

[*Mr. Risley ; Sir Griffith Evans.*]

extremely doubtful whether that statement can be made out. The assumption is that in rural areas there are large numbers of people who have no interests in land, and who will therefore escape a machinery which adjusts the tax according to interest in land. I use the figures prepared in connection with the cadastral survey of Muzaffarpur, which show that in an area of three thousand square miles there is a population of 2,711,000. We may assume half of these to be females; there remains 1,355,000. We may further assume that one-third of these are children. We are then left with a total number of 900,000, and of these no less than 200,000 are proprietors and shareholders in land. The number of tenures is one million. The excess of tenures over population is due to the fact that a certain number of people hold more than one tenure. But even these figures do not exhaust the subject; they make no mention of mortgagees of property and of tenant rights, all of whom, I understand, are to be numbered as having interests in land. So that in this Muzaffarpur area everybody, except the small class of labourers, has some interest in land, and certainly it would not be proposed to assess them. I shall give another instance. It is a statement in connection with a pargana in the Tippera district, from which it appears that no less than 94 per cent. of the population are agriculturists. Further, I find a statement in a very admirable report by Munshi Nandji. It is a statement in connection with pargana Mallarpur in Birbhum, which gives statistics of the population classified according to professions who also hold cultivable lands. They are merchants, oil-pressers, oil-sellers, potters, blacksmiths and coolies. I have no doubt that further statistics which may be prepared in connection with these statements will absolutely demonstrate this point. And further, it is a matter of experience in this country, as in other countries, that the trading classes, directly they have made money, the first thing they do is to acquire rights in land. They take mortgages of rights either as middlemen or as landholders, and it is absolutely beyond doubt that the whole of these people will be assessed under the road-cess machinery and will be rightly so assessed, and therefore there is no necessity for introducing any alternative form of taxation whatever.

The Hon'ble SIR GRIFFITH EVANS said:—"I wish to say a very few words, particularly on the question of the machinery for the assessment of the proposed alternative system of taxation: I should rather say the entire absence of any machinery for this alternative proposal. I am not going to discuss the question

[*Sir Griffith Evans.*]

whether equitably all property of all kinds should not contribute equally in a proper scheme of taxation for local improvements. That is a question which has been much discussed in England, but the practical difficulties have never been overcome. What we have to do now is to vote on a certain amendment, namely, that District Boards should be able to recommend certain alternative forms of raising this money, and on their making that recommendation the Collector should make certain estimates, and then there follow amendments which purport to indicate the way of carrying out such recommendations. The proposal is simple no doubt to a degree, and the only objection is that it is too simple, and that it provides no machinery at all for working it out. The proposal is to have a tax on persons in the local area according to the circumstances and the property of each person. How is the tax to be levied? My hon'ble friend, MR. ANUNDO MOHUN BOSE, who has backed up the adoption of this amendment, has himself said that it would be perfectly out of the question to utilise the agency for the assessment of the chaukidari tax for the purpose of levying this taxation. Obviously it is so. Then what is the other scheme? It is the machinery employed by mufassal municipalities. It is a most elaborate machinery. It provides that there should be an assessment list as regards the property and the circumstances of individuals, and a valuation list as regards the rateable value of holdings. These assessment and valuation lists are to be published; there is a machinery for appeals of an elaborate character, and a proviso for a maximum of eighty-four rupees. But these provisions are not incorporated in the Bill or in the amendment, and would not work if they were so incorporated. In the present case, we are simply told that the District Board is to recommend a principle of assessment, and that the Collector is to make out an estimate. It has been pointed out that it will be impossible for the Collector to do so, as he has no agency for the purpose. But suppose he does make an estimate, then by section 24A, if the District Board has decided to raise the cost of carrying out a drainage scheme by means of a tax on persons or on the annual value of holdings within a local area as provided by section 15A, they would require the Collector to assess persons occupying holdings within that local area according to their circumstances and property, or by a rate upon the annual value of holdings within such area, and then the assessment is to be made either through a paid assessor or by means of the village punchayats or through any other agency the Collector may think fit to

[*Sir Griffith Evans ; Mr. Bourdillon.*]

comply. That section gives no idea of the way in which objections are to be dealt with, on the assessment made, nor does it prescribe a limit or any proportion between the supposed income and the amount to be levied as a tax, or provide any means of valuing mufassal holdings or limit the percentage to be paid on the value. It is left entirely for the Collector to do what he pleases. I do not know what is meant by such a section. I assume it to mean that persons are to be assessed at whatever the Collector fixes, and thereupon this tax—I cannot discover when or on what action by the Collector it becomes payable—is to be recoverable as a public demand. It has been said that the Select Committee will be able to find the means of carrying out this principle of taxation. The question before the Council is not to refer the Bill back to the Select Committee and ask them to give effect to certain principles, but whether we should adopt the amendment now before us, which to my mind it is impossible to do with any regard for our reputation as an assembly of practical men."

The Hon'ble MR. BOURDILLON said:—"It appears to me that the general merits and demerits of the proposal before the Council have already been sufficiently discussed, and I have no desire to add another stone to that heap: I only wish to refer to one point which has not been noticed by any of the speakers who have preceded me. The hon'ble mover of the amendment has told us more than once that he bases his amendment upon the broad principle that all who benefit by an improvement under this Bill should be equally taxed. But if I read his amendment rightly, it seems to me to carry its own condemnation with it, and to be so worded as exactly to frustrate the hon'ble member's intention. It proposes that the tax shall be an assessment upon persons occupying holdings, but the bill nowhere defines a 'holding,' and the hon'ble member has omitted to provide any definition of the term. We must therefore turn to some other place for a definition, and as we are talking of rural areas, the natural reference is to the Road Cess Act, which has to a great extent been made the basis of the Bill before the Council. In that Act (section 4) 'holding' means the land held by a cultivating raiyat. If that definition is accepted in default of any other, the practical result would be that the tax will be levied from none but cultivating raiyats within the local area, whereas the intention of the amendment is to levy it from all alike."

[*Babu Surendranath Banerjee.*]

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I have a few observations to offer in reply to the remarks which have been made on my amendment. The chief objection is, firstly, one of principle and, secondly, as regards the practical machinery for the purpose of carrying out the objects of the amendment. It has been observed by more than one speaker, that my proposals involve a rough kind of income-tax. It is undoubtedly a rough kind of income-tax that I propose, but that ought to be no objection to them. It is somewhat late in the day to urge any objection of that kind, having regard to the fact that the bulk of the taxation in the mufassal is a rough kind of income-tax. The chaukidari tax, the tax levied in a large number of mufassal municipalities, are all so many forms of income-tax. Not only that, but it seems to me that by accepting this kind of taxation you move along the line of least resistance. As the hon'ble MR. RISLEY has remarked, the people of Bengal have been accustomed to the chaukidari tax since the year 1819, and to the municipal tax according to the circumstances and property for a long time; therefore they are familiar with this tax, and those who have to levy it are also familiar with it. Consequently, as far as the question of principle is concerned, my scheme is not open to any objection, as it enables us to move along lines to which the people have long been accustomed. But we have been treated by the learned Advocate-General to a criticism upon the defects of the machinery for the imposition and realization of the tax. It strikes me that if the Government accepts this amendment, there ought to be no real difficulty in the way of framing a suitable machinery for the purpose of carrying it out. It is provided in section 24A, which I propose to move as an amendment later on. The tax may be assessed and collected either by the income-tax assessor or, by any other assessor the Collector may appoint, or by means of any other agency the Collector may consider desirable. Then under Chapter II the Government is vested with the power to frame rules generally for carrying out the provisions of this Act. Surely, if the principle of the amendment is accepted, there ought to be no difficulty in the way of framing rules to give effect to it. I take my stand on the high ground of principle. You are going to enact a law which is admitted to be unpopular; why handicap it with a system of taxation which is likely to cause a great deal of dissatisfaction? The zamindars will complain, the raiyats will complain. They will say, here is a benefit to be shared by the community at large, but why should we

[*Babu Surendranath Banerjee; the President.*]

alone be taxed for it? I do not think the Government should face difficulties of that kind when my amendment provides a means of escape. I propose alternative schemes, and if some of them are found impracticable, the District Boards will not accept them. Why do you object to them? The mere fact of their being on the statute-book will testify to the anxiety of the Government to avoid an unfair and inequitable system of taxation. I have not the slightest doubt in my mind that by accepting these alternative systems of taxation the Government will have taken a very long step towards conciliating public opinion."

HIS HONOUR THE PRESIDENT said:—"I had hoped that the hon'ble mover of the amendment in winding up the debate would have told us that while still unconvinced as to the principle involved, he was prepared to withdraw his amendment in view of the fact that the majority of the Council is decidedly against it, and that a blow has been struck at his armour which has made serious dents in it, and which, to a great extent, destroys the effective power of that armour. I should like in the first place to say that though the hon'ble member, in proposing his amendment, began with expressing a fear lest that he should be considered obstructive, neither I myself, nor I think any officer attached to the Government, is inclined to think that the hon'ble member has been obstructive in the way in which he has treated this Bill, either in the Council or in the Select Committee. On the contrary, I wish to say that we owe a great deal to him in respect of the origin of this Bill, of the improvements which have been made in it during its incubation, and of the way it has been received by the country at large. And though I cannot accept this amendment, I am not the less grateful and glad to acknowledge the great help the hon'ble member has rendered in preparing the Bill and supporting its main principles.

