is theft; but it also says that it is not theft if you take it *bonâ fide* in the honest belief that you are entitled to it. Then it was said that the offence dealt with by this Bill may be called a crime; but what is the penalty?—only a paltry fine of Rs. 50. That may be a paltry amount to some of us: but we have been told that the people against whom the Bill is directed are poor, and that it will be impossible to recover any damages from them. That may be their misfortune: but I think a fine of Rs. 50 on a poor man means imprisonment in default of payment of the fine. I take it therefore that the punishment is a substantial punishment. Then it is said—Oh! but everybody will plead *bonâ fides*. It is not, however, what everybody may choose to plead, or even what everybody believes, that will decide the fate of the prosecution. The fate of the prosecution will be determined by the judgment of the Magistrate on the question whether there are, or there are not, reasonable grounds for the claim

which has been set up; and I take it that in passing a law like this, and arming the Magistrate with authority to punish the offender under this Act, we ought to proceed on the assumption that the gentlemen who will be called upon to exercise such authority are fairly competent for the discharge of their duties. Then the last argument of the hon'ble member seems to me altogether to destroy the force of what he had previously said. He said the administration of criminal justice proceeds upon the assumption that a man is not a criminal if he acted in good faith, or in the belief that he was entitled to do what he is charged with having unlawfully done. If that is so, where is the harm of putting in this clause in the statute itself? One may admire codification with its beautiful simplicity; one may also admire case-law with its remarkable elasticity, but I do submit that one cannot feel much admiration for a hybrid amalgamation of code law and case law where you have to find out the law, not from the statute itself, but partly from the statute and partly from the reported and unreported utterances of English and Indian Judges. That is a principle which I do submit is certainly not desirable. Then, again, something was said by the other hon'ble members who spoke—at least by one hon'ble member, so far as I remember—as to my objection being purely of a sentimental character. I submit that it is not so: and even if it were, the hon'ble member seems to forget that the administration of the criminal law is founded on the rules of morality, and ought not to be in habitual conflict with the general moral sentiments of the people. It has been said that you cannot make the squire and the labourer take the same view of the offence of poaching: and I think there may very well be a distinction between fish confined in a pond and fish enjoying their natural liberty in navigable rivers—at least in minds not trained to the appreciation of subtle or hidden analogies. We all know what Sydney Smith said of the difference between poultry and partridges: the difference certainly is not less marked here. I admit there is a right of property in unconfined fish: the Bill acknowledges it and protects it; but I submit it would be going too far if you were to punish those who, as one hon'ble member stated to the Council, had been in the habit of enjoying customary rights for generations, in happy ignorance of Gateward's case; the practical result, as those who have any experience of Indian litigants and their ways are well aware, would be simply to deter these people from exercising their ancient rights. Let it be fought out in the proper court, if it has to be fought out at all, namely, the civil court, but the terrors of the criminal law must not be called in aid to deter