

[*Maulvi Muhammad Yusuf ; Mr. Lyall ; Babu Surendranath Banerjee.*]

a fine is imposed in accordance with the amendment under consideration, then he may simply sit quiet and do nothing to cure his default. Without this amendment, he will try his best not to remain any longer in default: with the amendment he will persist in his default. Only two alternatives should be before the tenant, namely, action on his part to cure his default or conviction; this amendment unwisely gives him a third alternative."

The Hon'ble MR. LYALL said:—"I venture to think that the appeal *ad misericordiam* has no real weight. All who know the Mufassal well, as several Hon'ble Members present can claim to do, know how much the common people talk about *Mokulummas*, Courts, Thanas, Munsifis and the like. Your Honour has received repeated petitions upon any attempt to close a Munsifi or a Thana, and when a new registration office is opened, all the country round about know why it is opened; it will be talked about in the village, and will be a matter of common rumour. Therefore there can be no fear that the raiyats will not know why the new sub-registration offices are established and for what purpose they have to go to them."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Having seen that the sense of the meeting is against the amendment, I beg leave to withdraw it."

The Motion was, by leave, withdrawn.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that the following proviso be added to section 25:—

'Provided that no person shall be fined under this section except after he has been served with a notice to comply with the provisions of section five; the provisions of the Civil Procedure Code in respect of the service of notice shall apply to the service of notice in such a case.'

He said:—"Section 25 provides that a notification is to be issued in the Calcutta Gazette, and on the issue of such a notification zamindars have to give notice of every change of tenancy which occur in their estates, and if they fail they are to be prosecuted and punished. I think this is a hard measure to mete out to the zamindars. I should like to know how many zamindars read the Gazette. I should like to know how many who are not zamindars wade through the pages of the Gazette. An absentee landlord may be ignorant of a general notification issued in the columns of the Calcutta Gazette. He may thus be

[*Babu Surendranath Banerjee ; Mr. Buckland ; Mr. Ghose.*]

punished through no fault of his. If a personal notice were issued upon him, he would have no excuse. I have referred to the Local Self-Government Act under which zamindars have to submit certain returns, and in respect of those returns notice is given. At any rate some provision of the same kind ought, I submit, to be made in this Bill."

The Hon'ble MR. BUCKLAND said:—"The Hon'ble Member is very sanguine if he thinks that a mere notice to the zamindar will have the effect of making the Act more acceptable to him. Most likely the notice will be treated in the way that other notices are treated. I believe the arguments for and against this motion have been practically exhausted. I shall therefore only repeat that the Government is distinctly opposed to this notice being required."

The Hon'ble MR. GHOSE said:—"I desire to support this amendment. I have tried to make my position clear. I tried to make myself understood that while I thought the amendment of the Hon'ble Member for the Corporation in regard to section 24 is not really necessary, and while I was not prepared to go as far as he proposed with regard to notice being served upon a raiyat calling upon him to give notice of a transfer effected by him, I tried to distinguish between the two cases—the case of the raiyat who makes the transfer, and the case of the zamindar who is not a party to the transaction, but who nevertheless may be required by a notification in the Calcutta Gazette to make a return, and especially in the case of those zamindars who do not know English or whose amlah do not know English. The Hon'ble the Legal Remembrancer charged me with endeavouring to mislead the Council by pleading ignorance on the part of zamindars, and he reminded me that ignorance of the law is no excuse. I beg to assure him that nothing was further from my intention than to plead ignorance of the law on behalf of any one. But here we are not sitting in judgment over any zamindar; we are legislating; we are providing the machinery for the working of this Act; and as legislators we ought to take care that adequate provision is made for the purpose of bringing these new obligations to the knowledge of the zamindars before they are dealt with as offenders under this law; and I threw it out as a suggestion that a notification in the Calcutta Gazette is not sufficient in my judgment, and I think that some proceeding might be taken with little or no trouble to the Government, but with great advantage to those

[*Mr. Ghose ; Sir Griffith Evans ; Mr. Buckland.*]

who will be liable to punishment for non-compliance with a requisition of which they had never heard. And, following the analogy of the Road Cess Act, I think nothing would be easier than by beat of drum to make a proclamation, so that the fact may be made known; and if, after being made acquainted with his new obligations under the law, a zamindar still persists in disregarding the obligation, I can see no objection to his being punished. But I thought then, and I think so still, that some more effectual notice than a mere notification in the Gazette might be given with great advantage. I challenge the Legal Advisers of the Government to point to a single instance in previous legislation on a similar subject requiring returns from zamindars, where a notification in the Calcutta Gazette has been deemed sufficient, and I shall be very much surprised if they are able to find any instance where it is not provided that new obligations of this character imposed upon zamindars should be brought to their knowledge by service of notice or by proclamation."

The Hon'ble SIR GRIFFITH EVANS said:—"There is a proviso to section 14 of the Road Cess Act which provides for the making of a proclamation which I think will cost the Government very little trouble, and which I think will meet the views of those who press the hardship to the zamindar of getting no information except through the Calcutta Gazette. I propose to insert similar words as sub-section (2) of section 5."

The Motion was, by leave, withdrawn.

The Hon'ble SIR GRIFFITH EVANS, by leave of the Council, moved that the following be inserted as sub-section (2) to section 5:—

'(2) The Collector of the district shall cause such notification to be published by affixing a copy thereof in some conspicuous place in the office of such Collector, in every Civil Court, in every police-station, and in the office of every Sub-divisional Officer within the district, and in any other manner which the Local Government may from time to time direct.'

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND said:—"I beg leave to move a verbal amendment in sections 24 and 25. In those sections, and in the proviso which was added to section 25 on my motion, the word 'Collector' is used, but in other parts of the Bill the expression 'Collector of the district' is used. My motion there-

[*Mr. Buckland ; Mr. Ghose ; Babu Surendranath Banerjee ; Mr. Lyall ; the President.*]

fore is, that in sections 24 and 25 and in the proviso to section 25 the words 'Collector of the district' be substituted for the word 'Collector' wherever it occurs."

The Motion was put and agreed to.

The Hon'ble MR. GHOSE, by leave of the Council, withdrew the motion of which he had given notice, that section 25 of the Bill be omitted.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in line 6 of section 29, the words beginning with "and the amounts" to the end of the section be omitted, and that the following be substituted in their place:—

'and allot the cost of such survey in the following proportions:—

'One-fourth to be borne by the Government, five-sixteenths by the raiyats, including tenants, rent-free owners and occupiers, and seven-sixteenths by the zamindars; and the Local Government may specify the date from which the expenses aforesaid shall be recovered, and also the rate per acre based upon the aforesaid proportions to be paid by the said proprietors, landlords, tenants and rent-free owners and occupiers.'

The Hon'ble MR. LYALL rose to order. He said:—"I beg to ask the Hon'ble the President whether, under the provisions of section 19 of the Indian Councils Act, this motion can be made without the previous sanction of the Governor General in Council?"

The Hon'ble THE PRESIDENT said:—"I think that the provision to which the Hon'ble Mr. Lyall has referred does not apply to the motion before the Council, and that the amendment is one which it is in the power of the Hon'ble Member to propose."

The Hon'ble BABU SURENDRANATH BANERJEE continued:—"It was made a matter of complaint when the Bill was referred to the Select Committee that an allotment of the costs was not specifically made. The Secretary of State has ordered that $\frac{1}{4}$ th of the cost of the Bihar Survey should be borne by the Government, $\frac{5}{16}$ ths by the raiyats, and $\frac{7}{16}$ ths by the zamindars. The object of this amendment is to state specifically the proportion of the cost which each party should bear, and in proposing this amendment I have followed the recommendations of the Secretary of State. It is a matter of the greatest importance that

[*Babu Surendranath Banerjee ; Mr. Buckland ; Mr. Ghose.*]

the question of the proportions in which the cost of the survey and settlement should be paid should not be left undefined. These are my reasons for bringing forward this amendment."

The Hon'ble MR. BUCKLAND said:—"The argument of the Hon'ble Member would have some validity if this were an Act applicable to the Bihar Survey and Settlement only and not to any other survey and settlement. The Secretary of State's Despatch, in which he laid down the proportions to be borne by the several parties concerned, is perfectly well known, but that Despatch relates only to the case of the Bihar Survey, and it is not likely that the injunctions contained in that Despatch will be disobeyed; therefore, in so far as this amendment refers to the Bihar Survey, we can give the Hon'ble Member an assurance that the apportionment laid down in the Secretary of State's Despatch will be observed. But it is quite impossible to say now that that proportion will be maintained in the case of every other survey, and it is unreasonable to make such a request. The effect of adopting this amendment would be that in every survey and settlement which may be hereafter made, the Government should undertake to pay a quarter of the bill. That would be quite unprecedented, and therefore the motion as it stands must, I think, be decisively opposed; as far as the Bihar Survey is concerned, it is not likely that the Secretary of State's orders will be overlooked."

The Hon'ble MR. GHOSE said:—"I think it will save time if I were to support my hon'ble friend's amendment. I think it only right that the proportions to be borne by the three parties should be embodied in the law, and that it should not be left entirely vague and indeterminate as to what proportion should be borne by the State, or whether any proportion should be borne by the Government, and what proportion should be borne by the raiyats and by the zamindars respectively. There is absolute unanimity of opinion on this subject in the reports received from all the public bodies who have been consulted on the subject of this Bill. I will read to the Council a short extract from the letter of the Bengal Chamber of Commerce on this point. They say:—

'The proportion in which survey expenditure incurred in any district is to be divided between the State, landlords and tenants is spoken of, but is not made clear. It is only provided that the distribution of the Cess shall be made under certain rules to be framed, as the Committee would recommend, by the Local Government, but the proportion is not stated. The Committee comment upon this omission. The proportion has been fixed in Bihar and

[*Mr. Ghose ; Mr. Beighton.*]

has received the sanction of the Secretary of State, and they can perceive no objection to its being repeated in this section.'

"That is exactly what my friend's amendment proposes to do, instead of leaving it to Your Honour's Successor on the recommendation of the Collector of the district, who may recommend that the whole be thrown on the zamindar, or if he is a *pro* zamindar, he may recommend that the whole expense be borne by the raiyat; or he may recommend that no portion of the expense should be borne by the Government. I submit that the recommendation of so high an authority as the Bengal Chamber of Commerce ought to be adopted."

The Hon'ble MR. BEIGHTON said:—"The Hon'ble Member has failed to notice that in the interests both of the raiyats and the zamindars it is better that the proportions in which the expense should be borne should not be stereotyped in the Bill. It often happens that a survey is necessary on behalf of one of the parties only. A survey, for instance, may be ordered by the Collector in a case where there is a combination among tenants not to pay rent. Is it fair in such a case that the landlord should be saddled with even one-fourth of the cost? Or take a case where a landlord has applied for a survey because the accounts of his property are in a state of confusion. Is it fair that in such cases as these one party or the other should pay the precise proportion of cost which has been decided in the case of the Bihar Survey? I think it would not be at all to the interest of either raiyats or zamindars that the proportions of cost to be borne by them respectively should be irrevocably fixed, whatever may be the circumstances of each case. Then again let me draw the attention of the Council to the case provided for in section 101 (1) (b) of the Bengal Tenancy Act where the Local Government may order a survey in order to avert a serious dispute between the tenants and their landlords. Does the Hon'ble Member seriously contend that in such a case as this, without any reference to the merits of the case or the party at default, the zamindar is to pay 7 annas, the tenant 5 and the Government 4 annas? One would imagine there was some particular virtue in the combination 7, 5 and 4 which the Hon'ble Member wishes to perpetuate. I cannot but hope that the Council will see that it is essential to leave it to the Government to decide under the circumstances of each particular case how in fairness to all parties the expense ought to be borne."

[*Sir Griffith Evans; Babu Surendranath Banerjee.*]

The Hon'ble SIR GRIFFITH EVANS said:—"Leave, I take it, has been obtained from the Government of India to bring in this Bill, because it affects to a certain extent the Bengal Tenancy Act, which was passed by the Governor General in Council. Section 114 of that Act provides that expenses incurred in carrying out the provisions of this Chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area in such proportions as the Local Government, having regard to all the circumstances of each case, may determine.

"That is the rule laid down by the Bengal Tenancy Act, and it is matter for consideration whether, the Government of India not having given leave for a new departure of the kind here proposed which would practically operate as a repeal of section 114 of the Bengal Tenancy Act, the result would not be to jeopardise the whole Bill altogether. I cannot say that the passing of this amendment is not within the competency of the Council, but I think it is hardly open to us at this stage, after it was submitted to the Government of India in a particular form, to make a new departure in the way now proposed."

The Hon'ble BABU SURENDRANATH BANERJEE in reply said:—"It would savour almost of impertinence if I were to argue a point of law with the learned Advocate-General and the learned Legal Remembrancer, but I beg leave respectfully to submit that we cannot enact any law calculated to supersede the provisions of the Bengal Tenancy Act. We have not the competency, even though we had the inclination, to do so. All that I contend for is that all Cadastral Surveys must be governed by the provisions of this Act; therefore the remarks of the learned Advocate-General, so far as I can see, are irrelevant to the issue before us. I say this with great deference, but I am bound to put this view before the Council."

The Hon'ble SIR GRIFFITH EVANS explained:—"The expenses which will be incurred under this Act are expenses for maintaining Records of Rights made by virtue of the Bengal Tenancy Act. We are dealing with the expenses of a Survey and Settlement of Rights which is to be done not under the authority of this Act, but under the authority of the Bengal Tenancy Act."

[*The President.*]

The Hon'ble THE PRESIDENT said:—"I think the fact which has been mentioned by the Hon'ble Mr. Ghose, namely, the great unanimity evinced by the public bodies who have commented upon this provision of the Bill, only shows how their thoughts have been concentrated on the one leading case of North Bihar, while there are many other classes of cases which have to be borne in mind by those who have to work the Bill. The Hon'ble the Legal Remembrancer has pointed out one such class of cases to which the amendments both of the Hon'ble Babu Surendranath Banerjee and of the Hon'ble Mr. Ghose would not apply, namely, where the proprietor applies for a Cadastral Survey on account of the lawlessness and contumacy of the raiyats, or on account of the confusion into which a particular estate may have fallen. There is another class in which the Magistrate applies for a settlement-survey as the only means of settling long-pending and aggravated quarrels between proprietors and tenants. In such a case it would be quite unreasonable to apply the particular ratios applied by the Secretary of State in the case of the Bihar Survey. That case being the leading case has caught the public eye, and especially the eye of the Bengal Chamber of Commerce, which naturally has no experience of the many different kinds of surveys under the Tenancy Act. Where a settlement-survey is applied for on account of disputes between landlords and tenants, it would not be reasonable that the Government should pay any portion of the cost. A great amount of survey work is done under the Tenancy Act in Government Estates and in Wards' Estates; and the advantage derived from such surveys is so great that generally the whole of the cost is laid upon the estate, and nothing at all falls upon the raiyats. But if the raiyats are found to be extremely unreasonable; if they prolong the work and increase the expenditure by their recalcitrancy, the Government may well say to them, 'you must bear a portion of the cost.' These facts show the importance of adhering to the principle which the Hon'ble the Advocate-General has supported, that it is absolutely necessary to have a free hand in each particular case. The case of the North Bihar Survey would by no means serve as a precedent in any other classes of cases. I am hopeful that after hearing this explanation the Hon'ble Members will be content to withdraw their amendments, because it will be seen that they are quite impracticable, and would produce results which are not anticipated by themselves."

The Motion was put and negatived.

[*Mr. Ghose ; Babu Surendranath Banerjee ; Mr. Buckland.*]

The Hon'ble MR. GHOSE, by leave of the Council, withdrew the motion of which he had given notice that in section 29, the words within brackets from "in such proportion" to "determine" be omitted, and that the following words be substituted:—

'In the proportion of 7 annas by the proprietors and landlords and 5 annas by the tenants.'

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following proviso be added to section 29:—

'Provided that pending the final determination of the total expenses which have been incurred in making a survey, the accounts shall be published in the local gazette, and the parties liable to contribute towards the expenses shall be allowed the opportunity of submitting their representations in connection therewith.'

He said:—"This amendment is somewhat loosely worded, but if the principle is accepted, I should be happy to re-draft it with the assistance of the Council. I maintain that those who contribute towards the cost of the survey have a right to know how their money is spent; and, moreover, I submit that the publication of the accounts will go far to ensure economy. The right which my amendment seeks to confer upon those who contribute towards the cost of the survey will go still further to promote the same result. I am informed that, in connection with the Cadastral Survey carried on in the estates of the Maharaja of Tippera, there was a good deal of extravagance. I have heard it stated that boundary stones to demarcate the villages which could be had in the bazar for nine annas a piece were charged for at the rate of nine rupees a piece. I have heard that from a distinguished pleader from Tippera; but, however that may be, I submit that the accounts should be published in order that those who contribute towards the cost of the survey may have an opportunity of submitting any representations they think fit in connection with the matter."