"As regards this amendment, I admit that the object is wholly laudable. From the beginning we have sought for some other way of imposing a rate than on landed interests only, and if we could have found a way of taxing people who will benefit by these drainage schemes, and who do not come within the scope of the rate which has been adopted, we should have been glad to accept it. We have searched high and low, but we have not been able to find it. I think that the object of the amendment is a right and a sound one, and if it had been a practicable measure, I would accept it with great satisfaction. But the main difficulty in our way from the time when the first

[*The President.*]

draft of this Bill was brought out is the practical difficulty of the introduction of a new system of taxation; how we should assess, how we should value, how we should bring notices home to the people, how we should treat the objections which people might make, and how we should provide for appeals after objections had been made and had been overruled. That weighed upon me very much, and it was with a great deal of relief that I received a suggestion from Mr. Duko, the Collector of Hooghly, who has had great experience in working the Agricultural Drainage Act, and whose assistance has been invaluable in framing the provisions of the Sanitary Drainage Bill. It is his proposal which we have adopted in making use of a machinery which exists and which is working fairly well, namely, the machinery of the Road Cess Act. It would be a most retrograde step now to leave this machinery which exists and to go to a new machinery, which we should have to create, and I am sure no practical man, who has thought over the difficulties which lie in the way of this Bill as I have done, would dream of going back from a machinery which is existing and which we can adopt, to propose a new machinery which has to be worked out.

“The idea of utilising the machinery of the Chaukidari Act has not been supported by a single member, except the hon’ble member himself, and that not very strongly. The idea of utilising the machinery of the Income-tax Act has hardly been discussed, and I will dismiss it with the simple remark that I am satisfied that the Government of India would not sanction our utilising a machinery which is for the collection of an Imperial tax in order to tack on to it a small provincial tax. They would say that they require the free power of dealing with the income-tax as the sheet-anchor of Imperial finance. They may, at any time, desire to raise the percentage at which the income-tax is now collected, and it would be fatal to their own financial position if, at the same time as they had to enhance their own assessments, a small provincial leech is attached to it which would suck at the same source and deprive them of part of the extra amount which they wish to raise.

“I therefore hope the Council will agree with me that neither the machinery of the chaukidari-tax nor of the income-tax can be applied to the object of taxation under this Bill, and that the idea of inventing new machinery for it, is not to be tolerated. And even if it were to be tolerated, as the learned Advocate-General and other hon’ble members have pointed out, we have not

[*The President ; Mr. Lyall.*]

the details of the machinery placed before us. As Mr. Risley has pointed out, the amendment will not achieve the end aimed at by the hon'ble member, but the very reverse. To pass this amendment would be to wreck the Bill. It would be necessary to send the Bill back to the Select Committee to consider this and the subsequent amendments bearing upon it so as to see how they could be worked. The Council could not pass the Bill in the state in which it would stand if this amendment were passed. Therefore on all grounds, both theoretical and practical, I think that this amendment must be resisted, and I should wish, for the sake of the unanimity of the Council in carrying this Bill through, that the hon'ble member would see how desirable it is that we should have a unanimous vote on this important subject."

The amendment was by leave withdrawn.

The Hon'ble MR. LYALL moved that the following words be added to section 2—

'The words 'cultivating raiyat,' 'estate,' 'holder of an estate,' and 'tenure' shall have the meanings attached to them in the Road Cess Act, IX (B.C.) of 1880.'

He said—"The reason for asking leave to add these definitions is this. At one time when the Bill was in Select Committee, it was decided that the cess to be raised under this Act should be levied under the machinery of the Road Cess Act; some objection was raised, and finally sections 23 and 24 were inserted in the Bill. These definitions existed in the early draft of the Bill, but were omitted subsequently, and it was only yesterday pointed out to me by my hon'ble friend, MR. R. C. DUTT, that it would be advisable to insert these definitions. The Advocate-General was consulted, and he agreed that their insertion is necessary."

The motion was put and agreed to.

The Hon'ble MR. LYALL moved the following amendment in section 9—that in place of the words "at a special meeting" at the end of the section, the following be substituted—"at a meeting specially called for the purpose."

He said:—"When the Select Committee were drafting the Bill, they failed to note that in the present Local Self-Government Act there is no provision for a special meeting of the District Board. The object to be attained is exactly the same. Instead of 'a special meeting,' we propose that the District Board shall

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

take the preliminary scheme into consideration at a meeting to be called for the purpose. The words 'special meeting' had a particular meaning in the old District Board Act, but they have been entirely omitted in the Local Self-Government Act. The amendment therefore stands thus, that in section 9 the last words 'at a special meeting' be struck out and the words "at a meeting specially called for the purpose" be substituted for them; and that in the first line of section 11 the word "special" be struck out."

The motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that for the first sentence in section 11, the following be substituted:—

'If at a meeting specially called for the purpose, a majority of the members present, acting on the advice of the Commissioners, or with the approval of a majority of not less than two-thirds of such members (such meeting to consist of not less than two-thirds of the total number of members of the Board) acting against the advice of the Commissioners, adopt the preliminary scheme, they shall revise it in the following manner.'

He said:—"This section deals with the procedure which the District Board has to follow when it has to consider the report of the Drainage Commissioners. The report is to be considered at a meeting to be specially convened for the purpose. If the report is adopted by the District Board, it will be adopted by a majority, but if the report is rejected, a further safeguard is provided. It must be rejected by a majority of two-thirds of the members present. I have not the smallest objection to a majority of the meeting adopting any scheme on the advice of the Drainage Commissioners, but I contend that when the report is rejected it should be rejected at a very full meeting of the District Board; and therefore I beg to submit for the consideration of the Council that the decision of the Drainage Commissioners should not be rejected except at a meeting where at least two-thirds of the entire number of members of the District Board are present. My amendment is in the nature of a compromise. In the Bill first revised by the Select Committee, the section provided that if the scheme of the Drainage Commissioners was to be rejected, it should be rejected at a meeting of two-thirds of the total number of the District Board. When I called attention in Select Committee to section 10 of the Bill as revised by the first Select Committee, which laid down the provision to which I have just referred, I was met with the remark that it would be impracticable, that you would never get two-thirds of the whole number of the District Board

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

to be present at a meeting. However that may be, my present proposal cannot be regarded as impracticable, for it is supported by the high authority of a Magistrate of the district, who is also Chairman of the District Board. The Magistrate of Faridpur, writes:—‘I should prefer a majority of two-thirds of the members present at a meeting specially convened for the purpose of considering the scheme, such meeting to consist of not less than two-thirds of the total number of members of the Board.

“We may be sure that a District Magistrate would not make a recommendation of this kind unless it involved a perfectly feasible proposal.”

The Hon'ble MR. LYALL said:—“I cannot recommend the Council to accept the present motion. The question was very fully considered by the Select Committee, and the reason which induced them to make the recommendation is that the District Boards are large bodies, consisting of men residing in all parts of the district, and it is almost impossible for them all, or even a large majority, to attend meetings. From the statistics I find that the number of members who attended meetings in the year 1893-94 was only 46·9 of the total number. You cannot expect attendance at meetings in the mufassal such as you expect in municipalities and other bodies where the members live close to each other. Taking these facts into consideration, the Select Committee were of opinion that the wording of the Bill is sufficient, but I am quite willing, if the hon'ble member will reduce the number to one-half, to accept the amendment.”

The Hon'ble BABU SURENDRANATH BANERJEE said:—“If that is the sense of the Council, I shall be glad to get a minimum of one-half of the members of the District Board if I cannot get two-thirds.”

The amendment was then put in the following amended form, and the motion was agreed to:—

‘If at a meeting specially called for the purpose, a majority of the members present, acting on the advice of the Commissioners, or with the approval of a majority of not less than two-thirds of such members (such meeting to consist of not less than one-half of the total number of the members of the Board) acting against the advice of the Commissioners, adopt the preliminary scheme, they shall revise it in the following manner.’

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

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following proviso be added to section 14:—

'Provided that it shall always be obligatory on the Local Government to contribute a fixed proportion, to be determined by the Local Government, of the cost incurred in carrying out such scheme.'

He said—“As I read section 14, it is optional with the Government to contribute to the construction of any drainage project or not, just as it pleases. I take it that, having regard to the great interest which the present Lieutenant-Governor has taken in this Bill—and I am sure that it is an interest which will be perpetuated by his successors in office—such contributions will be frequently made, and in the vast majority of cases will be generously made. Therefore I think it would be wise on the part of the Government to recognise this duty as a statutory obligation. It would act as an incentive to the District Boards to initiate such schemes. It would act as a stimulus to generous and philanthropic individuals who would emulate the generosity of the Government. Further, if Government contributes it will take care to see that no bogus schemes are started, and that the money is well-spent. I have heard the remark made that the Government may nullify the provision by contributing very little, but I have abundant confidence in the generosity of the Government in this matter. I hope that under these circumstances the Government will make the concession I ask for, and that it will recognise its duty to make such contributions as a statutory obligation.”

The Hon'ble MR. LYALL said:—“I do not wish to take up the time of the Council by saying anything further than that this amendment cannot be accepted by the Government.”