The Hon'ble MR. BUCKLAND said:—"I regret that I must disappoint the Hon'ble Member again. It is really impossible to grasp what this demand really amounts to. It is very difficult to carry out these operations, and to bring them to a conclusion. The Hon'ble Member may rest assured that all that is necessary is done to ensure economy, but it will be a tremendous addition to our labours if it is necessary to publish the bill of charges, and to

[*Mr. Buckland ; Maulvi Muhammad Yusuf ; the President.*]

allow every raiyat to come forward and submit his representations in a formal manner. If we allowed anything of this sort to be done, it would perhaps double and treble the amount of work necessary to carry out these very large survey and settlement operations. I can see no harm—in fact we do it now—in publishing in the Calcutta Gazette the Government Resolution regarding the survey which will sufficiently inform the public, and which makes known generally what have been the total charges incurred, and what is the rate of cost per acre; and the expense devolving upon any raiyat can be calculated therefrom. Nothing of real importance is held back, and it is pretty well known beforehand that the expense ought not to amount to more than an average of 8 annas per acre divided among all the parties. We do all we can to keep down the expense, and no good would be gained by allowing the raiyats to contest every small point. Nothing will involve more trouble on all parties concerned than to have every small item of expense disputed, and to have elaborate arguments and discussions. I regard this proposal as altogether unnecessary, and I think my hon'ble friend may trust us to keep down charges as low as possible. I must therefore oppose the amendment."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"I consider this amendment to be a very reasonable one. It deals with two questions—*first*, the publication of the accounts in the Calcutta Gazette, and *secondly*, the opportunity to submit representations. The two points stand on different bases. As regards the first point, I do not see any objection to the amendment. As regards the second point, there might be some objections to allow thousands of persons, whether zamindars or raiyats, to make representations; but when we are going to tax their pockets, then the objection to give them an opportunity to submit their representations does not seem to be very formidable."

The Hon'ble THE PRESIDENT said:—"I think this is an amendment which should not be passed by the Council. It proposes to put the Government in a position which they ought not to be asked to occupy. It will create a new procedure contrary to what exists in similar cases. For instance we carry on embankment work under the Embankment Act, and in many cases we charge proprietors of estates protected by such embankments with the exact cost spent for their maintenance from year to year. Nobody has ever asked that the accounts should be furnished in detail, nor have I ever heard any suggestion that the expenses

[*The President ; Mr. Buckland.*]

have been overcharged, or that the charges have been unduly distributed. Moreover, the amendment as it has been drafted will not meet the Hon'ble Member's wishes, unless the accounts are published in great detail. We do publish the accounts in some detail, and in the next Calcutta Gazette the Hon'ble Member will see the accounts of the survey and settlement work carried on last year shew with considerable fullness, and under different heads. That will give as much information as the statistician requires to understand the nature and cost of the work, and to form a judgment whether the operations have been carried out with an eye to economy or with extravagance. With regard to the instance of excessive charge, which the Hon'ble Member has given, I am sure that he has stated it as he has heard it from the Pleader of Tippera to whom he referred; but no information has reached me on the subject; and while it is easy to make such assertions, it is impossible to refute them at a moment's notice and without further enquiry. But all that I have heard justifies me in saying that it is presumable that no such extravagance has taken place. It is true that the cost of the survey in Tippera has been more expensive than the average, but there are local causes, such as complicated tenures and conflicting interests, which have made that inevitable. I think the Council will be justified in trusting the Government to take care that economy is observed in carrying out surveys and settlements. We have published our estimate, which is that we desire to work at the average cost of 8 annas per acre. To a certain extent my personal credit is pledged to carry that estimate out, and every nerve of the Government is strained to arrive at that result, and every possible endeavour will be made to make the work of the department economical. I therefore am obliged to say on the part of the Government that I cannot advise the Council to accept this amendment."

The Motion was put and negatived.

The Hon'ble MR. BUCKLAND moved that in section 30 the words "and landlords" be omitted. He said:—

"This is a verbal amendment, the words 'and landlords' having crept in by mistake. We only want to provide that proprietors of estates should pay their share of the expense at the same time as they pay their revenue. The term 'landlords' covers many other persons besides proprietors, and includes raiyats. I therefore propose to strike out the words 'and landlords' "

The Motion was put and agreed to.

[Babu Surendranath Banerjee; Mr. Buckland; Mr. Ghose.]

The Hon'ble BABU SURENDRANATH BANERJEE moved that in section 30 for the words "together with such instalment of land revenue as the Local Government may direct" the words "to the Collector or such other officer as the Local Government may direct" be substituted. He said:—

"Here the cost of the survey is treated as part and parcel of the land revenue. If a Collector is inclined not to accept the land revenue unless the cost of the survey has been paid, the estate may be sold up. This seems unnecessary, having regard to the fact that arrears of payment under this Act can be recovered as a public demand. My amendment seeks to rectify this defect."

The Hon'ble MR. BUCKLAND said:—"I think the Hon'ble Member has gone quite out of his way to pick a hole in this section. He is afraid that an amount due from a proprietor under this Act will be regarded as part and parcel of the land revenue, but the very words which have been used show that it is distinct from land revenue. The section says that the amount shall be paid *together with* such instalment of land revenue, so that it is stated as distinctly as possible that it is another thing from an instalment of land revenue. The object of the section is that, whereas proprietors have to pay their land revenue, it should be open to the Government to say that at such *kist* day as the Government may think fit the amount of the survey settlement charges due from the proprietors shall be paid at the same time as an instalment of land revenue, and I think there is no hardship in that. It is a very ordinary sort of provision to make: and we particularly go on in the same section to say that arrears of the survey settlement charges shall be recoverable under the certificate procedure, so that there will be no question of selling up an estate for default in payment of these charges. I think the distinction is as clear as possible, and that the amendment is unnecessary."

The Hon'ble MR. GHOSE said:—"I am not quite convinced that the danger which is apprehended by the Hon'ble Mover of the amendment is so entirely without foundation as the Hon'ble Member in charge of the Bill seems to think. No doubt it is expressly laid down in section 30 that arrears of payment under this section shall be recovered under the certificate procedure, but for my part I fail to see the necessity of coupling the payment of this debt with the payment of any particular *kist* of land revenue. The association of a

[*Mr. Ghose; Mr. Buckland; Mr. Lyall; Babu Surendranath Banerjee.*]

particular *kist* of land revenue with any other debt may imply that the non-payment of the one will involve the non-receipt of the other, and I should not be surprised if the Collector were to put that interpretation upon it, and then by the operation of the Sunset Law the result apprehended by my hon'ble friend will take place. For my part I have not yet been able to understand, nor has the Hon'ble Member in charge of the Bill attempted to tell us, what necessity there is for associating the payment of arrears recoverable under the certificate procedure with the payment of land revenue. Why should not the arrears be recoverable, like any other public demand, wholly apart from a *kist* of land revenue? Therefore, there may be the danger of the Collector under this section declining to receive a *kist* of land revenue unless at the same time the arrears due under this Act are paid."

The Hon'ble MR. BUCKLAND said:—"With Your Honour's permission I would explain that the simple object is to provide that the amounts due under this Act shall be paid *at the same time* as the land revenue. It would be for the convenience of all parties that, when the land revenue is being paid in, the proprietors should at the same time pay in these amounts."

The Hon'ble MR. LYALL said:—"I desire to add one word as to the reason why I agreed to this section. Without it there is nothing in this Bill or in the Tenancy Act that makes the payment by a proprietor due. Without fixing some date on which the payment is due, it cannot be recoverable as a public demand. All that I hold to be intended by this section is to fix the date when the payment becomes due; and it was considered that it would be convenient to the proprietor to pay it at the same time as an instalment of revenue. No Collector can refuse to receive land revenue, provided it is paid before sunset of the last day of payment. He cannot refuse to receive it from anybody, whether connected with the estate or otherwise; nor can he refuse any payment, however small in amount, provided it is offered before the latest time of payment. Therefore, the fear which has been expressed by the Hon'ble Mover of the amendment that the Collector might refuse payment is not a well-grounded one."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"After the discussion which has taken place as to the purport of the section, I beg leave to withdraw my amendment."

[*The President ; Mr. Buckland ; Babu Surendranath Banerjee.*]

The Hon'ble THE PRESIDENT said:—"I think the Hon'ble Member is wise in wishing to withdraw this amendment, because, if there was any danger of misconstruction of the meaning and intention of the section, this discussion will clear it away. Putting it briefly, the real object is to prevent the zamindar from being called upon to pay his share of the cost, except at a time when he has to pay an instalment of land revenue. It is entirely for the convenience of the landlords that the section has been framed."

The Motion was, by leave, withdrawn.

The Hon'ble MR. BUCKLAND moved that in section 31 the word "tender" be substituted for the word "receipt." He said:—

"This is a mere verbal amendment. The section provides that the amount due from a tenant, &c., shall be paid by him on 'receipt' of the extract from the Record of Rights. Suppose that he will not receive the extract. We propose that he shall be liable to pay the amount due from him, when the extract from the *khatian* is 'tendered' to him. You may take an extract to the raiyat, but you cannot make him receive it; therefore I propose to substitute the word 'tender' for the word 'receipt.'"

The Motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in line 4 of section 34 the words "two months" be substituted for "one month."

The Hon'ble MR. BUCKLAND said:—"The section of the Registration Act upon which this section of the Bill is based is section 72. I do not know whether the Hon'ble Member has referred to that section, but there he will find that an appeal made from a Sub-Registrar's decision to the Registrar to whom he is subordinate, must be made within thirty days from the date of the order of the subordinate officer, and we have followed that principle. If thirty days have been found sufficient in the Registration Act of 1877, we anticipate that it will be found quite sufficient under this Bill, and I see no reason for extending the time. In a matter of this sort, the best thing is to adopt the precedent of the existing law, of which we are following the procedure as far as we can."

The Motion was put and negatived.

[*Mr. Buckland ; Babu Surendranath Banerjee.*]

The Hon'ble MR. BUCKLAND said:—"With Your Honour's permission I will ask the Council to accept an amendment of which I have not been able to give notice. I am indebted to my friend the Hon'ble Member, the Collector of Calcutta, for a suggestion which may be of very considerable importance in the working of the Bill. It is a little section which is taken from section 87 of the Land Registration Act. It will empower the Collector, in cases where he is overwhelmed with appeals under this Act, to appoint an officer who will exercise what is called special appellate powers. Particularly at first there may be a large number of petty appeals, and it may be very undesirable that the time of hard-worked Collectors should be taken up with such cases. He may have an experienced Joint-Magistrate or Deputy Magistrate who could dispose of such appeals under general instructions from the Collector. For these reasons, I move that the following section be inserted after section 34:—

'The Local Government may from time to time vest any officer other than the Collector of the district with special appellate powers under this Act; and every Officer so vested shall be competent to hear and decide any appeal which the Collector of the district is competent to hear and decide under this Act.'

The Motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in clause (2) of section 35, "section 190" be substituted for "section 192."

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND moved that the Bill, as settled in Council, be passed. He said:—

"I do not propose to detain the Council at any length. I think we may consider ourselves fortunate that we have got through this debate in four hours. I hope that the Bill will now receive the sanction of the Government of India, and that the Act will be launched under Your Honour's auspices, assume shape and be brought into working order. It is impossible to predict with any certainty what will be the result of the working of this Act, but what we claim to have done is that we have made this effort to redeem the pledge given by the Government that an Act will be passed for the maintenance of a Record of Rights; and we have proceeded on the lines which Your Honour intimated in a

[*Mr. Buckland; Maulvi Muhammad Yusuf.*]

general way, so long ago as June, 1892, should be followed, namely, that the measure should take the shape of an amplification of Registration Offices. It now remains for the people to co-operate with us, and to come forward and register their transfers, and to accumulate for themselves a body of evidence of their transfers and successions that shall stand them in good stead in the day of litigation. We hope that this measure, which will be ancillary of course to the more important measure of the Tenancy Act, and particularly Chapter X of that Act, will conduce to the peace and order of any district or part of a district to which it is applied, and that it will enhance the value of landed property and conduce to the peace and prosperity of the peasantry of Bihar and other parts of the country to which it may be applied. I have again to thank my hon'ble colleagues in the Select Committee; I have also to thank the several Public Associations which have sent us valuable reports upon the subject of this Bill, and I have to thank the Council as a whole for the patient hearing which they have accorded me."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"I will not, at this late hour, detain the Council with any lengthy observations regarding the merits of the Bill as it now stands. I may, however, be allowed to say in connection with the Bill that the attitude of the President towards the non-official members of the Council has been happily one of encouragement and conciliation; and perfect freedom of thought and full liberty of speech have always been conceded to us, although some portions of the debate were well calculated to put patience and temper to severe test. For this we are sincerely thankful to the Government. All questions that have come up for debate and decision have been decided after due deliberation and full and free discussion on their own merits, according to the true convictions and opinions of the Members, and the Government has never had recourse to official majority in connection with any question relating to the Bill. This is highly encouraging, and leaves nothing to be desired. Although I would have been glad if many more of the suggestions and amendments which we proposed had been accepted and carried out, still I cannot shut my eyes to the fact that Government has conceded a great deal, and has never refused to adopt such of our suggestions as were deemed by it reasonable and fit to be accepted. The Bill has been conceived and prepared with the honest belief that it would promote the good of the people. Altogether the Bill as it now stands assumes a shape so that it

[*Maulvi Muhammad Yusuf; Mr. Risley; the President.*]

is least open to adverse and hostile criticism: the most objectionable parts have been purged away, and it is impossible to expect that it should assume a more satisfactory appearance. Under these circumstances, I vote that the Bill should be passed into law."

The Motion was put and agreed to.

THE CALCUTTA PORT ACT, 1890, AMENDMENT BILL.

The Hon'ble MR. RISLEY presented the report of the Select Committee on the Bill to further amend the Calcutta Port Act, 1890.

The Hon'ble MR. RISLEY also applied to the President to suspend the Rules of Business.

The Hon'ble THE PRESIDENT having declared the Rules suspended—

The Hon'ble MR. RISLEY moved that the report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill. He said:—

"In dealing with this Bill I am fortunate in having very little to say. The only section in which any substantial alteration has been made by the Select Committee is section 15, which, as it originally stood, empowered the Port Commissioners to declare any of their warehouses to be bonded warehouses. It was suggested in Select Committee that, as the Sea Customs Act of 1878 already conferred the power of converting private licensed warehouses into bonded warehouses, the amendment proposed by the Bill, as it was introduced, would have the effect of creating what may be described as a double procedure for doing practically the same thing, and for that reason it was considered better to proceed upon existing lines for converting the warehouses of the Port Commissioners into bonded warehouses within the meaning of the Sea Customs Act, instead of proceeding by independent legislation to empower the Port Commissioners to do what is required. Having regard to the important interests at stake and the somewhat intricate legal questions involved, the Port Commissioners felt that this was a point which required to be determined with the greatest care, and accordingly, with the concurrence of the Select Committee, the sections as re-drafted by them were referred to the Hon'ble the Advocate-General, and a slight modification was introduced by him. The form the

[*Mr. Risley ; Babu Surendranath Banerjee.*]

sections now take is that of empowering warehouses belonging to the Port Commissioners to be licensed under section 16 of the Sea Customs Act; they would then become bonded warehouses, the provisions of that Act would apply to them, and the Chief Customs authority would have full executive powers in the matter. When the question was referred to the Hon'ble the Advocate-General, he held that in order to do that it would be necessary to declare *all* the warehouses of the Port Commissioners to be private warehouses within the meaning of the Sea Customs Act, and capable of being licensed as bonded warehouses. He also advised that, as the Bill in the form in which it was amended would have the effect, I can hardly say of altering, but at any rate of touching, the Sea Customs Act, it would be necessary to obtain the previous sanction of the Governor General in Council; this has, therefore, been done, and the necessary sanction has been received. This is really the only substantial alteration which has been made by the Select Committee, the other alterations being merely formal and subsidiary to this one. I have omitted to explain that the section dealing with warrants has been modified to some extent. As it at first stood it was necessary, as we were dealing with an independent enactment, to state the section to which warrants should conform, and to give a statutory form of warrant; but now, having brought all these arrangements within the purview of the Sea Customs Act, we say:—'The warrants delivered under section 96 of the Sea Customs Act shall in the case of the said warehouses be signed by the Commissioners or some person duly authorized by them.'

The Motion was put and agreed to.

The Hon'ble MR. RISLEY 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 BABU SURENDRANATH BANERJEE moved that in section 4 of the Bill, the words "passengers or" be omitted. He said:—

"Before making any remarks upon this section, I wish it to be understood that I have no desire to stand in the way of the passing of this Bill, which I understand has been introduced at the instance of the Mercantile Community which is so worthily represented in this Council by my hon'ble friend to my

[*Babu Surendranath Banerjee ; Mr. Risley.*]

left (Mr. Smyth). I think it is no part of the duty of a Port Trust to make arrangements for the conveyance of passengers. They deal with goods which arrive at, and are exported from, this Port. But apart from this question of principle, I have to observe that if the Bill is to be passed in the form and shape in which it has been laid before us, it will seriously interfere with the operations of the Calcutta Tramways Company, and will entail heavy loss to the Corporation of Calcutta. The Council will remember that last year the Corporation entered into a contract with the Tramways Company which was legalised by this Council. Under the terms of that contract the Company pay a mileage rate to the extent of several thousands of rupees per annum to the Corporation, and they further keep in order the portions of the roads over which the tramway lines are laid. If this section is passed into law, and if the Port Commissioners take advantage of this provision and run trams for passengers from Chitpore to Kidderpore, the Tramways Company will have to cease running their cars along that part of their line, which will not only mean loss to the Corporation, but serious inconvenience to the public.

“In this connection may I be permitted to inquire of the Hon’ble Member in charge of the Bill as to what has become of the little project of law proposed by the Calcutta Corporation to enable them to recover rates upon huts situated on lands belonging to the Port Commissioners? I am told that the Corporation lose about Rs. 20,000 a year for want of such a necessary provision in the law. It is a very urgent matter, and I appeal to the Hon’ble Member to expedite the settlement of the question, which the longer it is delayed the heavier is the loss which the Corporation of Calcutta have to sustain.”

The Hon’ble MR. RISLEY said:—“I think it will be convenient if I deal first with the matter which the Hon’ble Member has mentioned last, namely, the question of the assessment of buildings within the Port Commissioners’ lands for the purposes of the Calcutta Corporation. I understand that there is a special arrangement for assessing the property of the Port Commissioners by a percentage on the money which was spent on the property, but that does not provide for the assessment in the ordinary way of buildings belonging to persons other than the Port Commissioners, but which stand on their property. There is no question whatever as to the justice of the claim which the Corporation has put forward. It has been submitted to this Government and considered,

[*Mr. Risley.*]

and a proposal to deal with it by an amendment of the Calcutta Port Act has been submitted to the Government of India. But I must explain that the proposal to deal with the Calcutta Port Act in the way in which it is dealt with in the Bill before the Council dates some time back. The question to which my hon'ble friend refers came in subsequently, and the original proposal having already been reported to the Secretary of State, it was held that a further report would be necessary in order to the introduction of the proposed amendment. In other words, it will not be open to us, under the rules relating to the previous sanction of the Government of India, to bring that question into the Bill now before the Council. It has been reported in the regular course of business, and I believe there is very little question as to the necessary sanction being received, and as soon as sanction is received, the matter will be dealt with in the ordinary way.

“As regards the motion to omit the words ‘passengers or’ in section 4 of the Bill, which amends section 35, sub-section (2), of the Port Act, I must express my extreme regret in adding one more to the series of instances in which the Hon'ble Member's proposals have been declined during to-day's debate. I see no way of getting over the matter, except that of leaving the thing as it stands; there does not appear to be any means of compromise in the matter. At the same time I think the apprehension which the Hon'ble Member has expressed, that the Port Commissioners' line will compete with the existing Chitpur Tramway line, in which the Municipal Commissioners are interested, is altogether groundless. What the Mercantile Community wish the Port Commissioners to do—though the Port Commissioners are not specially anxious to do it—is that they should carry passengers merely between the jetties and the docks. Obviously when a merchant's clerk or other employe has to go to the docks to look after consignments of merchandise, it is extremely inconvenient that he should not be able to make use of the Port Commissioners' tramway for the purpose, but I apprehend there is no question whatever of the Port Commissioners carrying general passengers and taking customers away from the Calcutta Tramway. In the first place, the provision in the Bill which will authorise the carrying of passengers will not be made use of on the whole of the line connecting Chitpur and Kidderpore, but only on the portion between the jetties and the docks. The Port Commissioners' so-called tramway, which is really a railway, used hitherto solely for carrying goods, runs inside the Port Commissioners' premises, and

[*Mr. Risley ; Mr. Ghose.*]

would, I imagine, offer no attractions to the ordinary passenger. There will, I understand, be no published time-table and no regular passenger trains. The passengers carried will consist of the special class of clerks, sarcars, stevedores, ships' coolies, and others having business at the docks, and I do not think that such small traffic can possibly interfere with the interests of the Calcutta Tramways Company. I may further state that if the Municipal Commissioners will be satisfied with an executive pledge to the effect that the permission to carry passengers will not be used so as to draw business away from the Calcutta Tramway, the Port Commissioners are willing to give such a pledge. Hereafter, when further occasion arises for revising the Port Act in connection with the question of assessment, which has been mentioned, the status of the Port Commissioners' Railway will doubtless come under discussion, and full expression will be given to the views of all the parties concerned—the Mercantile Community, the Municipal Commissioners, and the Port Commissioners."

The Hon'ble Mr. GHOSE said:—"I beg to congratulate the Hon'ble Member on the very satisfactory statement which he has made, and I think my hon'ble friend the Mover of the amendment must be perfectly satisfied with that statement, namely, that steps have been already taken in order to give effect to the proper and just claims of the Corporation, which my hon'ble friend represents here, regarding the assessment of certain property within the Port Commissioners' premises. With regard to the other matter which forms the subject of his amendment regarding the carrying of passengers by the Port Commissioners, it seems to me that after the explanation which has been given, that they will have no fixed time table, and will carry only certain clerks and sarcars and other people connected with the merchandise of the town; that they will have in fact no regular passenger service, I think my hon'ble friend should also be satisfied and should withdraw his amendment.

"Before resuming my seat I desire to take this opportunity, as this will probably be the last occasion on which I shall have the honour of addressing the Council, of expressing my sense of grateful appreciation of the patient and indulgent hearing which has always been accorded to me, and the kindness and courtesy which I have invariably experienced at the hands of every Hon'ble Member of the Council. And I trust, Sir, that although we have frequently found ourselves in opposition to the views of the majority of Hon'ble Members,

[*Mr. Ghose ; Babu Surendranath Banerjee ; Mr. Risley ; Mr. Lyall.*]

we have never lost sight of the spirit of compromise which ought to animate our debates, and that we have never been wanting in due and proper respect for the opinions of those from whom we have for the time being been compelled to dissent."

The Hon'ble BABU SURENDRANATH BANERJEE in reply said:—"After the explanation which has been given by the Hon'ble Member in charge of the Bill, and the assurance given by him that it is not in contemplation to use the Port Commissioners' Railway for the purposes of passenger traffic, but only for the convenience of those who are connected with the mercantile business of this Port, I beg leave to withdraw my amendment."

The Motion was, by leave, withdrawn.

The Hon'ble MR. RISLEY moved that the Bill, as settled in Council, be passed.

The Motion was put and agreed to.

THE BENGAL SANITARY DRAINAGE BILL.

The Hon'ble MR. LYALL moved that the Bill to facilitate the construction of drainage works for improving the sanitary condition of local areas be referred back to the Select Committee. He said:—

"At this late stage I do not propose to trouble the Council with more than a very few words. The Council will remember that at the end of February last the Select Committee who sat on this Bill presented a report, and that in the last paragraph of their report they recommended that the Bill, as amended by them, should be republished. In accordance with that recommendation the Bill has been republished; and in doing so the Government issued a Circular to all local authorities drawing their attention to the provisions of the amended Bill, and calling for an expression of their opinion. In accordance with that Circular a great number of replies have been received, some of which are very much to the point, and criticise the Bill on points which I think require more consideration than can be given at a sitting of the full Council. There are two points in particular on which new light has been thrown. These are first, the question of dealing with projects falling partly within the limits of one or more municipality. The other point is the manner in which the cost of the

[Mr. Lyall; the President.]

work carried out under the Act should be realised. These two points in themselves are sufficiently important to justify my placing on the agenda the motion standing in my name."

The Motion was put and agreed to.

The Hon'ble MR. LYALL also moved that the Hon'ble Mr. Risley be appointed to the Select Committee in the place of the Hon'ble Mr. Collier.

The Motion was put and agreed to.

ADJOURNMENT OF THE COUNCIL.

THE HON'BLE THE PRESIDENT said:—"This brings us to the end of the Cold-weather Session of 1894-95, and when we meet in July and August next, the first business of the Council will be to receive from the Select Committee the report on the Drainage Bill; and I trust that after such amendments as may seem necessary to be made, the Bill will be passed into law. There is a possibility of there being another Bill laid before the Council, namely, a Bill to amend the Partition Law, which has been in preparation for some time and has been sent to the Government of India, and if it be received back in time, it may perhaps be passed in the Summer Session, otherwise it will have to be delayed. I do not think there is any other legal work of importance with which I shall have to trouble the Council.

"I cannot close this Session without saying one word, with reference to what fell from the Hon'ble Mr. Ghose, to express how heartily I appreciate the spirit in which he and his *confrères* have joined our meetings, and how cordially I agree with what he has said, that the spirit of compromise and the endeavour to assist the Government by careful, honest and zealous consideration of the measures laid before them, has been the leading note of the Members of this Council. I am quite satisfied in my own mind that the extension of the Council has materially added to its strength, to its popularity, and to its power of doing good for the country. Of the Hon'ble Members present there are, I think, three whose term of office will come to an end before we meet next time, and who may be re-elected or who may not. If they are re-elected, we shall welcome them back; if not, we hope we shall find in their successors colleagues who are as generous and as zealous as they have been."

The Council adjourned *sine die*.

CALCUTTA; }
The 6th May, 1895. }

Reg. No. 190G-300-23-4.96.

H. L. BELL,
Offg. Assistant Secretary to the Govt. of Bengal,
Legislative Department

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 Indian Councils Acts, 1861 and 1892.

The Council met at the Council Chamber on Saturday, the 6th July, 1895.

Present:

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.

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

The HON'BLE D. R. LYALL, C.S.I.

The HON'BLE J. A. BOURDILLON.

The HON'BLE C. E. BUCKLAND, C.I.E.

The HON'BLE H. H. RISLEY, C.I.E.

The HON'BLE R. C. DUTT, C.I.E.

The HON'BLE RAI DURGA GATI BANERJEA BAHADUR, C.I.E.

The HON'BLE SURENDRANATH BANERJEE.

The HON'BLE J. G. WOMACK.

The HON'BLE MAHARAJA JAGADINDRA NATH ROY OF NATOR.

The HON'BLE MAULVI MUHAMMAD YUSUF KHAN BAHADUR.

The HON'BLE C. E. SMYTH.

STATEMENT OF THE COURSE OF LEGISLATION.

The Hon'ble THE PRESIDENT said:—"Before beginning the work of the Council, I wish briefly to state that the work of the Session which is now commencing is summed up in the List of Business which lies before Hon'ble Members. We have to introduce and to pass three small Bills, all of which will be brought forward to-day for the first time, and we have to carry through the Sanitary Drainage Bill, which is now in the hands of the Select Committee. I am in hopes that the Select Committee will be able to present their Report upon this Bill on Saturday next, and in that case I propose that we shall commence the discussion of it on this day fortnight, and then proceed to discuss it regularly as long as is necessary, till the Bill is passed. In that way I think it is probable that in the course of two, or at the outside of three, sittings, beginning from

[The President ; Babu Surendranath Banerjee ; Mr. Cotton.]

this day fortnight, the 20th instant, we shall be able to get through our legislative programme, and I shall then be able to release Hon'ble Members from further attendance in Council. Practically speaking this day fortnight will be the first day on which there will be anything but formal business before the Council, and I hope that by that time the Council will be completely re-organised, and that we shall then have present all the members who have already been elected, and who are now being re-elected, and I hope then to have the opportunity of welcoming them to the Council."

RAIN GAMBLING.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Has the attention of Government been called to the articles which have appeared in the newspapers, particularly in the *Bharat Mittra*, drawing attention to the nuisance of rain gambling at Barabazar? What action, if any, does the Government intend to take in the matter? Is the Government aware that the gambling is carried on openly in a place which is thronged with people from morning till evening and is not far off from the police-station, and that it is regarded as a serious nuisance by the respectable section of the community at Barabazar? Is the Government aware that rain gambling has been suppressed in the town of Bombay and in all the Native States?

The Hon'ble MR. COTTON replied—

"The Lieutenant-Governor has had the subject referred to under his careful consideration; he is advised that this form of gambling cannot be interfered with except by legislation, and he has decided that it is not desirable to attempt to legislate with the object of stopping it. His reasons are, firstly, that it is practically impossible to put down betting in private houses: if the particular form it has taken in the case under reference were stopped, it would break out in some other form, and if driven into secrecy, it might be even more harmful than if practised openly. Secondly, he does not think it possible to devise a law which would stop the form of betting known as rain gambling without also bringing such practices as betting on races, or on other events of chance, within the same prohibition; he does not think the public conscience would support this; and he is opposed to any legislation, the tendency of which would be to punish acts committed by one class, while similar acts committed by another class are not interfered with."

[Babu Surendranath Banerjee.]

ALLEGED DACOITY AT FARIDPUR.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

(a) Has the attention of Government been called to a charge of dacoity brought by one Tarak Chandra Bose in the Faridpur district against Aijuddi and others reported in the newspapers in April last? Is it true that the Deputy Magistrate who in the first instance enquired into the case remarked that there was scarcely a shadow of doubt that some of the accused entered the boat of the complainant and took its contents, and that in submitting the case for the orders of the Magistrate, recommended that the accused should be summoned—two under section 411, Indian Penal Code, and one under section 380, Indian Penal Code? Is it the case that the Magistrate, who never examined a single witness, but relied solely on the papers in the case, not only did not summon the accused, as recommended by the investigating officer, but directed that the complainant be prosecuted under section 211, Indian Penal Code, for bringing a false charge against the accused; that thereupon the complainant moved the High Court, who reversed the order of the District Magistrate, directing him to make a further enquiry and send up the accused to the Sessions, if there was a *prima facie* case; the High Court expressing their surprise that the Magistrate should direct the prosecution of the petitioner under section 211, Indian Penal Code, simply because there was not sufficient evidence in support of his complaint; that eventually the accused in the case were committed to the Sessions by the Deputy Magistrate, but that the Magistrate directed the Public Prosecutor to withdraw the case and the case was accordingly withdrawn, notwithstanding that the complainant himself undertook by a special application to conduct the prosecution at his own expense and on his responsibility?

Having regard to the law which leaves no remedy open to the complainant, will the Government direct the Public Prosecutor under section 417, Criminal Procedure Code, to present an appeal to the High Court against the order passed by the Sessions Judge, or pass any other orders which the justice of the case may demand?

(b) Is it true as stated in the petition of Tarak Chunder Bose in the case referred to in the preceding question, that the Inspector-General of Police found fault with the police in the Faridpur district for their want of success in dealing with dacoity cases, and that several cases of dacoity reported by the

[*Babu Surendranath Banerjee ; Mr. Cotton.*]

police to be false have resulted in the conviction of the persons accused, which convictions were upheld by the High Court?

The Hon'ble MR. COTTON replied—

“The attention of Government was called to the case in question, and a report was called for from the Magistrate through the Commissioner, which has lately been received. It appears that the facts are on the whole as stated in the Hon'ble Member's question. The complaint was rejected by the police as false; but on the plaintiff filing a petition, a preliminary enquiry was ordered, which was conducted by a Deputy Magistrate, who reported that though the charge of dacoity was false, the plaintiff had been robbed. The Magistrate read this report and held that the evidence recorded did not bear out the conclusion, and that the whole story was incredible, and he ordered the plaintiff to be prosecuted under section 211 for a false complaint. The High Court on appeal reversed this order, and directed that the Deputy Magistrate who held the enquiry should go on with it, and determine judicially whether process should issue against the persons accused, or else consider whether it is a fit case in which to direct a prosecution for false complaint. On receipt of these orders, as the first Deputy Magistrate had only second class powers, the case was made over for trial to another and full-powered Deputy Magistrate, who eventually held the charge to be proved, and committed the accused to the Sessions. The Magistrate on again reading the evidence was convinced that the charge could not be sustained, and consulted the Sessions Judge, who, after perusing the records, told the Magistrate that he saw nothing in it to justify conviction, and that it would be a waste of time to try the case. On this the Magistrate instructed the Government Pleader to ask leave to withdraw from the prosecution under section 494, Criminal Procedure Code, and the Sessions Judge passed the following order:—

‘I have perused the voluminous depositions taken before both Deputy Magistrates, and consider that no conviction for dacoity is likely to be had on such evidence as that. Certainly that this Aijuddi now accused cannot be convicted. I accordingly allow the withdrawal. Aijuddi is acquitted, &c.’