The Hon'ble MR. R. C. DUTT said:—“I think this amendment, if it were accepted, would be entirely futile. On the one hand, the Bill confers upon the Government the power of accepting or rejecting a scheme. That being so, if we lay it down, at the same time, that the Government in accepting a scheme shall always contribute a certain proportion of the cost, it may come to this that where the Government is prepared to contribute one-fourth of the cost of a particular scheme which it approves, and the Legislature has fixed the proportion of one-third, the Government may be induced for that reason to reject the scheme. On the other hand, there may be schemes which the Government may consider so important that it may desire to contribute more than the proportion

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

laid down in the Act, and in such cases the amendment would have the effect of restricting the generosity of the Government, which I am sure my hon'ble friend does not intend. I have just now before me a scheme of this nature which has been laid before the Government. It is a scheme for opening out the Kausiki khal in Hooghly. The northern part of the khal is now silted up, and is mostly cultivated to the extent of two or three miles; the rest of the channel is absolutely stagnant, and the water in it is never renewed. There are about fifty villages situated in that area, the whole of which suffer from the effects of malaria, and in recent years they have suffered from cholera also. There were at least two hundred deaths from this disease last year. A scheme was prepared for sending a current of fresh water into this khal from the Kana Nadi, so as to benefit all the villages on its banks, and restore it as a water course. It was proposed to provide a sluice gate at the lower end by which the water could be let out into the Rajapur Bil; and having thus opened out both ends of the khal, it was proposed to get as much water into it as can be spared from the Kana Nadi, which may be about four or five flushes during the year. It took some time to mature the scheme, and I had the greatest pleasure, as acting Commissioner of Burdwan, to forward it to the Government for favourable consideration. A few months ago I received a reply from the Government, in which they stated that the scheme would be carried out in the Irrigation Department, provided that half the estimated cost of the work was contributed by the District Board. Therefore, if we accept this amendment and fix the proportion to be contributed by the Government, which would probably not be more than one-fourth or one-third, it may have the effect of restricting the contribution to something less than what the Government may otherwise be willing to give."

The Hon'ble, BABU SURENDRANATH BANERJEE, said:—"My hon'ble friend MR. R. C. DUTT labours under some misapprehension. According to the terms of my amendment there is to be no hard and fast rule of proportion which is to govern all cases. The proportion of the contribution to be made by Government will vary in each case, and will be determined by the Government itself, having regard to all the circumstances of the case. There will be nothing to prevent the Government from paying one-half of the cost in any case in which it may think fit to do so. All that I want is that the Government should recognize by law that it is bound to make a contribution."

[*Mr. Risley ; Babu Surendranath Banerjee ; Sir Griffith Evans ; the President.*

The Hon'ble MR. RISLEY, said:—"In that case I should like to enquire how the proposal, as it has just been explained, differs from that which is already comprised in section 14, which provides that the Local Government shall consider the scheme, and 'if it approve or modify the scheme, it shall thereupon return it so approved or modified to the District Board through the Commissioner of the Division, with an intimation of the amount which the Local Government will contribute towards the scheme.' I conclude that the amount so contributed will bear some proportion to the cost to be incurred in carrying out the scheme."

The Hon'ble BABU SURENDRANATH BANERJEE observed:—"If it is understood that the liability of the Government to contribute is recognised in the Bill, I withdraw this amendment."

The Hon'ble SIR GRIFFITH EVANS said:—"I do not think the Government was bound by section 14 to make any contribution. It ordinarily would do so no doubt, but there is no statutory obligation, and I do not see why there should be a statutory obligation."

HIS HONOUR THE PRESIDENT said:—"I think the answer to the hon'ble member's amendment is that it does create a statutory obligation on the Government to contribute to the cost of an approved scheme, which section 14 as it stands in the Bill does not create. But the statutory obligation would be satisfied by the Government contributing a single rupee, and therefore it would have no practical effect. Under these circumstances, perhaps, the hon'ble member will withdraw the amendment."

The amendment was by leave withdrawn.

The Hon'ble BABU SURENDRANATH BANERJEE moved that for sections 23 and 24, the following be substituted:—

'Every holder of an estate or tenure liable to pay the rate under section 22 shall pay to the Collector half the rate due in respect of such estate or tenure, the other half being paid to the Collector, or any other officer who may be appointed in this behalf, by the cultivating raiyats holding lands within the local area, the amount due from holders of estates and tenures and cultivating raiyats being recoverable under the law for the time being in force for the recovery of public demands.'

He said:—"Under the Bill as it is, the whole of the drainage cess will be recovered from the owner of the estate or tenure, and he will have

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

to recover half the amount from the cultivating raiyat. The object of my amendment is to make each person responsible for his own dues. The zamindar will pay his share of the cess, and will not be held responsible for the dues of the cultivating raiyats which he is not always able to realise, and at the same time the raiyat will be protected against the exactions of an unscrupulous zamindar, who may take more than he is entitled to do. This is the principle which has been adopted in the most recent enactment which has been passed by this Council. Sections 30 and 31 of the Record of Rights Act, provide as follows:—

‘30. The amount due from proprietors shall be paid together with such instalment of
Payment of expenses by proprietors land revenue as the Local Government may direct, and arrears shall be recoverable under the law for the time being in force for the recovery of public demands.

‘31. The amount due from tenants and rent-free owners and occupiers shall, subject to
Payment of expenses by tenants and rent-free owners and occupiers any orders passed by the Local Government under section 28, be paid by them to the Settlement Officer, on tender of such extract from the record of rights as they may be entitled to receive. Arrears shall be recoverable under the law for the time being in force for the recovery of public demands.’

“This is what we have done in connection with the most recent piece of legislation which has passed through this Council, and I beg that the same principle may be adopted in this Bill. It is a new law which we are enacting, and it will be an unpopular law, and it strikes me that zamindars and raiyats will be partly conciliated if the principle for which I contend is accepted. The British Indian Association have made a representation on this point; they complain of the principle contained in this section, and they have recorded a strong protest against it.”

The Hon'ble MR. LYALL said:—“I am compelled to ask the Council to reject this amendment. The hon'ble member says it is on the lines of the latest legislation, but the latest legislation has nothing to do with the subject before us now. The object of the Select Committee was that the rate should be collected in the easiest way by the existing machinery of the road cess, but the hon'ble member wants us to create an entirely new machinery in the Collector's office to realise the rate from all cultivating raiyats. That would be an expensive machinery, and I venture to doubt whether the raiyats would

[*Mr. Lyall ; Mr. Bose ; Rai Eshan Chunder Mittra Bahadur ;
Babu Surendranath Banerjee ; the President.*]

prefer it. I do not think they would object so much to pay an anna or so more than their existing road cess as to a number of peons being let loose with certificates all over the country for the collection of these petty sums. The sums realisable under this Act will be exceedingly small, and a large number of peons with certificates in their hands would have to be sent out for the collection of very small amounts. I venture to think that the poor raiyats would have to pay a great deal more under the proposal of the hon'ble member than under the procedure prescribed by the Select Committee. I cannot therefore recommend the Council to accept this amendment."

The Hon'ble MR. A. M. BOSE, said:—"While sympathising to a great extent with the object which the hon'ble member for the Corporation has in view, I will point out that this amendment can hardly be placed before the Council, or considered by it, until section 22 of the Bill is amended. That section provides that 'the rate so determined shall be published as provided in section 40, Bengal Act IX of 1880, and shall be paid together with the road cess payable by those liable to pay such cess;' therefore that section lays it down that the whole of the rate under this Bill shall be paid in the first instance by the persons who are liable to pay the road cess. If we leave that section intact, and my hon'ble friend does not propose to alter it, it will not be possible to accept this amendment."

The Hon'ble RAI ESHAN CHUNDER MITTRA BAHADUR said:—"I do not know whether the proposal of the hon'ble member would be advantageous in any way. I think it would be more convenient if the zamindars and tenure-holders were called upon to pay the rate and realise their quota from the raiyats."

The Hon'ble BABU SURENDRANATH BANERJEE asked leave to withdraw the amendment.

HIS HONOUR THE PRESIDENT said:—"Before allowing the amendment to be withdrawn, I desire to explain the reason why an important distinction exists between the case before us now, and the case to which the hon'ble mover of the amendment referred in the Record of Rights Act. It has rather a curious history. When Sir Antony MacDonnell was acting for me, the question came before him first of all, and he contemplated that their share of the cost of

[*The President ; Babu Surendranath Banerjee.*]

the settlement operations should be paid by the raiyats, not once for all, but through a number of successive years, and he therefore thought the cost should be collected in the way in which the road cess is collected; but when I came to consider the matter, I found that the amount would be so small that it would be better not to collect it, by instalments, with the road cess, which might give the impression that it was to be more or less a permanent imposition, but to collect it once for all from the raiyats. If you want to collect a due once for all, you should collect it directly from the person from whom it is due, but if you are going to collect an amount year after year by all means collect it by a machinery which exists for the collection of an annual rate or cess."

The motion was by leave withdrawn.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following proviso be added to section 22 :—

'Provided that if the Collector or other officer shall so direct, a notice under this Act may be sent by post in a letter addressed to the person named therein at his last known residence, address, or place of business, and registered under Part III of the Indian Post Office Act of 1866, or any similar enactment for the time being in force, and service of it may be proved by the production of the addressee's receipt.'