“Under these circumstances it would be out of place for the Government to file an appeal against the acquittal.

“It may be convenient that I should add here that the further assertion which has been made in some newspapers, and which was repeated in a question

[*Mr. Cotton ; Babu Surendranath Banerjee.*]

lately put in Parliament, that the accused were eventually convicted and the conviction upheld by the High Court, is without foundation.

“With regard to the last part of the Hon’ble Member’s question, the petition of Tarak Chunder Bose, to which he refers, has not been seen by Government, but I have made enquiries from the office of the Inspector-General of Police, and have ascertained that the District Superintendent of Police of Faridpur was warned to show greater personal activity in the investigation of dacoity cases, but that it is not the fact that any cases of dacoity during 1894 and 1895 reported by the Faridpur police to be false have resulted in the conviction of the accused in the Sessions Court.”

ALLEGED MURDER AT CHITTAGONG.

The Hon’ble BABU SURENDRANATH BANERJEE asked—

Whether the attention of Government has been called to the facts of a case recently published in the *Amrita Bazar Patrika* of the 14th June last, in which one Kanti Chandra Ghose was charged with murder by the District Superintendent of Police at Chittagong? Is it true, as stated in the *Patrika*, that Kanti Chandra Ghose was arrested on a charge of murdering his servant upon an anonymous application in which his name was not even mentioned, but that one Kanti Chandra Roy was charged by the writer of the anonymous petition with the said murder; and as there was no Kanti Chandra Roy in Chittagong, Kanti Chandra Ghose was arrested, that he was kept in *hajat* for nearly a month, notwithstanding the fact that respectable witnesses, such as a local Munsif and others, deposed that the accused Kanti Chandra Ghose had one servant, and that he was living, and that subsequently the man who was supposed to be murdered was found living in the Backergunge district? Does the Government approve of the proceedings? If not, will the Government pass such orders as the justice of the case may demand?

The Hon’ble MR. COTTON replied:—

“The attention of Government was drawn to the articles in the newspaper referred to, and a report on the facts of the case has been called for from the Commissioner of Chittagong. The report has been received to-day; as soon as it has been considered by the Government, an answer will be given to the Hon’ble Member’s question.”

[*Mr. Buckland.*]

THE BHUTAN DUARS REPEALING BILL.

The Hon'ble MR. BUCKLAND moved for leave to introduce a Bill to provide for the repeal of Act XVI of 1869 (the Bhutan Duars Act). He said:—

This is an Act of special interest only to the Bhutan Duars, and it is not likely that the Council can have much acquaintance with it. I should therefore, perhaps, say a few words with regard to the circumstances under which this Act became law, before asking the Council to repeal it. It will not be necessary to go over the history of the campaign against Bhutan, which took place in 1864-65 in consequence of the treatment that Sir Ashley Eden's mission met with at the hands of the Bhutias. It is sufficient to mention that during the year 1865 the British arms were crowned with victory, and that a treaty of peace was made on the 11th of November of that year with the Bhutan Government, and that, following the threats which had been conveyed to the Bhutan Government of the consequences of their non-performance of the conditions offered to them, it was considered necessary by the Government of the day, by a proclamation, dated the 4th July 1866, to annex to British territory the eighteen *duars*, which are now known by the collective name of the Western Duars: *duars* meaning the gates or passes from British territory into what was then the territory of the Government of Bhutan.

“ I have consulted the records of those days, and find it there stated that the Bhutias had left no records, and that they appear to have had nothing which might be called a system of Revenue Administration. When the country was taken over by the British Government, and the district of Jalpaiguri was formed, the Government of the day introduced certain laws and regulations into the territory thus acquired. Amongst them it appears that the Code of Civil Procedure was extended to that territory, and thereupon the cognizance of all suits of a civil nature became vested in the ordinary civil courts having jurisdiction within the annexed tract of country. Within a very short time a case occurred in which the local civil officer did justice between landlord and tenant. But the case came on appeal to the High Court, and the High Court in their decision intimated that they were satisfied that justice had been done by the local officer, but that in conformity with law they were bound to overrule him. When this matter came before the Government of India, it was thought desirable to legislate with a view

[*Mr. Buckland.*]

to have substantial justice done in the newly acquired territory, rather than strict law administered, and administered unwillingly, as I have stated, by the High Court of the day. A Bill, therefore, which became Act XVI of 1869, was introduced in the Council of the Governor-General in May 1869, by Mr. Frank Cockerell of the Bengal Civil Service; and it might be well that I should read a few lines of the speech the Hon'ble Member made in introducing the Bill, which will, I think, show the Council in a nutshell the objects and reasons of that measure. The Hon'ble Member said :—

‘Experience had shown that, in a newly acquired territory, where British Administration had been preceded generally by bad Government, and often, as in the case of Bhutan, by a complete absence of any regularly constituted Government, claims relating to interests in land, or in any way connected therewith, were not satisfactorily dealt with by the ordinary Civil Courts, governed and restricted as those Courts were by the rules of Civil Procedure in their adjudication of all suits and matters coming before them.

‘For claims of this kind, whether with regard to the equitable interests of the persons concerned, or the interest of the State which, until the land revenue assessment of the newly-acquired territory was completed, might be said to be interwoven with those of claimants of any right or title in the land, needed to be determined by considerations of expediency and good policy, such as the Civil Courts in the exercise of their ordinary jurisdiction were precluded from entertaining. Hence, in the case of such previous acquisitions of territory as the Panjab and Oudh, the operation of the Code of Civil Procedure was barred as regards claims to any interest in land pending the completion of the land revenue settlement of those provinces, and all claims of the nature referred to were adjudicated in the Court of the Settlement Officer.

‘Why this course was not adopted as regards the territory ceded by Bhutan at the time of its annexation, did not appear, but a case had recently occurred which showed conclusively that this measure ought to have been taken when the Code of Civil Procedure was introduced into the annexed province, and should certainly be no longer postponed.’

“Then the Hon'ble Member in charge of the Bill which became Act XVI of 1869 referred to the High Court judgment to which I have briefly alluded. The Bill was then referred to a Select Committee, and the rules which were sent up by the Bengal Government were considered. The rules which were attached to the Act (and which have since performed that function) were meant to provide for cases regarding immoveable property in that territory.

“When the Bill was passed in July, 1869, in the Viceroy's Council, the Hon'ble Member in charge of it dwelt chiefly on the point that the Bill was a temporary measure only intended to provide for a transitional state of things, and the question then was how the Bill should be terminated. The question at issue

[*Mr. Buckland.*]

at that time was whether the Act should be terminated by a published order of the Governor General in Council, or whether it should be left to future legislation to repeal it, and it was decided at that time to take the latter course. It is, therefore, necessary to introduce a Bill to repeal the Act which, as was settled at the time, cannot be repealed or altered merely by an order of the Government.

“Since the passing of Act XVI of 1869 the Jalpaiguri district, which includes the Western, *i.e.*, the Bhutans Duars, has become one of importance in consequence of a considerable increase in the population. The census of 1872 showed a population of 100,111, but the census of 1891 showed just a few less than 300,000 inhabitants. Moreover, the district has grown enormously in importance by reason of the vast amount of British capital which has been introduced into it, a number of tea-gardens have sprung up, and there has been a great extension of European industry and enterprise in that territory. It has therefore appeared to the Government for some time past that the Act, which was introduced avowedly for a temporary purpose in dealing with the newly acquired territory of the eighteen Bhutan Duars, is not adapted to the present state of affairs. It must not be supposed that there is no law in force in the Western Duars portion of the Jalpaiguri district. In 1874 an Act was passed, called the Scheduled Districts Act, by which the Local Government is empowered, with the sanction of the Governor General in Council, to extend to the territories mentioned in that Act, or to any part of them, any Acts which are in force in British India. I have been through the Bengal Code, and I find that at this moment there are in force in the Duars more than thirty different Acts, and among them several very important Acts, such as the Penal Code, the Code of Criminal Procedure, the Code of Civil Procedure to a limited extent, the Police Act, the Transfer of Property Act, and the Contract Act, and it is quite possible, under the Scheduled Districts Act, to which I have referred, to extend to the Duars, with the sanction of the Governor General, any Act which the Government may please. But it is not possible to extend to it the whole of the Code of Civil Procedure as long as Act XVI of 1869 remains on the Statute Book.

“These are the reasons why it is thought necessary to introduce this little Bill. Before anything can be done to empower the ordinary Civil Courts of the country to take up cases connected with immoveable property, it is necessary to repeal Act XVI of 1869. The question has assumed some importance within the last few years, not only on account of the development of English industry, but also because the tea planters have been memorialising the Government

[*Mr. Buckland.*]

for some time with a view to the conversion of this district into what they call a Regulation district. It is obviously impossible to grant that application *in toto*; the district will remain under the Scheduled Districts Act, and it will be a question as to which Acts should be applied in regard to cases concerning immoveable property when Act XVI of 1869 is repealed. This matter will, perhaps, be discussed in Select Committee, but I should inform the Council that the decision lies entirely with the Local Government, who can, with the sanction of the Government of India, introduce such laws as they may think fit when Act XVI of 1869 has been repealed and the ground has been thereby cleared.

“It may be asked why this repeal was not carried out before. Looking at the Statement of Objects and Reasons, I am reminded that for some years past very important settlement operations have been carried out in this tract of country, and it was thought desirable, as long as the settlement was in progress, to defer the repeal of this Act. A Deputy Magistrate and Collector, Mr. Donald Sunder, has as Settlement Officer recently completed this settlement, and has done it very well, and his final report is now before the Government. The Lieutenant-Governor took the opportunity, when the settlement proceedings were drawing to a conclusion, to lay the matter before the Government of India, and their sanction has been obtained to proceed with legislation to repeal Act XVI of 1869. With these observations I move for leave to introduce this Bill.”

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND also applied to the President to suspend the Rules of Business to enable him to introduce the Bill, and to move that it be read in Council.

The Hon'ble THE PRESIDENT having declared the Rules suspended—

The Hon'ble MR. BUCKLAND introduced the Bill and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble MR. BUCKLAND also moved that the Bill be referred to a Select Committee, consisting of the Hon'ble Messrs. Lyall, Beighton and Smyth, and the Mover.

The Motion was put and agreed to.

[*Mr. Cotton.*]

THE CALCUTTA ELECTRIC LIGHTING BILL.

The Hon'ble MR. COTTON moved for leave to introduce a Bill to facilitate and regulate the supply of electricity for lighting and other purposes in Calcutta. He said:—

“As it is proposed to advance this Bill more than one stage to-day, it will be more convenient, with Your Honour's permission, that I should make such remarks as I propose to address to the Council when I move that the Bill be read in Council.

The Motion was put and agreed to.

The Hon'ble MR. COTTON said:—“The observations which I shall address to the Council with reference to the Bill which has been circulated, will relate, first, to the necessity for legislation on the subject of the supply of electricity; and in the second place to an explanation of the particulars in which the Bill which will be introduced to-day differs from the English Statute Law on the subject. Hon'ble Members are no doubt aware that it is open to any of Her Majesty's subjects to generate and supply electricity for his own purposes—either to use it himself, or to supply it to other places and persons—provided that no injury to the property, convenience, or comfort of any other persons, or to the public, be thereby committed, and provided also that it be not necessary for that purpose to break up the public streets or interfere with any public rights. As far as the supply of electricity is limited to this, no Act of the legislature is necessary. So we have seen that in the town of Calcutta various private installations have been established. There is the installation for the electric lighting of Harrison Road, which is managed by the municipality; electric light is supplied by private installation to the Hooghly Bridge, to the Docks at Kidderpore, to the Bengal United Service Club in Chowringhee, to the Eden Gardens under the control of the Public Works Department, and we have seen temporary installations in the *maidan* for illuminating the skating rink, and in Government House, both on the occasion of the recent investiture and on previous occasions. These are to all intents and purposes private installations which have been carried out without trespassing on public rights, and no legislation has been required to validate them, and if the demand for electricity in the town of Calcutta were limited to isolated cases of this kind, no legislation from the Government would be required.

[*Mr. Cotton.*]

“The reason for legislation is this: The Government are of opinion, and the authorities whom we have consulted on the subject, viz., the Chamber of Commerce, the Trades’ Association, the Calcutta Corporation, and the Commissioners for the Port of Calcutta; these authorities as well as the Government are of opinion that the time has come when the demand for electricity will increase, and that it cannot be adequately supplied, except by the establishment of one or more generating stations which would be in a position to meet the demand. As soon as a scientific agency has acquired commercial value and becomes a means of profit, there arises a class of potential consumers who want to be supplied, and a class of traders who desire to supply such consumers. Hence the public pressure which has been put on the Government to facilitate the introduction of electric lighting; but as consumers cannot be accommodated without producers interfering with public and local rights, and in particular without their breaking up the streets to the great inconvenience of the public, it becomes necessary for Government, through its Legislative Council, to regulate the supply. This is done by providing that those who undertake to supply electricity, and cannot do so without overriding public and local rights, shall be enabled to do so by legislation passed for the purpose, subject in the interests of the public to legislative restrictions.

“This briefly is the reason of the necessity for legislation in Calcutta, and it is identical with the reason for legislation in Great Britain and in other countries where electricity is now supplied by companies. The history of the English law on the subject is simple. In 1879, an important committee of the House of Commons was convened, under the presidency of Sir Lyon Playfair, to consider whether legislation was necessary to regulate the supply of electricity. It was the opinion of that Committee that the time had not come for legislation, and although it was foreseen that the time would come quickly, the proposal to legislate was then allowed to drop. The ink with which that report was written was hardly dry before very important discoveries in electricity were made, and in particular the discovery of incandescent light, which enabled electric lighting to be distributed more easily; and as soon as that discovery was made, pressure was again put upon Parliament to legislate for the regulation of the supply of electricity, and then the law of 1882 was passed. That law was substantially still in force, and is the statutory provision upon which the Bill before the Council is based. By that law authority is conferred for the Regulation of the supply of electricity in three ways: first, by a special Act; secondly,

[*Mr. Cotton.*]

by what is known as a provisional order; and thirdly, by license. The meaning of a special Act is of course clear. A special Act is passed in order to enable a particular company to supply electricity subject to such restrictions as that Act may contain. This is a procedure which the Board of Trade have discouraged, and as a matter of fact very few special Acts of this character have been passed. The second procedure, which is described as the grant of a provisional order, is somewhat similar to that of a special Act. Power is delegated to the Board of Trade to prescribe the whole of the procedure under which the undertaking company is authorized to supply electricity, and the details regarding the restrictions to be imposed upon them. A provisional order is an elaborate set of rules which guide and control the company. It has no effect whatever until it is confirmed by a special Act of Parliament. A special private Act is introduced confirming the order of the Board of Trade, and then the order of the Board of Trade has the force of law. The third method is that of a license, which contains details similar to those of a provisional order, but differs from it in some material respects. The Board of Trade, in whose hands the entire administration of this department rests, have always discouraged licenses and have encouraged promoters to apply for provisional orders, and very few licenses have therefore been granted under the Act. Nearly all the companies in England have been enabled to undertake their work by means of provisional orders. I will explain briefly the salient distinctions between a license and a provisional order. A provisional order is without limit of time. A company is granted its rights indefinitely, but there is a clause in the Act of 1882 which empowers the local authority over the area to which the order extends to purchase the undertaking on the expiration of twenty-one years. This period having been objected to by the public, an Act was passed six years afterwards, in 1888, extending the period from twenty-one years to forty-two years, and all provisional orders issued in England now are subject to the right of the local authority, that is to say, the Corporation or County Council, or London County Council, to purchase the undertaking at the expiration of forty-two years. A license is granted for a fixed period of seven years subject to renewal. The advantage of a license over a provisional order consists in the fact that it is not liable to be bought up by the local authority, and also in the fact that a license can be obtained quickly and promptly without the delay of going to Parliament to confirm it, or the risk which every reference to Parliament involves. No further objection is raised. The Board of Trade have the power in their own hands.

[*Mr. Cotton.*]

“The question came before this Government as to the procedure which should be adopted in India, and it was decided that the form of a provisional order is unsuited to the condition of things prevailing here. There is no Board of Trade under the Government to whom the responsibility of drafting the provisional order can be referred. In Calcutta the Government itself has to exercise the authority which in England is exercised by the Board of Trade. So it was determined that the form of a license would be more appropriate to the condition of things here.

“Then the question of the term of the license came under consideration, and also whether a concession granted under a license should be purchaseable by the local authority or not. In respect of the latter question it was decided that the local authority should have no right to purchase at any time, thereby acting on the same lines as have been adopted in England in regard to licenses. In Calcutta the Municipal Corporation will have no power to purchase any concession granted under this Act.

“The question of the duration of a license involved a further difficulty. It was originally proposed that the duration of a license should be seven years, the same period as the English Act prescribed. I should have said that the Act of 1882, as it was originally introduced into Parliament, prescribed the period of three years; it was extended to five years by the Select Committee of the House of Commons, and the House of Lords raised it to seven years. The legislation of 1888 did not affect the duration of licenses. This point was, however, taken up both by the Chamber of Commerce and the Trades' Association, and both those authorities have pointed out that seven years was too short a period. And looking to the fact that the license contemplated by this Government is in many respects similar to a provisional order, except that the Government takes the place of the Board of Trade throughout, and also to the obvious consideration that capital will not lend itself to an undertaking unless the permanence of that undertaking is guaranteed, or at all events unless it is guaranteed for a very considerable period, the Government have modified the term from seven years to twenty-one years, as the Council would find in the Bill before them. A license is proposed to last for a period of twenty-one years subject to renewal. It is thought that a period of twenty-one years is sufficiently long to attract capital in India, and as long as it is prudent to grant as the term of any license, especially when it is remembered that the action taken under this Act is necessarily of a somewhat experimental character.

[*Mr. Cotton.*]

“Turning to the provisions of the Act, I desire to invite the attention of the Council to a few points. You will observe that the short title of the Act is the ‘Calcutta Electric Lighting Act.’ But in point of fact this Act follows the phraseology, as far as possible, of the English Law. Its object is not to supply electric lighting, but, as you will see from the preamble, it is a Bill to facilitate and regulate the supply of electricity for lighting and other purposes. It is not intended to limit the provisions of the Act to electric lighting in any way. There are other purposes to which I hope electricity will be devoted, and to which companies formed under the provisions of this Act will, I trust, devote their energies. I merely throw out as a suggestion the substitution of electric tramways for the tramways which we see in Calcutta drawn by horses. That would be an immense improvement when the tropical heat of Calcutta is considered. It would be a great benefit both to the public and the wretched horses employed, if electricity could be substituted for the present means of haulage. Throughout the Act you will find that it contemplates the supply of electricity, and not electric lighting only. That in fact is one of the main principles of the Bill, and it follows in this respect the English Act.

“Section 3 of the Bill empowers the Local Government, which, as I have already said, takes the place of the Board of Trade, to grant licenses, and following the precedent of the English Law, it insists on the consent of the local authority being first obtained. Now in England when a license is granted, the consent of the local authority is absolutely a condition precedent. Unless that consent is obtained, a license cannot be given. In the case of a provisional order the Board of Trade are vested with powers to interfere, and, if they see sufficient reason, to overrule any objection which may be made by a local authority. It has been deemed fit to introduce a similar provision in this Bill. The Council will see that there is a *proviso* that if the Local Government, after due enquiry, are satisfied that the local authority has no sufficient reason for withholding its consent, the Local Government may overrule the local authority and grant a license.

“In the amending law, the English Act of 1888, there is a very important clause amending the first Act, which enacts that the grant of authority to an undertaker to supply electricity in any area shall not in any way prevent the granting of a license or provisional order to any other person or authority within the same area; that is to say, this clause legislates against monopolies; it declares that no

[*Mr. Cotton.*]

company shall be granted a monopoly. That clause of the section is not introduced in the present Bill, and it will be for the consideration of the Select Committee whether a similar provision should be introduced by law. But I may point out that although there is no monopoly created by law in England, the Board of Trade have declared again and again—it is one of the rules which guide its procedure—that to all intents and purposes the grant of a provisional order under a public Act is equivalent to a monopoly. They have not as a rule allowed two companies to run within the same local area.

“This Bill, following the English Act, contemplates the grant of licenses for particular areas. As you all know, in London the metropolis is as it were mapped out. Wherever there is a demand for electric lighting the local area is defined, and the provisional order relates to that particular area and no other. In the same way it is contemplated that Calcutta may be mapped out; or it may be possible that one single area may suffice for the whole of Calcutta. These are matters which will have to be considered by the Government before a license is granted. In England the generating stations are sometimes of very vast size, and the largest of all the Electric Companies has, I understand, its generating station in Deptford, seven miles at least from the locality supplied with electricity. This implies that the capital of the company is very large. That is not likely to be the case in this country, but the fact shows that electricity can be supplied for lighting and other purposes from a very considerable distance, and it may be unnecessary to divide Calcutta into different areas, if a company is formed with sufficient resources to afford the supply of electricity which may be required.

“Section 4 of the Bill relates to the making of rules, and section 5 to the conditions to be inserted in the license. The rules are intended to regulate the procedure to be followed in applying for a license. In section 4, by some oversight of the drafter, clause (a) has found a place by mistake. It provides for the making of rules for securing the public from personal injury. That is a clause which finds its place in the conditions of the license, and ought to be inserted in section 5 alone. That provision is based on the English law, and has reference to the conditions to be mentioned in the license. I need hardly say that the conditions to be mentioned in the license are an important factor with which the public is concerned. The Act itself is a mere skeleton; the flesh and blood will be found in the license to be ultimately granted. The

[*Mr. Cotton.*]

form of a license is identical with the form of a provisional order. There are many such orders granted, and intending undertakers will experience no difficulty in finding what a license is likely to contain. The Board of Trade have prescribed what they call a model provisional order which, subject to such modifications as the conditions of time and place may render necessary, will doubtless be the model upon which licenses will be granted under this section. It is suggested by the Trades' Association that the law should contain a provision for the limitation of the price to be charged for the supply of the electricity. That is a point which will be fully dealt with in the license. The schedule to the model provisional order states the maximum price to be charged. I have seen some provisional orders in which the prices are somewhat different from those contained in the model order, but, whatever the maximum price may be, that is a detail which need not be contained in the Act, but will find a place in the provisional order or license. In the same way the Engineer to the Calcutta Corporation has suggested that provision should be made for the preparation of maps; now, maps are no doubt very necessary, but the law does not provide for them, it is a detail which is left to the framers of the license.

“The sections of the Act which follow, sections 6 to 11, are very important; they relate to the right the undertakers or company who supply electricity have to break up streets and adopt all other measures which are necessary for laying down their works. These provisions are taken with slight modifications from the Indian Gas Works Act of 1857, modified slightly with reference to the English Gas Works Acts of 1845 and 1871. The English Electric Lighting Act merely declares that the procedure under the Gas Works Act for these purposes shall be held to apply.

“Section 13 touches on a very burning question, namely, the right of the undertakers to erect aboveground works, *i.e.*, whether the electric line should go above the road or below it. This is a matter which has been under consideration in England on many occasions. The English Act requires the express consent of the local authority before overhead wires can be erected. It was thought, however, that such sanction would not afford a sufficient guarantee in this country, and in place of the consent of the ‘local authority,’ the Bill contains the words ‘express consent of the Local Government.’ There is no doubt that overhead wires are a source of danger. The wire by which an electric current is maintained for the supply of electricity is of different material,

[*Mr. Cotton.*]

and much thicker and heavier than the electric wire used by telephone companies. It constitutes by itself a source of danger to the public on account of its weight, and in the interests of the companies themselves it has been felt in England that overhead wires are a source of danger, and that mischievous people are apt to cut them, whether it is done to spite a neighbour, or from pure mischief and thus injure the supply. On the other hand, there is some difficulty in the town of Calcutta in regard to underground wires. It is said that the soil, for some reason or other, renders it extremely difficult to lay down underground wires, and to maintain them in proper condition and order, and that is one of the reasons, as I understand, why the Harrison Road installation has temporarily broken down. At all events there is much to be said on both sides, and it is thought advisable to reserve to the Government the power of sanctioning the erection of overhead wires.

“Section 16 of the Bill is of some importance. I invite attention to this section as giving effect to the principle which I explained to you is one of the main principles of the Act, namely, that the Act is not limited to the regulation of the supply of electricity for electric lighting, but to facilitate and regulate the supply of electricity to whatever use it may be put. It lays down that the undertakers are not to prescribe any special form of lamp or burner to be used by any consumer, or in any way to control or interfere with the manner in which electricity supplied by them under this Act is used; that is to say, the consumer, as he is called under the Bill, may utilise the electricity supplied to him in any way he thinks proper. He can use it as a motive power all the day if he can; he can use it as an illuminating agent all night, if he thinks fit to do so. A second proviso has been added in accordance with the suggestion of the Trades' Association, namely, that no lamps or electric fittings shall be added or reduced without due notice being given to the undertakers to enable them to inspect the wires and make such alterations as may be necessary. This clause is not contained in the English Act, and personally I do not think it is a desirable clause. Whether it should be retained or not is a matter which will receive the consideration of the Select Committee; but as it stands I am not sure that it is consistent with the principle laid down that consumers shall do as they please with the supply of electricity given to them. That supply can always be regulated by a meter, with which every house which is supplied with electricity must be furnished.

[*Mr. Cotton.*]

“Section 24 of the Bill contains a provision to which I invite attention. The concluding part of clause 2 of that section relates to the protection of telegraph lines. The English Law enacts that any difference between a telegraph authority and the undertakers or their agents in regard to telegraph lines shall be determined by arbitration. In place of Arbitrators, the Local Government has been inserted in this Bill. This was a matter which was discussed between the Government of Bengal and the Government of India, and the Government of India declared, in terms which will doubtless commend themselves to Members of this Council, that it would weaken the safeguards of the Imperial telegraph system if questions affecting the safety of that system were left to be determined by arbitration.

“These are the main points contained in the Bill itself to which I deem it necessary to invite the attention of the Council. The Council will understand that where I have not specially referred to them, the provisions of the Bill follow the lines of the English Act modified as may be necessary to suit the conditions of this country. There is one point, however, not taken up in the Bill, but to which the amending law of 1888 refers. Section 4 of the amending Act of 1888 is aimed at a class of persons who may be described as non-undertakers, that is to say, persons who generate electricity, but who do not apply for a license under the law, and who work on their own account. The passing of this Bill, as I have already explained, will not, in the smallest degree, interfere with the operations of private individuals on their own account, or on account of other people, provided that the rights and convenience of other people are not affected. But there are persons who, relying upon the indifference or ignorance of the public, will not hesitate to lay down lines and works in direct communication with a local authority or individuals concerned without having obtained any license, and who are prepared to run the risk which their trespass on public rights may involve. It is to control such operations that section 4 of the amending Act lays down that the Board of Trade or Postmaster-General may by notice require any persons so using or supplying any electric lines or works to conform to any regulations in the interest of public safety, which may be prescribed, and that in default thereof the removal of such lines or works may be ordered, and heavy penalties imposed. It will be for the consideration of the Select Committee whether a similar clause should not be introduced into this Bill. I am disposed to think that possibly it will be

[*Mr. Cotton.*]

desirable to do so. In England there have been conspicuous cases, as, for instance, the famous Company known as the Sir Coutts Lindsay Company, who started their works as a sort of free lance. They never applied for a provisional order or license, or anything of the sort, but distributed electricity freely, and adjusted all disputes by compromise with the people who were injuriously affected by their works; they promptly compromised not only with local authorities, but also with all individuals who objected to their overhead wires, or to any other proceedings which they adopted. At last the Sir Coutts Lindsay Company, foreseeing difficulties, went into liquidation, and re-opened under the name of the very largest Company which exists, namely, the London Electric Supply Company. But the origin of that Company was irregular, and it gave rise to the clause in the amending Act of 1888 to which I have referred. Other companies followed their example and carried on trade in several places, in Brighton and elsewhere, but they did not succeed; and it is a matter for consideration whether we should not bring similar undertakings, if they should be attempted in India, under regulation and control.

“These are the observations I have deemed it necessary to make in introducing this Bill. I am afraid I have been somewhat tedious, and have addressed you longer than, perhaps, some of you had expected; but I feel that this is a very important measure, and that the meaning of it is, perhaps, not very clearly apprehended, it may be by Hon'ble Members, and certainly not by the public generally: and it is perhaps, therefore, not inconvenient that I should have explained in this Council at some length the objects of the Bill and the character of its provisions. It is very necessary that this Bill should be carefully examined in Select Committee, and I have no doubt this will be done. We cannot but feel that this is the first attempt which has been made in India to meet such a very technical and difficult matter as the regulation of the supply of electricity, and that our present Bill may become the model for legislation in other Presidencies. If such is the case, I can only trust that it will be found a safe model for other legislatures to follow.

“With these remarks, I have the honour to apply to you, Sir, to suspend the Rules of Business to enable me to introduce the Bill, and to move that it be read in Council:

The Hon'ble THE PRESIDENT having declared the Rules suspended—

[*Mr. Cotton; Mr. Lyall; Mr. Risley.*]

The Hon'ble MR. COTTON introduced the Bill and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble MR. COTTON also moved that the Bill be referred to a Select Committee consisting of the Hon'ble the ADVOCATE-GENERAL, the Hon'ble Messrs. SMYTH and WOMACK, the Hon'ble Babu SURENDRANATH BANERJEE, and the Mover.

The Motion was put and agreed to.

THE BENGAL SANITARY DRAINAGE BILL.

The Hon'ble MR. LYALL moved that the Hon'ble Messrs. BOURDILLON and BEIGHTON, and the Hon'ble MAULVI MUHAMMAD YUSUF KHAN BAHADUR, be added to the Select Committee on the Bengal Sanitary Drainage Bill.

The Motion was put and agreed to.

THE CALCUTTA PORT ACT, 1890, AMENDMENT BILL.

The Hon'ble MR. RISLEY moved for leave to introduce a Bill to further amend the Calcutta Port Act, 1890.

The Motion was put and agreed to.

The Hon'ble MR. RISLEY also applied to the PRESIDENT to suspend the Rules of Business to enable him to introduce the Bill and to move that it be read in Council. He said:—

“ On the last occasion when the Calcutta Port Act came under amendment, at the meeting of this Council on the 13th of April last, I explained that the amendment which I have now to introduce formed part of the original proposal to amend the Port Act. It was, however, introduced at a comparatively late stage, after the proposal as a whole had been referred to the Government of India for the consideration of the Secretary of State, and this particular

[*Mr. Risley.*]

amendment was held to be of a sufficiently important character to render it necessary to make a further reference to the Government of India and the Secretary of State. That is the reason why this amendment was not introduced with the group of proposals which the Council then had before them.

“ I will now explain as briefly as possible the reasons which render this particular amendment of the Port Act necessary. The Port Commissioners possess a large amount of land adjoining their foreshore. This land is vested in them; they have let out portions in plots to various persons, and on such portions and plots shops, huts, and so forth have been built. Up to the time when the Calcutta Port Act of 1890 was passed, and probably for some time afterwards—as far as I can make out from the papers—these huts and shops, together with the portions of land on which they stand, were assessed for the purpose of municipal taxation under what are called the bustee provisions of the Calcutta Municipal Act. That is to say, the Port Commissioners were treated in the same way as the owners of bustee lands in other parts of Calcutta. They were called upon to supply the information necessary to enable the valuation to be made. The entire amount of the assessment was, in the first instance, collected from them, subject to a deduction of one-eighth to cover the cost of collection, and they were enabled afterwards to collect from the owners of the huts and shops, and so forth the entire amount of municipal assessment on these buildings, and half the amount of municipal assessment on the land on which they stood.

“ With the passing of the Calcutta Port Act of 1890, all this came to an end. Section 59 of that Act provides a special procedure for valuing the Port Commissioners' property for the purposes of municipal assessment. Their entire property, the docks, machinery, land, and so forth, is valued with reference to the expenditure which has been incurred upon it, and five per cent. on the aggregate expenditure is taken to be the annual value of the property, and on that annual valuation the municipal rates are assessed at the rates authorized by the Calcutta Municipal Act. The practical result of this, with reference to these huts, is that from the passing of the Port Act they could neither be valued for the purposes of municipal taxation, nor could any tax be assessed upon them.