He said—"Section 40 of the Road Cess Act does not make any provision for personal service by post. In the Bill as revised by the first Select Committee we had a section precisely the same as that which I now propose. It was a proviso to section 34 of that Bill, and it laid down that if the Collector or other officer should so direct, a notice should be sent by post in a registered cover. The proviso which I now submit for the acceptance of the Council does not impose any duty on the Collector, except such as he may take upon himself in the exercise of his discretion. It is entirely a matter of discretion whether he should serve a personal notice of this description, and I do not see any possible objection to the acceptance of a proviso like this. There may be cases of hardship in which the Collector may be convinced that service of personal notice is necessary. What possible objection can there be to his serving personal notice in such cases? It is not an obligation imposed upon the Collector, but we give him a discretion, and he may be trusted to use his discretion in a manner which will not encumber him with unnecessary work."

[*Mr. Lyall ; Mr. Dutt.*]

The Hon'ble MR. LYALL said:—"There is no possible objection to this amendment, except that it already 'exists in the law, and to insert this proviso would be to enact the same provision twice. Section 22 of the Bill provides for the service of notice in the manner provided by section 40 of Bengal Act IX of 1880, and in section 96, clause (2) of that Act, it is enacted that the notice may be served 'by sending a registered letter containing such notice directed to the said person at his usual place of abode or to the place where he may be known to reside,' and that makes exactly the same provision which the hon'ble member desires. The provision exists in the law, and is therefore unnecessary."

The Hon'ble MR. R. C. DUTT said:—"The reason why this provision occurred in the Bill as before amended by the Select Committee was that it was then intended to realise this cess as a separate tax. It is now provided in section 24 that it is to be levied with the road cess, and it will be a rate proportionate to the road cess. The provisions of the Road Cess Act have therefore been made applicable to the recovery of sums due under this Act. Practically what the hon'ble mover of the amendment wants is provided for."

The amendment was by leave withdrawn.

The Hon'ble MR. LYALL moved that the following clause be substituted for clause (2) of section 35 :—

- (2) "The Local Government shall, before making, altering or repealing rules under this section, publish a draft of the proposed rules, alterations and repeals in three consecutive numbers of the *Calcutta Gazette*, and shall specify a date not less than one month from the date of publication at or after which such draft will be taken into consideration.
- (3) The Local Government shall receive and consider any objection or suggestion which may be made by any person with respect to such draft before the date so specified.
- (4) Every rule so made or altered and every repeal of any such rule under this section shall be thereafter published in the *Calcutta Gazette*."

He said:—"This clause has been redrafted by the Secretary. It is more full than the clause which the Select Committee drafted, and it is in accordance with the procedure prescribed by the General Clauses Act."

[*The President ; Mr. Cotton.*]

HIS HONOUR THE PRESIDENT said:—"As this amendment is upon a question of wording, and has not been considered as carefully as is desirable, it will perhaps be better to defer the consideration of it to the next meeting of the Council. Although we have disposed of all the amendments proposed to this Bill, I shall recommend to the Council that we should not pass the Bill on this occasion, but should defer it to the last meeting of the Council, which will probably be held on this day fortnight. It often happens in regard to Bills of this kind that suggestions are made at a later date, corrections and improvements are proposed, and it is always well to have a *locus penitentiæ* in a matter of this kind. Another reason for deferring the final passing of the Bill is that we leave an opportunity for two mufassal members of the Council who have not yet been elected to give us the benefit of their experience in the matter. There have been delays in the election of the representative members of the Bhagalpur and Dacca Divisions, but we hope by this day fortnight to see those members among us ; therefore I propose that the final passing of this Bill be deferred till the last meeting of the Council."

THE CALCUTTA ELECTRIC LIGHTING BILL.

The Hon'ble MR. COTTON presented the Report of the Select Committee on the Bill to facilitate and regulate the supply of electricity for lighting and other purposes in Calcutta.

The Council adjourned to Saturday, the 27th July, 1895.

CALCUTTA;
The 15th August, 1895.

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 27th 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 BANERJEE 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.

THE OFFICIAL SECRETS ACT.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Is there any truth in the statement which has appeared in the *Indian Daily News* that a new set of rules in connection with the Official Secrets Act is under the consideration of Government; if so, will the Government publish the rules in the Official Gazette before final adoption, so as to enable the Press to discuss them?

The Hon'ble MR. COTTON replied:—

“No rules under the Official Secrets Act have been framed by Government, and the Lieutenant-Governor is not aware that the preparation of any set of rules in connection with that Act is under contemplation.”

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

THE MONGHYR ELECTION.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Is it true as stated in the newspapers that Mr. Phillips, Magistrate of Monghyr, before he went on leave sent a circular to all the members of the District Board, in which he discussed the merits of the various candidates for election to the Bengal Council, and suggested that members should vote for Mr. Hennessy? Is it the case that the Maharaja of Sonbarsa has drawn the attention of Government to this circular, and has petitioned for the avoidance of the Monghyr election on the ground of the use of official pressure? Is it the case that Mr. Stack, the Inspector of Schools for Bihar, wrote to the Sub-Inspector of Schools at Monghyr, who is a member of the District Board, requesting him to vote for Mr. Hennessy; and is it the case that two new members of the District Board, both Europeans, were appointed by telegram, so as to be in time, to vote for the first election?

Does the Government approve of these proceedings; if not, will the Government be pleased to state what action it proposes to take in this connection?

The Hon'ble MR. COTTON replied:—

“The answer to the first two parts of the Hon'ble Member's question is in the affirmative, except that Mr. Phillips did not recommend that the members of the Monghyr Board should vote for any one candidate: he suggested two names as those of persons who had in his opinion preferential claims on the support of the District Board, viz., those of Mr. Hennessy and Rai Dhiraj Karan Bahadur. Mr. Phillips explains that he recorded his note because several members of the Board had asked him for his views and wishes. He probably thought that as he was leaving the district his advice was sought rather as an experienced friend than as an official, but still his conduct was indiscreet and opposed to the principle laid down by Government for the guidance of its servants.

“The Lieutenant-Governor does not think it necessary to make any enquiry as to whether Mr. Stack, the Inspector of Schools, Patna Circle, wrote to a Sub-Inspector of Schools requesting him to vote for any particular candidate, but he considers that any such letter, if written, would have been an indiscretion.

[*Mr. Cotton.*]

“It is the case that the appointment of two European members of the Monghyr District Board, which had been unduly delayed by slackness in the local offices and in the Secretariat, was made by a telegram, so as to enable them to vote at the elections. It was thought desirable that the Board should be of its full strength on so important occasion.”

THE CALCUTTA ELECTRIC LIGHTING BILL.

THE Hon'ble MR. COTTON moved that the report of the Select Committee on the Bill to facilitate and regulate the supply of electricity for lighting and other purposes in Calcutta 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.

He said:—“I propose, with Your Honour's permission, to trouble the Council with an explanation of some of the more important changes introduced by the Select Committee in the drafting of this Bill. In section 3, which relates to the granting of licenses, it will be observed that a clause has been added declaring that the grant of a license to supply electricity within any local area shall not in any way hinder or restrict the grant of a license to any other person or company within the same area. This clause has been taken from the English amending Act of 1888. It was introduced in England after full discussion and consideration of the question whether an undertaker within any particular area should be allowed an absolute monopoly or not. There was nothing in the law of 1882 which authorised a monopoly; nothing was said on the subject, and it was entirely in the discretion of the Board of Trade to grant a second order or a second license in any particular area or not. So far, therefore, the amending Act of 1888 did not affect the procedure which the Board of Trade was competent to follow. But it was thought advisable when the law was under reconsideration to lay it down specifically, that a monopoly was not contemplated by the law. As I understand it one of the main reasons for such a provision was that the roads, streets, thoroughfares, &c., may not be unnecessarily interfered with. If two rival undertakers were to work at the same time, there would be a double set of operations, and the public would be subjected to unnecessary inconvenience. This I believe to be the main reason why local authorities in England have been in favour of monopolies, and in practice the Board of Trade has

[*Mr. Cotton.*]

not allowed two companies to work together in one area. Special cases may arise in which it is desirable that a second license should be granted, and to meet such cases the law was modified in England in 1888, and we have thought it desirable to follow the example of the Legislature in England and to introduce a similar clause in the Bill now before you.

“Section 4 of the Bill relates to the making of rules. If you examine this section, you will see that the rules to which it relates apply exclusively to rules regarding applications for licenses; they have no reference to the general public any further than this, that any member of the general public may of course become an applicant for a license. They apply specifically to any intending undertaker, laying down the exact form in which an application for a license should be made, and provide for any enquiries and so on in connection with the grant of such licenses. We have provided that any proposed rules made under this section or any modifications or repeal of such rules should be published in the *Calcutta Gazette*, and should not be taken into consideration by the Local Government until after the expiration of two months from the date of the original notification. It is thought that the period of two months is ample time to allow any person who is interested in the subject of the rules to take objection or to make suggestions with regard to such rules. I propose, with Your Honour's permission, to introduce a mere verbal modification which will clear up a point which is at present somewhat obscure in the wording of this section.

“Section 5 relates to the conditions to be inserted in the license. As I have said before this is the most important section in the whole law, and it is the conditions inserted in the license which will really control the working of this law when it is passed. We have added to those conditions a proviso taken from the English Act in order to afford greater security to the safety of the public. Among the conditions to be introduced, there is a clause (a) which relates to the safety of the public from personal injury or from fire or otherwise. The Board of Trade have found some practical inconvenience in inserting provisions under that clause which will meet cases as they arise, and it has been declared by the law in England that the Board of Trade shall have power to enact regulations for the same object,—that is the object of securing the safety of the public—which when passed should have the same force and validity as though they had been inserted in the license, and those regulations

[*Mr. Cotton.*]

may be modified from time to time. Experience has shown that this elastic arrangement is better than the insertion of any definite conditions on the subject in the license itself. We have followed the English procedure exactly in this respect, and under this proviso, if carried, it will be competent to the Local Government to enforce such regulations as they deem expedient for ensuring the safety of the public from personal injury or from fire or otherwise, and such regulations when passed shall bind the undertakers exactly in the same way as though they had been inserted as conditions in the license. Such regulations will not affect the general public any more than the conditions in licenses. They will affect undertakers only.

“ Under section 16 we have agreed unanimously to omit the proviso which was suggested for our consideration by the Trades Association, and which declares that no lamps or electrical fittings shall be added without due notice given to the undertakers. This section 16, as I have already stated to the Council, gives effect to one of the main principles of the Bill, namely, that undertakers are authorised to supply electricity, or, as explained in the licenses or provisional orders granted under the Act, to supply electrical energy. That is the term, used throughout the provisional order or license; and although this electrical energy is in the vast majority of cases devoted to the purpose of lighting, it is not intended by this Act, any more than by the corresponding English Act, that it should be devoted to lighting only. Section 16, which is reproduced from the English law, lays down that the undertakers shall not be entitled to lay down any special form of lamp or burner to be used by any company or person, or in any way to control or interfere with the manner in which electricity supplied by them under this Act, or by reason of any license, shall be used. The first proviso to that section was inserted on the recommendation of experts in England when the law was under consideration. Sir Frederic Bramwell and Dr. Siemens, probably the most competent authorities on the subject, gave it as their opinion that some restrictions should be imposed on consumers to prevent the misuse of electricity. I have perused their evidence, and find that they were unable to define the character of the misuse to which they thought electricity might be subjected. But they gave an illustration, the object being to prevent injury by any action reacting unfavourably upon the source of supply. The illustration they gave was this. If a person were to use the gas supplied to him by turning it on and off 100 times in

[*Mr. Cotton ; Mr. Smyth.*]

a minute, it would produce vibrations in the supply pipe which would be very objectionable. In the same way if a man was constantly trying reckless experiments with his electric lighting, he would endanger the supply to other consumers; his action might even endanger life and would tend to vilify the undertakers and their undertaking. And so in the model provisional order there is a special proviso which authorises undertakers to refuse to supply electric energy, unless they are reasonably satisfied that it will not be misused, and if it is misused to cut off the supply. The further proviso to this section of the law which the Select Committee decided unanimously to omit imposed further restrictions which the English law did not contemplate and which we deemed it unnecessary to impose in India.

“Section 27 of the Bill before you has been redrafted by the Select Committee, but as the language of the draft appears to admit of improvement, I propose, with Your Honour’s permission, to suggest a revised form of this section which should take the place of that now before the Council.

“Only one point I think remains, and that is that the Select Committee thought it desirable that power should be given to the Local Government by notification in the Gazette to extend the provisions of this Act to any municipality. As now drafted the Bill applies to Calcutta, but power is taken in the last section to extend it to any municipality, including Howrah and any other large municipality, where the demand for electric lighting may arise and where the Government may deem it expedient to extend the provisions of this Bill. We have an example in this matter in the Hackney Carriage Act, which was originally brought in for the town and suburbs of Calcutta alone, but which has in a large number of cases been extended to other places by the special authority given to the Local Government by the Act.”

The Hon’ble MR. SMYTH said:—“I have only a very few words to say regarding this Bill; but I think it will be satisfactory to the hon’ble mover of the measure for me to say that the interests I represent in this Council cordially approve of the introduction of this Bill, and I congratulate my hon’ble friend for having initiated a measure which will be welcome as supplying a long-felt want.

“The development of electric science in its application to the practical needs of human life may be considered to date from the time of Faraday, whose career

[*Mr. Smyth.*]

ended about the middle of the present century. In the past 40 years or so this science has advanced by leaps and bounds unequalled by any other knowledge since the commencement of the world's history. In 1880 the future of domestic electric lighting was secured by the introduction of the incandescent lamp. In 1882 the London Electric Lighting Bill was passed.

“And though the advances during the past 13 years have been great, still we know that greater achievements are in store for the present and for coming generations, as experience teaches us that the knowledge of to-day is as nothing compared with that of to-morrow. One can only then wonder that Calcutta—which prides herself on being in the front rank of cities of the world as regards importance,—has been so long without this improved light, more especially as she enjoys undisputed and unenvied the honour of being one of the hottest cities of the world.

“The introduction then of artificial light should be a boon to her citizens who have now to be content with the heat generating properties of gas and oil:—The reason why Calcutta has not followed the lead of nearly all the important cities of Europe in this matter is to my mind not far to seek. The absence of any law on the subject has been a bar to enterprise. Now that this Council is about to needfully legislate, I have little hesitation in saying that a stimulus to electric lighting will be given, and I fully believe and expect capital will not be wanting, and schemes will be put forward for supplying electricity over many of the most important areas of the town.

“With regard to the Bill itself I venture to consider it a fair and workable measure; for the Select Committee, while on the one hand being careful to guard the public interests have, on the other hand endeavoured to avoid making stringent regulations that will act as a deterrent to intending suppliers of electricity, and so defeat the intention of the Bill. I would now, as briefly as possible, draw your attention to some of the more important clauses of the Bill before you which have had the attention of the Select Committee. I would, in the first place, particularly draw your attention to the title of the Bill. It is a Bill to facilitate and regulate the supply of electricity for lighting and other purposes. This follows exactly the wording of the English Act of 1882. What I wish to emphasize is that the Bill is not being initiated for the sole purpose of electric lighting only, but it is to facilitate and regulate the supply of electricity for other purposes as well. I may here say that the Bill

[*Mr. Smyth.*]

would not have been half so welcome had it been a Bill to facilitate and regulate the supply of electricity for lighting only.

“It does not lie within my province to say what those other purposes may be, but the uses of electricity are boundless, limited only by the want of intelligence in producing fitting apparatus for its application. The demand for such apparatus is limited only by the want of intelligence on the part of the public to know how to use it properly.

“So rapid, indeed, has been the development of the electric industry that few have been able to keep trace of its achievements, and fewer still have sounded its possibilities for the purpose of giving direction to its growth.

“Electric power has produced, and will still produce, more changes in the mechanical servants and conveniences of civilized life than have ever been caused by the use of any other method or force which has been subjected to the service of man.

“In section 3, sub-section (2), you will notice the license shall be for any period not exceeding 21 years. In the original draft of the Bill this period of time was limited to seven years, but the Bengal Chamber of Commerce in their report on the Bill pointed out that the installation of the electric light on a large scale was a most costly undertaking, and that 21 years was the least period of time adequate to secure to the undertakers a reasonable return on their investment, and this suggestion was, I am glad to say, at once accepted as reasonable by my hon'ble friend MR. CORTON.

“You will notice in section 3, sub-section (5), that the grant of a license to supply electricity within any area shall not hinder the granting of a license to any other undertaker within the same area. This point was duly considered by the Select Committee, and though at first sight it appears to press somewhat hardly on the holder of the first license, still the Select Committee in following the English Act thought it might be a useful clause in the case of unsatisfactory undertakers.

“Section 24, sub-section (2)—Any difference which arises between the telegraph authority and the undertakers or their agents, &c.

“The attention of the hon'ble mover was drawn to this, and it was pointed out that it conflicted with the very proper provision for arbitration in sections 15 and 16. The Bengal Chamber of Commerce thought a good deal of

[*Mr. Smyth ; Mr. A. M. Bose.*]

dissatisfaction would or might be caused by vesting such power in the Local Government ; and they could see no reason why a dispute between undertakers or their agents, and a Department, should be absolutely left for disposal to the Local Government, and the Chamber suggested the section should be brought into conformity with sections 15 and 16.

“The hon’ble mover met this line of argument by saying, the section was worded in conformity with the wishes of the Government of India who in their letter of the 12th of March last wrote :—

“‘ That they considered 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.’

“In conclusion, I would merely say, as the hon’ble mover said when introducing the measure, that this Bill after all is only the ‘dry bones,’ the license (which is to be granted to those who we trust will come forward to supply electricity for lighting and other purposes) is the real ‘flesh and blood.’

“The object then of the Select Committee has been to prepare the ‘dry bones,’ in the best possible manner for the application of the ‘flesh and blood,’ in the shape of the license.

“This license, you are aware, is entirely an executive measure with which we have nothing to do ; but I would merely point out that in my opinion the success of the scheme depends as much upon the wording of the license as upon the drafting of this Bill.”