“ There are two possible modes of procedure by which these huts can be dealt with for purposes of municipal taxation. One is the procedure laid down

[*Mr. Risley.*]

in the Municipal Act for dealing with bustee property; the other the procedure authorised in the case of ordinary properties. The bustee procedure could not be applied, because it contemplates assessment and collection through the owners of the land. The owners of the land in this case are the Port Commissioners, and they having already been assessed on their lands it was held by learned Counsel to whom this question was referred that they could not be assessed again. The other possible procedure—and this experiment was actually tried by the Corporation after they tried the bustee procedure and failed—was to deal with these huts and shops under sections 101 and 102 of the Calcutta Municipal Act as ordinary buildings. Here they were met by another difficulty which proved equally insurmountable. Section 122 of the Municipal Act provides two methods of assessment for ordinary buildings. One of these methods is by taking the annual value to be the gross annual rent at which the house may be let or may be reasonably expected to let. But it is stated that the houses in question are not let, and are not built for letting purposes; consequently the procedure on the basis of the annual rental is not applicable. There is also a procedure, the second mode of valuation, which takes a percentage of the present cost of construction as the annual value, and enables the municipal tax to be assessed on that valuation. But it was held by Counsel that this procedure also, which was the only resource left to the Corporation of Calcutta, was inapplicable. The matter being important, and the opinion somewhat technical, I will read to the Council the relevant portion. MR. WOODROFFE says:—

“It is, however, suggested that inasmuch as the Commissioners of Calcutta are empowered under section 101 of Act II (B.C.) of 1888 to impose rates upon all houses and lands within the town of Calcutta, and under section 122 for the purposes of assessment under that Act to fix the annual value of any house not built for letting purposes and not ordinarily let at 5 per cent on the sum obtained by adding the estimated present cost of building such house, less a reasonable amount to be deducted on account of depreciation to the estimated value of the land with the houses as part of the same premises, they can, for the purposes of the assessment of these houses or huts built by the owners thereof on land of the Port Commissioners, which has already been assessed, fix their annual value by reference to the cost of their materials without inclusion of the value of the land wherein they are built, and which having been already assessed cannot be reassessed. This, in my opinion, the Commissioners of Calcutta cannot do.”

“Section 122 does not authorise any such mode of valuation”. The learned Counsel does not state in detail the reasons which led him to arrive at that conclusion, but on looking at the section it seems probable that the difficulty

[*Mr. Risley.*]

comes in from the peculiar wording of the latter portion, which renders it impossible to separate the cost of building a house from the cost of the land. If you could deal with these factors separately, there would be no difficulty in doing what the Corporation proposed. But as Counsel has held that it is impossible to do that, the necessity arises for changing the law.

“The result of this failure to proceed under any law at present in force is that the Corporation stand to lose, and have actually lost, I understand, in the past two years or so, a matter of Rs. 20,000 or Rs. 25,000 a year. The Bill proposes to get rid of this complication by inserting two sections, not in the Calcutta Municipal Act, but in the Calcutta Port Act, empowering the Municipal Commissioners to deal with buildings which stand on the lands of the Port Commissioners, quite irrespective of the value of the land. Five per cent. on the cost of building will be taken as the annual valuation, and the Municipal tax will be assessed on that valuation. For the recovery of the Municipal tax these sections provide that they are to have such remedies, powers, rights and authorities as they possess under the Municipal Act. I understand that these sections were drafted by the legal advisers of the Corporation, and its terms seem sufficient for the purpose. The question of this legislation was referred, before these sections were imported into the despatch sent to the Government of India, to the Port Commissioners who said they had no objection, provided another section was added, which provides for their recovering half the consolidated rate paid upon the land. Under the Port Act, as I have already explained, the Corporation claim a consolidated rate on the amount expended in the first instance by the Port Commissioners on their land, and the effect of this section will be merely to put the Port Commissioners in the same position as all other owners in Calcutta who recover half the Municipal taxation from their tenants.

“That disposes of the two sections, proposed to be inserted by section 3 of the Bill, which constitute the main object of legislation at the present time. It is proposed, however, to take advantage of the opportunity of amending the Act to make a formal, but what appears to be a decidedly necessary amendment in sections 35, 105, and 126 of the Port Act, in which where the word “Tramway” is used, the word “Railway” should be substituted. When the Act of 1890 was passed it appears to have escaped the notice of the framers of the Act, and also the notice of those who had to deal with the amendment of the Act in April last, that ever since the 4th of June 1880 the Port Commissioners’ tramway has, in fact, been a railway. On that date by a notification under

[*Mr. Risley.*]

section 4 of the Indian Railway Act of 1879, which corresponds with section 16 of the Railway Act now in force, that Act was extended to the railway belonging to the Commissioners for making Improvements in the Port of Calcutta. This was done at the request of the Port Commissioners themselves, who applied to the Government in the middle of 1879, and requested that their tramway might be brought under the operation of the Railway Act then in force (Act IV of 1879). *They proposed, it is true, that it should be done by a notification under section 54 of the Act, but the Government of India seem to have been of opinion that that section was not applicable. It is section 54 of their Act, which provides that steam tramways might be held to be railways. The Government of India held that the Port Commissioners' Railway was not and never could be described as a tramway, and they made the notification under the section empowering the Port Commissioners to use locomotive power on their 'railway,' and ever since that time, the so called tramway has been a railway. So the proposed change in the Act consists simply of the substitution of the word 'Railway' for 'Tramway,' the object being to bring the Port Act into accord with the Railway Act and to remove any doubts which may exist as to the legal status of the Port Commissioners as regards the carriage of goods and business transaction with other railways."

The Hon'ble THE PRESIDENT having declared the Rules suspended—

The Hon'ble MR. RISLEY introduced the Bill and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accorindgly.

The Hon'ble MR. RISLEY also moved that the Bill be referred to a Select Committee consisting of the Hon'ble the ADVOCATE-GENERAL, the Hon'ble MESSRS. SMYTH and WOMACK, the Hon'ble RAI DURGA GATI BANERJEA BAHADUR, the Hon'ble BABU SURENDRANATH BANERJEE and the Mover.

The Motion was put and agreed to.

The Council adjourned to Saturday, the 13th instant.

C. E. GREY,

CALCUTTA;
26th July, 1895. }
Reg. No. 900G—300—27-7-95.

Offg. Assistant Secretary to the Govt. of Bengal,
Legislative Department.

*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 Indian Councils Acts, 1861 and 1892.*

The Council met at the Council Chamber on Saturday, the 13th July, 1895.

Present:

The HON'BLE SIR GRIFFITH EVANS, K.C.I.E., Offg. Advocate-General,
presiding.

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

The HON'BLE D. R. LYALL, C.S.I.

The HON'BLE J. A. BOURDILLON.

The HON'BLE C. E. BUCKLAND, C.I.E.

The HON'BLE H. H. RISLEY, C.I.E.

The HON'BLE R. C. DUTT, C.I.E.

The HON'BLE RAI DURGA GATI BANERJEA BAHADUR, C.I.E.

The HON'BLE SURENDRANATH BANERJEE.

The HON'BLE J. G. WOMACK.

The HON'BLE MAULVI MUHAMMAD YUSUF KHAN BAHADUR.

The HON'BLE C. E. SMYTH.

The HON'BLE A. M. BOSE.

NEW MEMBER.

The Hon'ble MR. A. M. BOSE took his seat in Council.

THE BENGAL SANITARY DRAINAGE BILL.

The Hon'ble MR. LYALL presented the Final Report of the Select Committee on the Bengal Sanitary Drainage Bill.

The Council adjourned to Saturday, the 20th instant.

CALCUTTA ;
The 28th July, 1895.

Reg. No. 891G—300—27-7-95.

C. E. GREY,

} Offg. Assistant Secretary to the Govt. of Bengal,
Legislative Department.

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 Indian Councils Acts, 1861 and 1892.

The Council met at the Council Chamber on Saturday, the 20th July, 1895.

P r e s e n t :

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The HON'BLE SIR GRIFFITH EVANS, K.C.I.E., *Offg. Advocate-General.*

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

The HON'BLE D. R. LYALL, C.S.I.

The HON'BLE J. A. BOURDILLON.

The HON'BLE C. E. BUCKLAND, C.I.E.

The HON'BLE H. H. RISLEY, C.I.E.

The HON'BLE R. C. DUTT, C.I.E.

The HON'BLE RAI DURGA GATI BANERJEA BAHADUR, C.I.E.

The HON'BLE SURENDRANATH BANERJEE.

The HON'BLE MAHARAJA JAGADINDRA NATH ROY OF NATOR.

The HON'BLE MAULVI MUHAMMAD YUSUF, KHAN BAHADUR.

The HON'BLE C. E. SMYTH.

The HON'BLE A. M. BOSE.

The HON'BLE RAI ESHAN CHUNDER MITTRA BAHADUR.

NEW MEMBER.

The HON'BLE RAI ESHAN CHUNDER MITTRA BAHADUR took his seat in Council.

PROSPECTS OF BENGALI INSPECTORS OF THE CALCUTTA POLICE FORCE TO PROMOTION AS SUPERINTENDENTS OF THAT FORCE.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Will the Government state how many Superintendents there are attached to the Calcutta Police Force, and how many of them are Bengalis. Is it true that the claims of Bengali Inspectors attached to the Calcutta Police Force have, in many cases, been overlooked in favour of juniors who have been

Prospects of Bengali Inspectors of the Calcutta Police [20TH JULY,
Force to promotion as Superintendents of that Force ;
Repeal of Act X of 1859 (the old rent law).

[*Babu Surendranath Banerjee ; Mr. Cotton.*]

appointed Superintendents in preference to them? Do the orders of Government appointing two natives of India as Assistant Superintendents every three years apply to Indian Inspectors employed in the Calcutta Police? If not, will the Government be pleased to state what prospects of promotion are held out to them?

The Hon'ble MR. COTTON replied :—

“There are eight Superintendents attached to the Calcutta Police, of whom at present two are Bengalis. One of these holds the post of senior Superintendent on Rs. 500 a month, and the other is an Inspector who is officiating as a Superintendent.

“The Lieutenant-Governor is informed by the Commissioner of Police that it is not the case that the claims of Bengali Inspectors have been overlooked in favour of juniors who have been appointed Superintendents in preference to them.

“The Calcutta Police is treated as a separate service from the Bengal Police, and the orders referred to do not apply to Inspectors in the Calcutta Police. Those officers have prospects of promotion in their own service.”

REPEAL OF ACT X OF 1859 (THE OLD RENT LAW).

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Will the Government be pleased to state why it is not proposed to repeal Act X of 1859 (the old Rent Law), which is now in force in the Western Duars, notwithstanding the recommendation of the Commissioner of the Division to that effect? Seeing that a Bill has been introduced to repeal Act XVI of 1869, with a view to bring within the cognisance of the Civil Courts all suits belonging to immoveable property, &c., arising in the Duars, will the Government consider the propriety of further extending the scope of the legislation now undertaken by repealing Act X of 1859 and extending to the Duars the provisions of the ordinary Rent Law which is in force in other parts of Bengal?

[Mr. Buckland ; Maharaja Jagadindra Nath Roy of Nator.]

The Hon'ble MR. BUCKLAND replied :—

“It is not proposed to repeal Act X of 1859, because it is not in force in the Western Duars, and the Commissioner of the Division, presumably knowing that it is not in force there, has not recommended its repeal.

“The Government cannot consider the propriety of repealing an Act which is not in force in the Western Duars. It has been decided, if Act XVI of 1869 is repealed, to extend to the Western Duars, the Rent Law which is in force in the rest of the Jalpaiguri district, viz., Act X of 1859. It is not considered desirable to have different portions of a district subject to different Rent Acts. The provisions of the Bengal Tenancy Act are not considered suitable to the tenures existing in the Jalpaiguri district.”

·ALLEGED BANISHMENT OF ALL SANSKRIT GRAMMAR FROM
THE CURRICULUM OF STUDIES IN THE GOVERNMENT
SANSKRIT COLLEGE.

The Hon'ble MAHARAJA JAGADINDRA NATH ROY OF NATOR asked—

Has the attention of the Government been drawn to the paragraph in the *Indian Nation* of the 15th instant dwelling upon the alleged banishment of all standard Sanskrit Grammars from the curriculum of studies in the Government Sanskrit College by the introduction of a book of much inferior merit compiled by the present Principal of the College? If so, will the Government be pleased to make an enquiry into the matter?

And if on enquiry the allegations be found true, is the Government prepared to take such steps as would remove this stumbling block in the way of acquiring a real knowledge of Sanskrit language and literature?

The Hon'ble MR. BUCKLAND replied :—

“The Lieutenant-Governor learns that the paragraph in the *Indian Nation* is not correct in asserting that ‘Sanskrit Grammar has been practically banished from the curriculum of studies in the Government Sanskrit College.’ It appears that four different works on Sanskrit Grammar were in use in different classes of the college and school, three of which are still in use unchanged.

*Alleged banishment of all Sanskrit Grammar from the [20TH JULY,
curriculum of studies in the Government Sanskrit College ;
Eden Hindu Hostel, Calcutta.*

[*Mr. Buckland ; Maharaja Jagadindra Nath Roy of Nator.*]

The fourth book, the Magdhabodha, to which reference is made in the question, was used in the first-year college class and in the second to the seventh school classes. The Principal has now substituted for the Magdhabodha in the college class a work of standard excellence by Pandit Vidyasagar. The Magdhabodha is still used in the second and third school classes. In the fourth to the seventh school class the Principal has introduced a work of his own, called Mani Manjari, written in Sanskrit, not in Bengali, which is said to be easier and more suited to junior students than the Magdhabodha, a work of admitted obscurity. This substitution has not yet been approved of by the Director of Public Instruction, and is still under his consideration."

EDEN HINDU HOSTEL, CALCUTTA.

The Hon'ble MAHARAJA JAGADINDRA NATH ROY OF NATOR asked—

Is the Government aware that the Eden Hindu Hostel of Calcutta, originally established for the convenience of the mufassal students who come to Calcutta to prosecute their studies at the University, has recently been reserved exclusively for the students of the Presidency College? and if so, will the Government be pleased to take steps to restore the Hostel to its former status?

The Hon'ble MR. BUCKLAND replied:—

"The Eden Hindu Hostel was originally established for the convenience of mufassal students prosecuting their studies at the University, but was not reserved, either by trust deed or by practice, for the students of any particular College, though, as a matter of fact, from the commencement the great majority of the residents in the hostel have been students attending at the Presidency College.

"The Lieutenant-Governor has decided that he will build a boarding-house, in which residence should be compulsory for mufassal students of the Presidency College, who do not live with their parents or guardians.

"It was at first proposed to make this boarding-house independent of the Eden Hindu Hostel.

[*Mr. Buckland ; Babu Surendranath Banerjee.*]

“On the 8th April last the Board of Trustees met and proposed the following Resolution:—

1. *Resolved.*—That as the Government of Bengal has decided to build a hostel for students of the Presidency College, and as such students form the great majority of the residents of the Eden Hindu Hostel, the result of the Government decision, of which the Trustees fully approve, will be to seriously reduce the number of resident students and render it difficult, if not impossible, for the Trustees to carry on the hostel. In these circumstances, the Trustees are of opinion that the best course for them to adopt, in the interests of the students, and with the object of carrying out completely the purposes for which they have been appointed, will be to hand over the building and land now occupied by the Eden Hindu Hostel to the Government for the purposes of the projected hostel upon such conditions as may be determined.

2. That these conditions be the following:—

(1) that the hostel be retained as a hostel for Hindu students ;

(2) that Government pay off the existing liabilities of the hostel, amounting to about Ra. 3,000 more or less, in consideration of the furniture and library of the hostel which the trustees are prepared to hand over to Government on that understanding.

“The conditions were accepted by Government, and an additional block is being constructed alongside of the original building which will nearly double the accommodation.

“Any students belonging to other colleges who are now resident in the Eden Hostel will be permitted to remain; but in future a preferential claim to the accommodation in the Hostel will vest in students of the Presidency College and the two Entrance schools attached thereto. If any space is left unoccupied by them, students from other colleges will be admitted. No change has taken place in the object for which the hostel was originally designed, and no condition was contained in the trust deed antagonistic to the limitation now imposed.”

ALLEGED MURDER AT CHITTAGONG.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

I should be glad to know if the Government are now in a position to afford me the information promised in answer to the question I put in Council on the 6th July regarding an alleged murder case in Chittagong.

[Mr. Cotton.]

The Hon'ble MR. COTTON REPLIED:—

“The Magistrate of Chittagong has now fully reported upon the case referred to in the Hon'ble Member's question. The facts appear to be as follows:—

“On the 15th July, 1894, the servant of the Chaplain, the Revd. Mr. Salkeld, who lived in the dák bungalow, reported to a head-constable that a murder had been committed by Babu Kanti Chunder Ghose in a house adjoining the dák bungalow. This information was entered in the station diary at 11-20 P.M., and a police officer was sent to enquire, who returned saying he could find nothing in the house to corroborate the information. Next day on the 16th July, 1894, the Sub-Inspector of the town station in Chittagong reported to the Magistrate of the district that a false charge had been made by a servant in the employ of the Revd. Mr. Salkeld that a murder had been committed by Babu Kanti Chunder Ghose, a railway contractor, and requested that Mr. Salkeld's servant might be prosecuted for laying a false information. It appeared to the Magistrate, Mr. Anderson, that the charge was assumed to be false on incomplete grounds, and he directed Mr. Daly, the Officiating District Superintendent of Police, to enquire into the matter personally.