The Hon’ble MR. A. M. BOSE said :—“I have one observation to make in connection with a point arising out of section 12. Section 6 lays down that the undertakers under superintendence may open and break up streets, railways, tramways, and bridges, and also the sewers, drains, or tunnels within or under such streets, railways, tramways, and bridges. Then section 12 requires, except in certain cases, the consent of the local authority, company, or person by whom such street, railway, or tramway is repairable before these can be broken up. But in that section there is no reference to bridges, sewers, &c. That is to say, under the provision as it now stands the consent of the local authority is necessary to break up streets, railways, and tramways, but to break up bridges, &c., which is even a more serious operation than opening up streets, such consent is not necessary. I shall be glad to learn whether the

[*Mr. A. M. Bose ; the President ; Mr. Cotton ; Babu Surendranath Banerjee.*]

matter has been considered by the Select Committee, and whether there is any special reason for which consent is rendered unnecessary in the case of bridges. If there is no special reason, I hope the hon'ble member in charge of the Bill will take the matter into consideration and introduce a provision in section 12 by which breaking up of bridges, &c., will be subject to the same limitations and safeguards as the opening up of streets, railways, and tramways."

HIS HONOUR THE PRESIDENT said:—"The remarks made by the hon'ble gentleman are hardly applicable to the question before the House at the present moment. He refers to imperfections in a particular section, but he does not himself bring forward an amendment. It would have been more convenient if the hon'ble member had considered the subject in proper time and had drafted an amendment to meet the difficulty which occurred to him. The subject will not, however, be lost sight of, and I shall ask my hon'ble friend, the Chief Secretary, in charge of the Bill to refer to this matter before the House is closed."

The motion was put and agreed to.

The Hon'ble MR. COTTON said:—"With the permission of the PRESIDENT, I will move a verbal amendment in section 4, sub-section (2), clause (a). It is enacted by that clause that the Local Government shall, before making, altering, or repealing rules under this section, publish a draft of the proposed rules, alterations, and repeals. The expression "draft of the proposed rules and alterations" is no doubt appropriate, but the publication of a draft repeal is ambiguous. In order to remove that ambiguity I move that before the word "repeals" the words "a notification of any proposed" be inserted. Clause (a) will then run thus:—"Publish a draft of the proposed rules and alterations and a notification of any proposed repeals in the *Calcutta Gazette*." Similarly, I move that in clause (b) of the same sub-section the words "or notification" be inserted after the words "such draft."

The motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in section 13 for the words "Local Government" the words "Local Authority" be substituted.

[*Babu Surendranath Banerjee.*]

He said:—“Section 13 provides that the undertakers may construct electric lines above ground, subject to the sanction of the Local Government. I desire to relieve the Government of any responsibility in this matter. It is a responsibility which it seems to me will be more efficiently discharged by the local authorities, who will be more conversant with local affairs than the Local Government can be. My amendment imports the substance of the English Act. Under the English Act the Board of Trade issues licenses; the local authority gives the sanction contemplated under this section. There seems no reason why we should make a departure from the English law in this respect. If it could be shown that any local authority vested with jurisdiction had misused the powers entrusted to them, then some ground would exist for taking away this power from them and vesting it in the Local Government. On the contrary, facts point to an exactly opposite conclusion. There is nothing at present to prevent the Calcutta Municipality from giving sanction for overhead wires along the Harrison Road. Several times proposals to that effect were put forward, and on every occasion the Corporation resisted the application. Therefore there seems to me no ground for a modification of the English Statute. In moving this amendment, I am supported by the high authority of the Chamber of Commerce. They say as regards section 12, which is section 13 now, that under the English Act the Board of Trade gives licenses, but the local authority has the power to authorise above-ground works. This is what they say:—

‘As regards section 12, they note that in the English Act the Board of Trade gives the license, but that the “local authority” has the power to authorise restrictions as to above-ground works. By section 12 of the Bill, the Local Government is invested with this power, as with the power under section 3 to grant a license. The Committee think it would be more in accordance with the spirit of the English Act, and conduce in a larger degree to efficiency of working, if under section 12, instead of “Local Government,” “Local Authority” was substituted.’

“I hope my hon’ble friend the member in charge of the Bill will see his way to accept the amendment I have the honour to propose. I pressed this amendment in Select Committee, and as I think there is an important principle at stake, I hope the hon’ble member will see his way to give effect to the popular feeling in regard to this matter.”

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

The Hon'ble MR. COTTON said:—"I am afraid I must oppose this proposal. I am not aware that there is any popular feeling in respect of the matter; but as far as popular feeling has expressed itself, it is opposed to any overhanging wires at all. The Bengal National Chamber of Commerce said that the only criticism they had to offer was that overhanging wires should be absolutely prohibited. But be that as it may, the question of overhead wires was, as I explained in some detail when I introduced this Bill, a very difficult and technical matter, a matter which has given rise to more dispute and friction probably than any other section of the law has in England. The risks are no doubt very considerable; they may or may not be exaggerated, but they are certainly very considerable. On the other hand, the difficulties to be contended against in laying underground lines in a soil as damp as that of Calcutta may or may not be serious; so that there is a good deal to be said on both sides. The question is one of great importance to the public and to electric lighting in Calcutta. It was decided by the Government that the power of decision should be taken away from the hands of the local authority who have no experience in matters of this nature, and that it should rest in the hands of the Local Government who would not be influenced by any personal interest, and would always be guided by the advice of experts. This is a provision of the Bill which I cannot advise the Council to modify."

The Hon'ble MAULVI MUHAMMAD YUSUF said:—"I am unable to support the amendment, and I think it will be much better to allow the section to remain as it is. In regard to the matters contemplated by the section in question, there is no reason to suppose that the result of the deliberations of the Calcutta Corporation will inspire the public with greater confidence.

The Hon'ble BABU SURENDRANATH BANERJEE said in reply:—"I must say I have not been convinced by the arguments which have been adduced against my amendment. I am not prepared to admit that in a purely local matter affecting local interests the deliberations of the Local Government, who have so many interests to attend to, will inspire greater confidence than the deliberations of a local body, the scope of whose jurisdiction is far more restricted. It is said that local authorities have no experience in these matters. That is perfectly true, but when you entrust them with authority in respect of any matter, is it not likely that they will gain experience? When called upon to

[*Babu Surendranath Banerjee ; the President.*]

exercise their authority in such matters they will consult experts, and that is precisely what the Corporation did in regard to the system of electric lighting in Harrison Road. In the next place it is insinuated that popular feeling, if there is any, is opposed to overhead wires. We do not say whether there are to be overhead wires or not. The whole question, if my amendment be accepted, will be left to the decision of the local authority; they will decide whether in any particular area there should or should not be overhead wires; and it seems to me that this being a purely local question, it ought to be left to the decision of the local authority. It may be that they have not experience, but in regard to many matters entrusted to them, have they not in the first instance to gather information and experience? What experience had the Calcutta Corporation about gas, when they entered into a contract with the Oriental Gas Company? But they gained experience in time. No case, not the shadow of a justification, has been made out to authorize a deviation from the provisions of the English law in this respect. In the preparation of this Bill we have carefully followed the English Statute, and we can have no better guide; the English Statute entrusts this jurisdiction to the local authority, and why should we not follow the English Statute?"

HIS HONOUR THE PRESIDENT said:—"I am bound to say that the Government holds a very decided view on this subject, and calls upon those who share that view and who are influenced by their arguments to oppose the amendment now brought forward. In the first draft of the Bill which was drafted under my original orders, and which contained a provision equivalent to that which the hon'ble member desires to see reintroduced, we followed the English Act completely. The Government of India, however, drew our attention to the great importance of avoiding the danger to life which might ensue from a mistaken procedure and the serious interests that are involved. I sympathise entirely with the Hon'ble BABU SURENDRANATH BANERJEE in his picture of the Calcutta Corporation yearning to acquire more knowledge on every possible subject, and their desire to 'follow knowledge like a sinking star beyond the farthest bounds of human thought.' I would only ask the hon'ble member and those acting with him to restrain that desire when it involves or might involve the lives of his fellow creatures. The experience of England and of continental countries has shown the extreme danger of overhead wires, and it would be very disastrous if the Corporation of Calcutta were not to

[*The President ; Babu Surendranath Banerjee.*]

accept the experience of Eupore, but should wish to acquire that knowledge and experience at the expense, possibly, of the lives of some of the hon'ble members whom I see around me. Whatever we may think of the Calcutta Corporation, which is by far the most enlightened body we have to deal with, I would remind you that it is proposed to extend the Bill to any municipality throughout Bengal, and it may certainly be said, without derogation to the Municipal Commissioners of many of those places, that we should be very sorry to put the chance of mortal injury to ourselves or to our friends in their hands, even though we have so much confidence in the Corporation of Calcutta that we are prepared to accept that risk as far as they are concerned. I must therefore express the hope that the Council will not accept this amendment."

The motion was put and negatived.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following proviso be added to section 14 :—

"Provided that when a local authority considers it necessary to alter the position of any street or of the underground pipes and drains and other works, or to put down new pipes, drains, or other works, such local authority may require the undertakers to shift their electric lines at the expense of the undertakers."

He said :—"I move this amendment at the suggestion of the Chairman of the Corporation. In a letter, dated 18th June, 1895, addressed to the hon'ble member in charge of the Bill, Mr. Ritchie suggested the proposal which is embodied in the amendment I have the honour to move. The amendment embodies the relations which exist at the present moment between the Corporation and the Oriental Gas Company. When they shift their pipes at the instance of the Corporation owing to a change in the position of any street, pipe, or drain, they do so at their own cost, and I have just received a letter from the Manager of the Gas Company to say that although it is not a legal obligation upon them to shift their pipes in such cases at their own cost, they do so willingly, and practically they have charged nothing for it for a number of years. It seems to me that undertakers under this Bill ought to make a concession of this kind to a public body and for the public benefit as a return for the concessions which they receive from it; under the circumstances, I hope the hon'ble member will accept my amendment."