“After this, anonymous petitions were received, charging Babu Kanti Chunder (without any such further specification as Roy or Ghose), the railway contractor, with the murder. There was no doubt whatever as to who the person was at whom the petitions were aimed.

“On the 21st July Mr. Daly arrested Babu Kanti Chunder Ghose on suspicion and brought him before the Magistrate, who passed the following order:—

‘Kanti Chunder Ghose has been brought before me, and I direct that he be kept in *hajat* under section 167, Criminal Procedure Code, for a period of 15 days or less in case a final report be received. There is strong suspicion that on the night of Sunday, the 15th instant, he so severely assaulted his servant that the man died, and there is some evidence to show that the body (that of a stranger) has been concealed. Accused is himself a stranger and is said to be leaving Chittagong by to-morrow's steamer.’

“On the 23rd July an application to release the accused on bail was made. The Magistrate called upon the District Superintendent to show cause why Babu Kanti Chunder Ghose should not be released on bail. On the 24th July Mr. Daly produced eight witnesses whose statements were fully recorded by

[Mr. Cotton.]

the Magistrate. This evidence has been laid before Government, and it appears from it that Mr. Salkeld's servants declared that they had seen the accused severely beating a man who was lying on the ground, and that Mr. Salkeld and his mother-in-law, who lived with him, deposed to having heard blows and groans. On the 25th July the Magistrate passed the following order refusing bail:—

'The District Superintendent of Police has shown cause by sending up some witnesses whose statements I have recorded. There seems to be no reason to doubt that some one was cruelly beaten on the night of the 15th July: that the only servant now in the employment of the accused person was not the person who was beaten (I have examined him, and he has no bruises or other marks). There is evidence that accused immediately called in the assistance of a Police Inspector (Officiating Inspector Rajani Kanta Chaudhuri), and that whatever occurred was at once hushed up. I mention all this to show that there is, at least, the gravest cause for suspecting that the accused's servant succumbed to a very severe beating, and that the body was smuggled away. Then I must remember that the accused person is not only a man with much local influence, but also a foreigner, a man who could easily make his escape into hiding outside the district. As the offence with which he is charged is non-bailable, I think there is more than enough evidence to justify the detention of the accused in custody.'

"Two or three days after this Mr. Daly was transferred to another district, and Mr. Anderson went away on leave. On the 6th August an application was made by the police to Mr. Allen, who was officiating as Magistrate, for a second remand of ten days, and this was granted by him in the following order:—

'I have very carefully considered the special diaries, statements recorded, and all the proceedings of this enquiry. I am of opinion that the enquiry is not yet complete, inasmuch as further investigation is necessary to ascertain the whereabouts of the man who is alleged to have been murdered. This man is reported to be missing, and until his whereabouts are ascertained, or a reasonable opportunity for enquiry has been granted, the case cannot be closed. All the reasons recorded by Mr. Anderson on the 25th July last therefore still apply, and I therefore under section 167, Criminal Procedure Code, remand the accused to *hajal* for a further period of ten days, or until such date within that period as the enquiry may be completed.'

"On the 11th August an application was made to the Sessions Judge for the release of the accused on bail, but Mr. Caspersz declined to interfere.

"On the 15th August another application for a third remand was made to the Magistrate by the police; but, as it was clear by this time that further

[*Mr. Cotton; Mr. Lyall.*]

evidence was not likely to be found, Mr. Allen directed the release of Babu Kanti Chunder Ghose on bail in the following order:—

‘A further application has been made by the police for remand in *hajat* for seven days, the grounds mentioned being general only. I do not think I should be justified in granting a further remand in *hajat*, unless the nature of the evidence which is likely to be obtained were in some way specified, and unless it was explained why this evidence has not been forthcoming earlier. This has not been done, and I am not justified therefore in remanding the accused to *hajat*. There is, however, evidence to implicate him in the murder, and I therefore order him to find bail as follows, viz., his own recognizances in the sum of Rs. 1,000, and four sureties in the sum of Rs. 250 each, to appear before this Court on the 22nd instant, or at any earlier date upon which he is called upon to appear.’

“On the 22nd of August Mr. Allen declared that there was no further reason for detaining the accused, and directed that he be discharged from bail and recognizances.

“With reference to the Hon’ble Member’s question whether the man who was supposed to be murdered was found living in the Backergunge district, I have to say that it is the case that enquiry was made in Backergunge about a man named Jotendro Mohun Bose, who was asserted to have been once in Babu Kanti Chunder’s service, and that this man was ascertained to be alive in that district; but there was no evidence to prove that he ever was in the service of the accused or was in any way connected with this case.

“The Lieutenant-Governor has examined the records submitted by the Magistrate, and, while he is satisfied that there was ample room for suspicion and enquiry, he does not consider that there is any reason for thinking that the Magistrate or District Superintendent of Police showed any want of discretion in their treatment of the case.”

THE BENGAL SANITARY DRAINAGE BILL.

The Hon’ble MR. LYALL moved that the final report of the Select Committee on the Bill to facilitate the construction of drainage works for improving the sanitary condition of local areas be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered in the form recommended by the Select Committee.

[*Mr. Lyall ; Babu Surendranath Banerjee.*]

He said:—" I do not propose to detain the Council now with any general remarks, but would defer to a later stage any such remarks which I might have to make."

The motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that for clause (e) in sub-section (2) of section 6, the following be substituted:—

"An estimate showing, as the District Board may direct, (a) the rate bearing the definite proportion to the Road Cess payable direct to Government, or (b) the assessment on each village within the affected area, the amount being raised by levying at the discretion of the District Board a tax upon persons occupying holdings within such tract according to their circumstances and property, or by levying a rate on the annual value of holdings situated within such tract :

"Provided that the amount specified in the estimate shall provide for the payment with interest in the course of thirty years of (b) and the capitalized value of (c), excluding the portion to be incurred in respect of the municipal area, if any."

He said:—" I desire first to say a word or two with reference to a feeling of alarm which may be created in the minds of hon'ble members at the sight of the formidable array of amendments standing in my name. I wish to point out that several of these amendments hang together, and that they depend upon the success of the amendment which I have now the honour to move. For instance, amendments Nos. 1, 4, 7 and 9 are practically part and parcel of one and the same amendment. They relate to the financial clauses of the Bill. If amendment No. 1 be accepted, then it will follow, as a matter of course, that the other amendments to which I have referred must also be adopted with such modifications as the wisdom of the Council may dictate; but if this amendment be lost, the others must also fall with it. As far as the other amendments are concerned, it will not be necessary for me to speak at any length.

" I feel it my duty to congratulate the Government on the thorough discussion which has been accorded to this Bill. Whatever may be the defects of the Bill—and these are neither few nor insignificant—it will be conceded on all hands that the measure has received the most careful consideration at the hands of the Select Committee, and I venture to add of the public at large. It was twice referred to two different Select Committees. It were much to be wished that some of the new members of this Council were on the Select Committee

[*Babu Surendranath Banerjee.*]

recently appointed. It was twice published in the official Gazette. On two separate occasions the opinions of public bodies and of the high officers of Government were invited. As the result of this exhaustive enquiry, we have this Bill before us. As might have been anticipated, the Bill which now awaits the consideration of the Council is a very different measure from the Bill which was introduced in 1894. The Bill recognizes the principle of local option. Under the Bill as originally introduced the Magistrate or the District Board could initiate any drainage project. Under the Bill now before us, the initiative rests with the District Board, and the District Board alone. The District Board may initiate, may approve, may modify, or may reject any proposal. Nor is this all. The representatives of the landed interest have a voice in the deliberations connected with any drainage scheme. Hon'ble members who have carefully studied the Bill will not have failed to note the responsible functions which the Drainage Commissioners are required to perform under the Bill. Their decision will be final except when the District Board at a special meeting called for the purpose should, by a majority of two-thirds of the members present, decide to set it aside. These, so far as they go, afford sufficient guarantees that public opinion will be consulted and will not be disregarded. I desire once more to affirm that the Government in introducing this measure has been actuated by the purest and the loftiest motives. I do not care to discuss the question whether malarial fever is due to poverty or to obstructed drainage. There is a large body of medical evidence—the evidence of experts whose opinions are entitled to the highest weight and consideration—which places this matter beyond the pale of doubt and controversy. It is admitted beyond dispute that obstructed drainage is the chief, if not the only factor in producing malarious fever, and that poverty accentuates the conditions which produce the disease.

“But the difficulties of the Bill lie in respect of its financial clauses. I should rejoice if the Government could see its way to enact this Bill into law without imposing any cess or rate upon any section of the community. I would go further and observe that the public had a right to expect immunity from taxation for the purposes of this Bill. Let me briefly remind the Council of the circumstances connected with the passing of the Road Cess and the Public Works Cess Acts. The Duke of Argyll was then Secretary of State; he indited a despatch—it is a memorable document—in which he distinctly laid

[*Babu Surendranath Banerjee.*]

down the principle that the Road Cess which was to be levied on villages should be primarily devoted to the sanitary improvement of those villages. Has that been done? No. If this had been done, there would have been no necessity for a measure of the kind now before the Council. Nor is this all. The Road Cess has been charged with works which used to be carried out either from Imperial or from Provincial funds. Then again, when the Public Works Cess Bill was introduced into this Council, Mr. Herbert Reynolds (a name held in honour by all ranks in this Province), who was in charge of the Bill, distinctly declared from his place in Council that the proceeds of the Public Works Cess were to be devoted to meeting famine charges and certain other extraordinary Public Works charges which he specified. But after defraying those charges we have an annual surplus balance of nearly 11 lakhs of rupees, as was shown by the Hon'ble Mr. Bourdillon in his financial statement this year. What becomes of this balance? It is devoted to the carrying out of ordinary public works. If that balance were available, would it be necessary to impose any rate or cess under the Bill now before the Council? I submit not. Under the circumstances I trust I shall not be deemed an irreconcilable if I venture to record my respectful but firm protest against any tax or rate being levied upon any section of the community for the purposes of this Bill. The proceeds of the Road Cess and of the Public Works Cess ought to suffice to meet the expense of the drainage schemes that may be carried out under this Bill. In proposing this amendment, it must not be supposed that I acquiesce in any system of taxation contemplated under the Bill. As taxation is, however, inevitable, my amendment proposes alternate schemes which are less open to objection.

“It is proposed under the Bill to meet the charges of drainage works by the addition of a definite proportion to the Road Cess. On whom would such a tax fall? On the landed interest alone. But who would be benefited by these works? Not only the landed interest, but all interests; the artizan, the shopkeeper, the trader, the zamindar, the raiyat, would equally benefit from the sanitary works proposed to be carried out under this Bill. Manifestly, therefore, it is inequitable to tax a particular section of the community for blessings which would be shared by all. The object of my amendment is to rectify this anomaly. I propose that, subject to the discretion of the District Board, the charges for drainage works should be met by an addition to the road cess or by a tax

[*Babu Surendranath Banerjee.*]

upon persons occupying holdings according to their circumstances and property, or by a rate on the annual value of the holdings situated within the local area. The last two forms of taxation would include everybody benefited by the drainage scheme. But I have been told by hon'ble members of the Select Committee and by the members of the Government, that my schemes are impracticable; and a morning paper, which amuses and instructs us from day to day, has improved upon the situation by observing that, being born and bred in Calcutta, I ought to hold my tongue when a measure is introduced in this Council affecting mufassal interests. Well, Sir, I have not yet learned to hold my tongue. That may be a defect in my education, but I am too old to unlearn. I may be an ignoramus in regard to mufassal affairs, but there are others who are differently situated—experts intimately acquainted with the mufassal and with the working of Local Self-Government in the mufassal, both within municipalities and local areas. I have taken the precaution of consulting some of these gentlemen, men of light and leading in the mufassal, and I have got their replies. I do not want to read those replies to the Council in full, but I will read one or two extracts from them with a view to show that, in the opinion of gentlemen who are conversant with the working of the system of Local Self-Government in rural tracts, the scheme which I have ventured to formulate is a scheme which is workable. The Vice-Chairman of the Hooghly District Board, Babu Lalit Mohan Singh, says—‘In reply I beg to say that I do not think the two schemes to be impracticable. I would have given my reasons if my answer had been otherwise.’ Therefore, in the opinion of this gentleman, intimately acquainted with the working of the District Board and of Local Self-Government in the mufassal, the scheme which I propose is feasible. Another letter is from a very distinguished Municipal Commissioner, a gentleman who at this moment is contesting the Dacca Division for representation in this Council, Babu Guru Proshad Sen. He says—‘I do not think (b) and (c) would involve any impracticable scheme. As you point out, the chaukidari assessments are made under that system.’ Then there is a letter from Rai Jadunath Mukerjee Bahadur, Government Pleader of Hazaribagh, who says: ‘(b) and (c) follow the municipal law, and it is quite fair that one or other of these methods should be adopted in the matter. The assessments may be made in the manner they are made in the municipalities and by the adoption of one of those methods. Those who would otherwise escape assessment will come in under the law.’ Babu Pyari Lal Roy, who for

[*Babu Surendranath Banerjee.*]

many years was a member of the District Board of Barisal, says:—‘I like your (b) scheme, and I would make it compulsory and not leave the matter to the discretion of the District Board.’ And, lastly, I have a letter from Baboo Baikantonath Sen, late Chairman of the Berhampore Municipality and the leader of the Berhampore Bar. He says:—‘In reply to your letter of the 12th instant, I have at the outset to express my approval of your suggestion regarding the imposition of a tax as contemplated in (b) and (c). The panchayat agency might also be used for the assessment and collection of the tax, and I think efficiency and economy would both be secured. * * * I cannot understand why the imposition of the tax contemplated in (b) cannot be satisfactorily effected. Village Unions have come into existence in some places, and whenever available their services also might be utilised.’

“Here we have the opinion of a body of experts, and I think the Council should attach some little weight to that opinion. But why should the scheme be held impracticable? I think it very unfair to pronounce judgment before trial. Have you tried it, and have you found it to be impracticable? You have not; therefore you are precluded from expressing an authoritative opinion upon the matter. Many schemes which are held to be impracticable at the outset have been found to be quite feasible in their working. Therefore, I say we ought to give it a fair trial before we pronounce judgment against it. The panchayat may be used for the purpose, or an assessor may be appointed, or any other agency the Magistrate thinks fit may be employed. I am free to admit that the appointment of an assessor would involve a little more expense, but then the system of taxation I propose will be a little more remunerative; as it will embrace a wider circle of the population.

“Then it is to be borne in mind that my amendment proposes alternate schemes. It is not obligatory on the District Board to adopt the forms of taxation I have put forward. They may make their choice. If they find them to be impracticable, they will not adopt them; and if the majority of the District Boards come to the same conclusion, my scheme will die a natural death. No one will regret it, not even the unworthy individual who now stands sponsor to it. Thus it is evident that the Government will lose nothing by the acceptance of the alternate schemes which I have put forward.

“Nor is this all. It would be a source of great moral strength to the Government to be able to convince the people by the adoption of the alternate

[*Babu Surendranath Banerjee ; Mr. Lyall.*]

schemes which I have suggested that the Government did what lay in its power to avoid an inequitable system of taxation. If you have three alternate projects on the statute-book, and the addition to the Road Cess is uniformly accepted in preference to the other methods of taxation, those who pay it will be reconciled to it; they will regard it as the only practicable scheme; they will submit to the inevitable. Is it not a distinct advantage to the Government to be able to carry the people with them in any legislative project, and especially one which involves the imposition of a new tax? I desire to press this consideration upon the attention of the Government. I feel that by accepting these alternate schemes the Government will have taken an important step towards conciliating popular opinion, removing a felt grievance, and making less unpopular a measure which is admitted to be highly unpopular."