[*Mr. Cotton.*]

The Hon'ble Mr. Cotton said:—"I am afraid the hon'ble member has not read section 14 of the Bill, to which he proposes to add this proviso, with the attention it deserves. The proviso, if carried out, would have the effect of repealing one half of section 14 of the Bill as it stands. Now section 14 is an exact reproduction of the English law on the subject. The section is a little intricate perhaps, but I think I shall be able to make its meaning clear. It empowers the undertakers to alter the position of any pipes or wires under any street or place authorised to be broken up by them on previously making or securing such compensation to the owners of such pipes or wires, and on complying with such conditions as to the mode of making such alterations as may be agreed upon between the undertakers and owners of such pipes or wires, and in case of difference of opinion then the matter may be determined in the manner prescribed by the license authorising the undertakers to supply electricity, or when no such manner is prescribed, then the matter is referable to arbitration. Then the latter part (clause 2) of the same section reverses the arrangements between the parties. It lays down that any local authority may in like manner alter the position of any electric lines or works of the undertakers subject to the identical provisions, conditions, and restrictions which are made applicable to any changes or alterations made by the undertakers. Therefore the law as we have it before us, and which as I have said is the English law on the subject, provides the procedure under which a local authority should act when it desires to alter the position of underground electric works. The section goes into considerable detail; it contemplates the payment of compensation and imposes various other conditions, and I may add that the model order, which is practically the form of license which will be adopted in Calcutta, subject to such modifications as local requirements may suggest, gives further details, such as the length of time for which notice has to be given and other things which the undertakers have to do when they require gas or other pipes to be removed. Exactly the same procedure is contemplated when the local authority such as a municipality, when altering its own sewers or pipes or for any other reason, has occasion to remove the works of the undertakers. And reflection will show that similar provisions should apply in both cases. The suggestion of the hon'ble mover of the amendment is there should be an entirely one-sided provision, and that the undertakers should bear the expense in both cases. This is just one of those proposals which is calculated to

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

discourage the extension of electric energy in Calcutta. It will impose restrictions in Calcutta which have not been found necessary anywhere else, and will be viewed by undertakers as evidence of the wish of the authorities to put obstruction in the way of such undertakings. I attach no weight to the analogy put forward by the hon'ble member of the case of the Oriental Gas Company. The arrangement referred to is probably done under contract with the Gas Company, but Electric Companies should be protected by special provisions to be laid down in the Act. If you accept this amendment, you will practically be repealing the whole of the last portion of section 14 of the Bill. I trust, therefore, you will see the wisdom of leaving the Bill as it has been drafted by the Select Committee."

The Hon'ble BABU SURENDRANATH BANERJEE in reply said:—"I must confess that I have not been able to follow the hon'ble member in the line of argument he has thought fit to adopt in reply to my proposal. When I move an amendment on the lines of the English Statute, I am told that the peculiar circumstances of the case are such that the English law must be departed from. When again I move an amendment adapted to the particular circumstances of the case, I am told that the English Statute must be followed. We are fairly landed in a bewildering maze when we are confronted with an argument of this kind. The point on which the hon'ble member has laid considerable stress is that my amendment, if adopted, is calculated to discourage the growth of enterprise. If that be so, I admit that my amendment should not be adopted. But is it calculated to discourage enterprise? It certainly has not discouraged the Gas Company in carrying out extensive works in Calcutta. Undertakers will make their terms accordingly; they will recoup themselves by the terms they will impose when they find there is a proviso of this kind laid down by the Legislature. The Gas Company in their dealings with the Corporation make no charge for shifting their pipes at the request of the Corporation. It is not a part of their contract to do so, but as a matter of fact they do not charge anything when they shift their pipes at the instance of the Commissioners. Therefore, having regard to all these circumstances, I hope this amendment, which is made at the instance of the Chairman of the Corporation, will be considered as being reasonable and will be accepted by the Government. Local authorities represent the public, and this is a concession

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

which they might fairly be expected to make for the public benefit, and I do not think undertakers ought to object to such a condition as this."

The motion was put and negatived.

The Hon'ble MR. COTTON said:—"With Your Honour's permission I will ask leave to move an amendment of section 27 to which I referred in my opening remarks to-day. The language of that section as it stands is, it must be admitted, obscure. The meaning, however, is plain enough. The meaning is that a person who commits an offence under this Act may also be prosecuted under any other Act for the time being in force for any offence which he may have committed under such Act, provided that he shall not be punished twice for the same offence. This is an obvious principle of law which it is perhaps not necessary to have inserted in this Act at all, and so we hesitated in Select Committee whether any section on the point should find a place in the Act. Ultimately, it was decided that for the edification of the general public, who might not be aware of the common law on the subject, statutory provision should be made as I have indicated. But I admit that the wording of the section does not convey the meaning as clearly as it might have done, and therefore move that the following words be substituted for section 27 as amended by the Select Committee:—

'Nothing in this Act shall exempt a person from any liability for any offence which is also made punishable under any other Act or law for the time being in force.'

These words, I think, convey the meaning of the Select Committee, and are not open to the exception to which the words contained in the draft Bill are open."

The motion was put and agreed to.

The Hon'ble MR. COTTON said:—"With your permission I do not propose to move to-day that this Bill be passed, but to suggest that it should stand over until the meeting of this Council next week so as to enable the Secretary in the Legislative Department and myself to examine the Bill once more with reference to minute details of drafting, and also to enable me to consider the suggestion thrown out by the Hon'ble MR. ANUNDO MOHUN BOSE in regard to the procedure to which he referred under sections 6 and 12 of the Bill. Section 12 is a reproduction of the English Act on the subject, and I am not in a position, until

*The Calcutta Electric Lighting Bill; the Calcutta [27TH JULY. 1895.]
Port Act, 1890, Amendment Bill; the
Bhutan Duars Repealing Bill.*

[Mr. Cotton; Mr. Risley; Mr. Buckland.]

I have examined the reasons which led to the English Act being drafted as it is, to explain why there is no reference to bridges in that section."

The motion that the Bill be passed was postponed to the next sitting of the Council.

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 BHUTAN DUARS REPEALING BILL.

The Hon'ble MR. BUCKLAND presented the report of the Select Committee on the Bill to repeal the Bhutan Duars Act, XVI of 1869.

The Council adjourned to Saturday, the 3rd August, 1895.

C. E. GREY,

CALCUTTA;
The 15th August, 1895. }

*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 3rd August, 1895.

Present:

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 NAWAB SYUD AMEER HOSSEIN, C.I.E.

The HON'BLE SURENDRANATH BANERJEE.

The HON'BLE MAHARAJA SIR LUCHMESSUR SINGH BAHADUR, K.C.I.E., of Darbhanga.

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.

The HON'BLE GURU PROSHAD SEN.

NEW MEMBERS.

The Hon'ble NAWAB SYUD AMEER HOSSEIN and the Hon'ble BABU GURU PROSHAD SEN took their seats in Council.

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

THE FORESHORE AT AZIMGANJ.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

“(a).—Is the Government aware that the District Collector of Murshidabad has acquired the zamindar's rights in the foreshore at Azimganj with the object of conferring upon the East Indian Railway exclusive rights in the foreshore and the river bed at Azimganj, to the exclusion of all other persons, including the Calcutta Steam Navigation Company, although the foreshore had always been used as a public towing-path and as a public landing place even before the construction of the railway, and although the river Bhagirathi is a navigable river and its bed is therefore inalienable public property ?

“(b).—As the river Bhagirathi is under the operation of the Canal Act (V of 1864, B.C.) and is under the charge of the Public Works Department, was the transfer of the foreshore and bed of the river at Azimganj to the East Indian Railway made with the consent of that department ?

“(c.) Is it a fact that, in order to enforce the exclusive rights which it was attempted to confer on the East Indian Railway and to the prejudice of the Calcutta Steam Navigation Company, the District Magistrate issued the following notice and had it proclaimed by a crier :—

“NOTICE.

“Notice is hereby given to the public that the foreshore land of Azimganj has been taken over by the East Indian Railway Company. No country boat nor any steamer should moor alongside that foreshore land in such a way as to cause obstruction to the mooring of the ferry steamer of the railway company of that place.’

“Does the Government approve of these proceedings ? What action does the Government intend to take in regard to this matter and with a view to prevent serious injury to the interests of the Calcutta Steam Navigation Company, which has done excellent public service in improving the means of communication in Bengal, by forbidding the Company the use of navigable rivers and public landing places ?”

The Hon'ble MR. COTTON replied :—

“Enquiry is being made into the subject of the Hon'ble Member's Question, and the result will be communicated to him in due course.”

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

ALLEGED ISSUE BY MR. HEARD, SUBDIVISIONAL OFFICER OF DEOGHUR OF NOTICES BEARING THE SEAL OF HIS COURT DEMANDING A FREE SUPPLY OF PROVISIONS.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

“Has the attention of the Government been drawn to an article in the *Hitabadi* newspaper stating that Mr. Heard, the Subdivisional Officer of Deoghur, is in the habit of issuing notices bearing the seal of his Court, demanding a free supply of provisions, such as fowls, eggs, goats, sheep, &c., and that whenever he gets more than what he wants himself, he causes the surplus to be publicly sold to the highest bidder by the *Nazir* of his Court?”