The Hon'ble MR. LYALL said—"The hon'ble member who has just moved this amendment has commended it to the Council on the principle of its being a very little amendment, but I hope I shall be able to convince the Council that the amendment will be practically unworkable. The Council will observe that the foundation of the cess or rate which it is proposed to lay on the people under this Bill is a thirty-years' term. If it is necessary for a rate to be levied for thirty years, it should have some stable foundation. What my hon'ble friend has proposed is in the form practically of an income-tax, a tax on the circumstances of the people, which will vary every year. There will be no stability; one man goes away, another dies, a third fails in his business. Again, we should have the whole oppressive system of the machinery of the income-tax applied for the assessment of the tax. We all hope that this rate wherever it is imposed will be a light one, but if it is imposed in the way in which my hon'ble friend proposes, we should impose the greatest possible amount of tax on the people, and do the greatest possible injury to them. This fact was very forcibly brought forward some six years ago in this Council. Speaking of the assessment of the chaukidari tax by assessors, the Hon'ble MR. ANUNDO MOHUN BOSE spoke of 'the evil of the tax-gatherer going from hovel to hovel and collecting from each his quota, and perhaps, not unfrequently, a good deal more. A great deal had been heard in this country in connection with the fiscal measures of the Government of the evils of direct taxation, not necessarily attendant on the system, but under the circumstances of the country; but when an unsympathetic Government tax-gatherer, with all the powers proposed to be conferred on him and who must render

[*Mr. Lyall.*]

his account at a certain time, went from house to house to collect the tax, it must necessarily open the door to a great deal of oppression and create discontent among the masses.' I say that that fear is shared all over the country. We know that even in the case of the income-tax which is assessed on the people with infinitely more care, we do not get it fairly assessed, although we employ persons of a considerably higher status than would be employed for the assessment of a petty tax such as this. And I go further and say that the hon'ble member has given us nothing that will work; he has not provided for the pay of the assessor and for including it in the estimate. I will not detain the Council by quoting from Mr. Munro's report on the working of the Chaukidari Act; the Council know how it was there stated that the rich and the Brahmans were exempted from taxation, and the poor alone were assessed. The punchayet would in the same way use the power which the amendment proposed to confer upon them for their own benefit. Then my hon'ble friend does not propose to give the Collector the assistance of an assessor or a punchayet until he comes to the last stage. Under his 6th amendment he proposes that the Collector shall make the assessment how he may: he gives him no machinery. The Collector has no machinery fit to revise the estimates; he would have to employ men, and where were the men to come from? The hon'ble member does not object to the proposal of the Select Committee; but he would weld his own proposals with it. I venture to say that the proposal of the Select Committee will really do justice. In this country it is known as a fact that almost every man is a landholder. I will read an extract from the *Amrita Bazar Patrika* of 28th February last. This paper objected to the Bill 'as throwing an additional tax upon the landholding and agricultural communities, that is to say, on the whole Province of Bengal, for there are few men in Bengal who do not hold land in some way or other.' This newspaper therefore admitted that the imposition of this tax on the land was fair. I will go further and say that the land is stable; the land is there, and we shall be as sure to get our tax thirty years hence as on this day, and I know no other way of having such surety. I have already said that under the hon'ble member's proposal there would be no certainty that the amount of the tax would be the same from year to year; the Collector would have to vary the rate of tax, and that would be undesirable. For those reasons I venture to submit that the proposal of the Select Committee is the cheapest and best possible of all. There is the machinery ready and at hand, and it will cost nothing to extend it to this small extent. The landholder will not have to

[*Mr. Lyall ; Maulvi Mahomed Yusuf.*]

employ a single extra gumashta, nor will the Collector have to add to his staff of peons and amla. We have the machinery ready for use. I venture to say that although the proposal of the hon'ble member sounds well, it is so only seemingly, but in practice it will be found unworkable; and I therefore ask the Council to reject it."

The Hon'ble MAULVI MAHOMED YUSUF said:—"I submit that this amendment should not be accepted. The question raised in the amendment was fully discussed in the Select Committee, and the conclusions of that Committee were arrived at after due deliberation, and after a careful and mature consideration of the various courses suggested by the members of the committee: the result was that the only feasible and practicable course that could be found was that embodied in the Bill: other ways were suggested, but on examination they were found impossible. As far as the speech of the hon'ble mover of the amendment goes, the matter remains now where it stood in the Council, and no attempt has been made even now to show how the suggestions overruled by the majority of the Select Committee would be practically carried out. Therefore the objections raised in the Select Committee to what is contained in the amendment, not having been met, the question remains in the same state. One view was suggested in the Select Committee, and the same is foreshadowed, if not expressly put forward, in the speech of the hon'ble member, viz., 'If the scheme is not feasible, I do not put it forward as a compulsory scheme, let it remain as an alternative scheme open to the District Board; if they think the scheme not to be feasible, they need not adopt it.' In reply to 'all this I say that if it is not possible at the present moment for any hon'ble member to point out the practicability of the scheme proposed or suggested, it is not consistent with reason that the statute should provide that scheme to be one open to the District Board to adopt. And we should not forget that if this scheme is to find a place in the Bill even as an alternative measure, it will go forth to the public as a scheme which this Council held as a possible scheme; the scheme will thus be stamped indirectly with the sanction of this Council in regard to its feasibility, and it will be urged hereafter that if the scheme had not been feasible, then the Council of the Lieutenant-Governor would not have allowed it to find a place in the Bill; the intentions of the Council would thus be liable to misconstruction, and in practice feasibility would be forced on the scheme. I therefore think that this amendment will work incalculable mischief, without resulting in the smallest good to the community.

[*Rai Eshan Chunder Mittra Bahadur.*]

The Hon'ble RAI ESHAN CHUNDER MITTRA BAHADUR said:—"This is the first time I appear before this Council, and therefore I shall be excused if I do not exactly conform to the rules and the procedure of this Council. My ideas on the subject before the Council are these—Any proposal to tax a community according to their circumstances and property would lead to the levying of a tax in the shape of an income-tax, and if such a proposal is adopted, the result will be that enquiry must be made into the circumstances of each person who lives within the local area, both as to his income from personal property and from his real property. And I may be permitted to observe that such a tax would operate as a second income-tax. The amendment proposed is, no doubt, equitable in principle, but it would be difficult, as I said before, unless it is allowed to work as an income-tax, to ascertain what is the position of particular individuals in order to fix the assessment upon them. Then again a certain income has to be calculated upon for thirty years, but the circumstances and property of individuals might vary within that period, and how is the fixed income which is needed to be then obtained? Moreover, I think, from what I know of the mufassal, that such a provision would hardly be liked by the people. I find that under this Bill landholders will have to take upon themselves the liability of paying, and also partly recovering from the cultivating raiyats the sanitation cess, but the question is whether any tax can be appropriately levied in matters like these, unless we tax the land. The land has already been taxed heavily; landholders have to pay land revenue, they have to pay the road cess, they have to pay the public works cess, and also other cesses, but it is said that there is no feasible way of realising the money which would be spent in making any improvement, unless we can tax the land itself. I may be permitted to observe that there are only two modes of taxation in matters like these—first, in regard to a man's position and occupation, and secondly, regarding him as a holder of property; and if we go to assess him upon his means and his property, we have to enquire into particulars to ascertain what the assessment should be. I submit that a tax like the one contemplated under this Bill ought to be as small as it possibly could be. If land is to be taxed I can only say, with regard to the section which refers to the realisation of dues under process issued under the Road Cess Act, that instead of realising half from the zamindar and the other half from the patni-holder and the raiyats, we should divide that liability into smaller component parts—say one-fourth from the zamindars, one-fourth from the patni tenure holders, and the other half from the raiyats

[*Rai Eshan Chunder Mittra Bahadur ; Mr. Bose.*]

who would be mostly benefited by the improvement both in regard to their health and the condition of their lands. The liability of zamindars and tenure-holders, many of whom are non-resident, should be reduced, and the raiyats should bear a greater portion of the burden, because they are the persons who will be mostly benefited. In that case the tax would not operate with that degree of hardship to which my hon'ble friend, the mover of the amendment, has objected. I have not been able to consider whether such a scheme is feasible, but I hazard this proposal because I think that in order to make the tax acceptable to landholders it should be reduced. I commend this proposal to the consideration of the Council, because landholders will not be paying this tax for their own benefit, but for the benefit of their tenants, the raiyats, and they ought not to be taxed to the same extent as those who will be actually benefited. All I need say is that I consider the rate which is to be paid by landholders and tenure-holders to be rather high; they would not be benefited as much as the actual occupiers of the villages, and I submit that the Council should agree to a compromise by reducing the liability of landholders and tenure-holders, and putting the rest of the expenditure upon the occupiers of the land and upon the contributions from Government and the District Board. It may be said that the raiyats are poor; still they are the most benefited, and under those circumstances they ought to pay comparatively more than landholders and tenure-holders who are mostly non-resident."

The Hon'ble Mr. A. M. Bose said—"Not having had an opportunity of fully studying the question which has been before the Council now for more than a year, I had not intended to take part in this discussion; but after the reference which the hon'ble member in charge of the Bill has done me the honour of making to a previous utterance of mine in this Council, I think it necessary to state shortly my reasons for voting in favour of this amendment. But in the first place I wish to associate myself with the expressions of regret and protest which have been given utterance to in this Council at the birth of the new form of taxation which will come into existence on the passing of this measure; and all the more so as the forms of taxation already in existence were intended in the main to provide for necessities of the kind which it is in contemplation to meet by this Bill. But I take it that it is too late to enter with profit into any discussion of that kind at the stage which the Bill has now

[*Mr. Bose.*]

reached. Leaving that question aside, I submit that there is a great deal to commend, if not the exact form of the amendment, at any rate the principle which underlies it.

“It has been pointed out, and it has not been denied, that the object of the Bill is to benefit in the matter of health and sanitation all the residents of certain areas which may be brought under its operation. Therefore it is only right and equitable that every one to the extent of his means, and so far as may be practicable and reasonable, should bear the burden of the taxation rendered necessary for such purpose. We all know that it is not a particularly agreeable feeling which one entertains when one is subjected to the pressure of a new tax, to the operation of a ‘new scheme of drainage’ on the purse; and that feeling will not be improved if it is found that others who enjoy the benefit will be exempt from the necessity of paying for it. As a matter of fact there is in connection with this Bill that feeling, that sense of unfair treatment and irritation, amongst the representatives of the landed interest. And in a question of this description I think from considerations of justice and fairness, and also, I venture to appeal to the Council, from considerations of political wisdom and expediency, it is desirable, if it can be done, to remove that feeling of unfairness and to allay that sense of irritation. Only yesterday I received a letter from one of the most honoured representatives of the zamindari interest—unfortunately I have not brought that letter with me—stating that the feeling is growing among landholders that whenever there is any reform to be carried out which would confer benefit, real or fancied, on the community generally, those connected with the land are singled out for taxation, because the machinery for subjecting them to that operation is ready at hand.

“Though speaking generally, and in the main, it may be truly said that in the rural areas those engaged in trade are also interested in land, yet there are exceptions, and marked exceptions, to the rule. I myself know of tracts in which there are flourishing marts or bazars containing a large number of well-to-do members of the trading and mercantile classes, foreigners to the district and having no interest in any land in or about the locality, who would be exempted from the operation of the Bill, if those places happened to be within the affected area.

“But the objection which has been taken is not to the principle of the amendment, which is admitted to be just and fair, but to its being impracticable

[*Mr. Bose.*]

in working. I need hardly say I feel highly honoured by the reference to my previous statement in connection with the Chaukidari Bill; but in the present case there are two or three considerations of an important character which I beg leave to point out, and which distinguish this scheme from the case then under consideration. In the first place there is an important question of principle involved in the present case which did not then exist. And I may observe that as regards the imperfections of the mechanism proposed, I am confident the Select Committee, should the matter be referred back to them, will be able to find a practical means by which justice to all classes will be secured, and the incidence of taxation will be made co-extensive with the necessities of the situation. Proceeding further, not only is the principle one which requires taxation of a somewhat more extensive kind than that contemplated in the Bill, but in the second place there is ample and unfettered discretion left in the hands of members of the District Board as to the particular form of taxation to be adopted in any individual case, having regard to the actual facts or requirements of that case. I submit that will make a very important difference in the character of the measure, considering that the members of the District Board will be representatives of the inhabitants of the district. Even if there be any fear of difficulty in the working of some of the alternative schemes, any feeling of that kind will be more than counterbalanced by the advantage to be derived from a strict adherence to fairness and justice, and the remedy as regards such difficulty will be in the hands of the Board. They will be most qualified to determine whether such fears in any case are real, and they will further have the means ready at hand to remedy that defect by adopting the scheme now contained in the Bill, and which will, of course, be retained. If on the other hand no attempt to apply any of the alternative schemes is made by any District Board, those who represent the raiyats and zamindars will have no ground to complain, a sense of injustice will not be rankling in their minds, because they will find that although the legislature had armed the District Boards with the power of extending taxation, the practical difficulties in the way made that extension extremely undesirable. And in the third place, as regards the feasibility of working the alternative schemes (b) and (c), if indeed it be, as pointed out by the hon'ble member in charge of the Bill, that provisions of this kind would be practically a tax on incomes, I would observe that just as there is at present the road cess procedure for realising the tax now in contemplation, in the same way there is,

[*Mr. Bose ; Mr. Risley.*]

fortunately or unfortunately, a very extensive machinery for the working of the income tax. Here also it may be feasible to combine one machinery with the other.

“On these grounds, I submit that having regard to the importance of the principle involved and of giving every legitimate relief to the landed interest, all that can be done to meet their just grievances in a matter of this kind should be done. In giving my vote in favour of the amendment, I will only add one observation. I do not identify myself with any remarks which have been made in favour of a practical addition to what is now known as the chaukidari tax being accepted as a substitute for the road cess. Having some acquaintance with villages in the mufassal, I am bound to say that in my experience among the poor agricultural classes there is not unfrequently a great deal of hardship in the realisation of that tax, and I should be very reluctant to support this amendment if I thought it would bring about an addition to the chaukidari tax. I was going to say it would be a calamity to add any taxation to what is already borne by those who are living on the smallest of earnings and the scantiest of means. But believing as I do that the District Boards might so work the matter as to deprive the operation of the optional clauses, the alternative schemes of taxation, of any semblance of injustice or hardship to the poor, having their own experience and local feeling to guide them; believing that considerations of strict fairness to all classes should not be altogether lost sight of in searching for smoothness and ease of machinery; and without associating myself with all the details of the amendment—I shall yet vote for it, should it be pressed to a division, as a protest against the laying of fresh burdens on only one class, the raiyat and the landlord, for the conferring of benefits which will be shared by not them alone.”

The Hon'ble Mr. RISLEY said:—“I have only two or three words to add to the ample, and I venture to think effective, criticisms which have been passed on this amendment, and those two or three points have not been fully dealt with in the speeches which we have heard so far. In the first place, I understand, we are dealing wholly with a question of mechanism and not with the question of principle. The principle is admitted that a tax upon the land is proposed, and not a tax upon the incomes of the people. The only point is what is the best means of giving effect to that tax. We have the choice of two machineries or perhaps three, one of which, the machinery of the road

[*Mr. Risley.*]

cess, is unquestionably a good machinery, and it is proposed besides this machinery, which I am inclined to think the best, to give the District Board the use of two alternative kinds of machinery. One of these is the annual value tax which has not been referred to in the debate and which will hardly be possible in any rural area: it has been found impracticable in small municipalities, and it will therefore be quite unworkable in rural areas. Therefore the only alternative which really remains is the tax according to the circumstances and property of the person to be taxed. That tax has a tolerably ancient history. I believe it has existed from the time of the Chaukidari Tax of 1856, and I am not sure that it does not go back to an older Regulation of 1819, which introduced the Chaukidari Tax on a small scale for, I think, the municipalities of Dacca, Berhampore, Calcutta, and Cuttack. The Chaukidari Tax from the very commencement always had a maximum limit, and anybody who examines the matter can satisfy himself that that is the principle upon which the tax is based. In all the discussions, the discussions on the Municipal Bills of 1856 and of 1864 and of later years, it has always been recognised that the tax itself is a sort of rough-and-ready means of taxation, and is only to be accepted as a *pis-aller*, because you cannot put anything else in its place. What made the tax tolerable was this maximum limit, but it is not clear to me from the terms of the amendment whether the hon'ble member proposes to make his alternative scheme subject to a maximum or not. If he proceeds here on the lines of a circumstance and property tax, then practically he is bound to provide some maximum limit. The new Chaukidari Act, VI of 1870, fixes a maximum of one rupee a month. Either the amendment proposes ultimately to take cognizance of this, or it does not. If it does, the principle of proportional benefit which forms the principle of this Bill is clearly thrown out. Under the road cess procedure everybody pays strictly in proportion to the land he holds, but if you proceed on the basis of the Chaukidari Tax, everybody's liability will cease when the maximum limit of one rupee is reached, and then there will be a substantial difficulty in levying the amount required, and in no case will people pay in proportion to their income or the amount of land they hold. The tax will be absolutely inequitable all through.

“Then there is the second point. It is alleged that the proposal to assess the tax according to circumstances and property is intended to lay the burden on classes who under the Bill would escape from taxation. I submit that it is