“Will the Government be pleased to institute an enquiry with a view to ascertain the truth or otherwise of these serious allegations, if it has not already done so?”

The Hon'ble MR. COTTON replied:—

“Enquiry is being made into the subject of the Hon'ble Member's Question, and the result will be communicated to him in due course.”

THE CALCUTTA ELECTRIC LIGHTING BILL.

The Hon'ble MR. COTTON moved that in sub-section (1) of section 5 of the Bill to facilitate and regulate the supply of electricity for lighting and other purposes in Calcutta, the words “regulations and” be inserted after the word “such” and before the word “conditions.”

He said:—“These words seem to have slipped out of the Bill by oversight. They are contained in the corresponding section of the English Act, and are necessary with reference to sub-section (4) of section 3 of the Bill, which, it will be observed, contemplates that the license may make regulations as well as conditions. This omission was discovered when I was lately considering the Act with the assistance of the Secretary to the Legislative Department. The amendment merely supplies an omission in drafting.”

The motion was put and agreed to.

[*Mr. Cotton ; Mr. A. M. Bose.*]

The Hon'ble MR. COTTON also moved the following amendments in section 12:—

That in sub-section (1) of section 12 the words "open or" be inserted after the word "to" and before the words "break up";

also that the words "bridge, sewer, drain or tunnel" be inserted after the word "tramway" and before the words "without the consent of";

also that the words "bridge, sewer, drain or tunnel" be inserted after the word "tramway" and before the words "is repairable."

He said:—"These amendments are moved with reference to the observation made by my hon'ble friend, Mr. Anundo Mohun Bose, at the last meeting of the Council, when he pointed out that the word 'bridge' as well as 'drain and tunnel' found a place in section 6 and subsequent sections of the Act, but were omitted in section 12. Sections 6 to 11 of the Bill were all adopted from the Gas Works Clauses Act, and are intended to give power to the undertakers under certain conditions to open and break up streets, railways, tramways and bridges, and to open and break up any sewers, drains or tunnels within or under such streets, railways, tramways and bridges. In order to make these sections as complete as possible, we went, in drafting this Bill, somewhat beyond the provisions of the Gas Works Clauses Act, and provided that they should relate to streets, railways, tramways and bridges, as well as to sewers, drains and tunnels. Section 12 requires the undertakers to obtain the consent of the authority by whom such streets, &c., may be repairable. It was drawn up in exact conformance with the English Act, but the words 'bridges, sewers, drains and tunnels' were omitted. I am disposed to agree with my hon'ble friend that it will make the section more complete if these words were inserted. I therefore move these amendments in section 12 thereby bringing it into exact conformity with the preceding sections."

The Hon'ble MR. A. M. BOSE said:—"I have to thank the hon'ble member in charge of the Bill for accepting the amendment which I suggested on the last occasion. The addition of the words now proposed will not only remove an anomaly, but will provide a safeguard against the breaking up of bridges, drains and tunnels without the previous consent of the authority by which they are repairable."

The motion was put and agreed to.

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

The Hon'ble Mr. CORRON moved that the Bill, as now settled by the Council, be passed. He said—

“I think it will be found a practical and workable measure, well calculated to effect its object, which is to facilitate and regulate the supply of electricity for lighting and other purposes. I take this opportunity of assuring the hon'ble members of this Council, and in particular my hon'ble friend, MR. SMYTH, the representative of the Bengal Chamber of Commerce, whom I desire to thank for the valuable assistance he rendered while the Bill was under consideration in Select Committee, that the licenses and the rules and regulations which will be framed under this Bill will receive the most careful attention and consideration of the Government in the Public Works Department with a view of meeting the convenience both of undertakers and of the public.”

The motion was put and agreed to.

THE CALCUTTA PORT ACT, 1890, AMENDMENT, BILL.

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

He said:—“As the Report of the Select Committee has been circulated to all the members of the Council, it is unnecessary for me to add anything material to it. The Bill as it stands now, as I have already said, practically embodies the agreement come to between the parties most concerned, namely, the Port Commissioners and the Corporation of Calcutta. The form of the Bill has been determined by the legal advisers of those two bodies, and it has been put into the form in which it stands mainly with the object of saving the persons from whom the taxes and other charges will have to be collected from the inconvenience and annoyance of having to make several separate payments. That is the reason why the rates will be collected by the Port Commissioners and paid over to the Corporation by them. As regards the amendment, which my hon'ble friend, the member for the Corporation, has brought forward, I had the advantage

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

of discussing it with him and also with a representative of the Port Commissioners, and I suggested that the object of the amendment, would be sufficiently met by adding to section 66M the words 'the first month of.' The section will then read 'the Commissioners shall during the first month of each succeeding quarter pay to the Corporation, &c.' That I understand has been accepted both by the Port Commissioners and the Calcutta Corporation. It will give the Port Commissioners a month within which to pay the rate which they would have to collect with the rent payable by their tenants. I move this amendment on the understanding that my hon'ble friend, BABU SURENDRANATH BANERJEE, is willing to accept it."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I gladly accept the amendment proposed by my hon'ble friend, the member in charge of the Bill. It is in the nature of a compromise which, I think, will meet, so far as is practicable under a compromise, the interests of both parties. In accepting this amendment, I desire to thank my hon'ble friend and the Government for the promptitude with which they have introduced this Bill in response to an appeal which I made to the Government in April last. Owing to a legal difficulty the Corporation cannot assess basti lands, the property of the Port Commissioners, and it loses about Rs. 20,000 a year. The object of this Bill is partly to remedy this state of things."

The motion was put and agreed to.

The Hon'ble MR. RISLEY moved that the Bill as amended be passed. He said:—

"I do not think any further comment is necessary. It is essentially a Bill to which all parties interested have consented, and there is every reason to hope that it will work smoothly."

The motion was put and agreed to, and the Bill was then passed.

THE BHUTAN DUARS REPEALING BILL.

The Hon'ble MR. BUCKLAND said:—"It will be in the recollection of the Council that when I introduced this Bill to repeal Act XVI of 1869 four weeks ago in this Council, I stated at sufficient length the nature of the Act which

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

it is proposed to repeal, its temporary character, and our objects and reasons for repealing it. It will be unnecessary for me to go over the same ground again. The Bill was referred to a Select Committee in the form in which it was introduced, and has passed through the Select Committee without any material alteration. The Select Committee came to the conclusion that, the object being to repeal Act XVI of 1869, the Bill which had been drafted carried out that intention fully and completely; it was therefore unnecessary for the Select Committee to make any but a verbal alteration in the clauses of the Bill. I have therefore to move that the Report of the Select Committee on the Bill to repeal the Bhutan Duars Act, XVI of 1869, 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."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I desire to congratulate the Government on the introduction of this Bill. It will be in the recollection of hon'ble members that in January 1894, I put a question with reference to this matter, and I asked my hon'ble friend whether the Government would repeal Act XVI of 1869 in the Bhutan Duars. The hon'ble member in charge of the Bill was understood to give a favourable answer. He said that the matter was under the consideration of the Government, and I take it that this Bill is the outcome of those deliberations. But I should have rejoiced if the scope of the legislation now undertaken were a little further extended by the repeal of Act X of 1859 in the regulation portion of the Jalpaiguri district. I put a question in Council in this connection. An error had unfortunately crept into that question, of which the hon'ble member in charge of the Bill took advantage, and indulged in a pleasant retort. He said there was no rent law in force in the non-regulation portion of the Jalpaiguri district. That is quite true. But Act X of 1859 is in force in what is known as the regulation portion of the Jalpaiguri district. I would appeal to the Government to complete the scheme of beneficent legislation upon which it is embarked, by consenting at no distant day to repeal Act X of 1859 in the regulation portion of the district. That Act is not working satisfactorily—that is the universal complaint, the universal opinion of officials and non-officials. So far back as the year 1879, the District Judge of Rangpur took this view of the matter. Lord Ulrick Browne, who was Commissioner of the division from 1877 to 1885, was opposed to the continuance of the Act, and I believe Mr. Nolan, the present

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

Commissioner, is of the same opinion. The people presented a petition in favour of the repeal of the Act in 1891. Having regard to this strong expression of opinion coming from so many different quarters, I hope and trust Your Honour will see your way to repeal Act X of 1859 in the regulation portion of the Jalpaiguri district. I hope my hon'ble friend in charge of the Bill will be able to give us an assurance to that effect."

The Hon'ble MR. BUCKLAND said:—"The speech of the hon'ble member who has just sat down has come upon me as a surprise. The question of the repeal of Act X of 1859 in the regulation portion of the district of Jalpaiguri is not the question before the Council at the present moment. It is a matter for consideration and reference to previous reports on the subject, and to the local officers before any such action can be taken. At the same time I wish to point out that the hon'ble member, while asking for the repeal of Act X of 1859 in the portion of the Jalpaiguri district to which this Bill does not apply, has not in any way suggested what law he would like to take the place of Act X of 1859. It has been under the consideration of Government whether in the tract of country, for which we are now legislating, we should introduce Act X of 1859, or the Bengal Tenancy Act, and, after mature consideration, we came to the conclusion that the tract is not ripe for the introduction of the Bengal Tenancy Act. And further, as regards the older portion of the district, we have had no cause to consider the question of repealing an Act which has long been in force and which, as far as we are aware, is working very well. The question not being before the Council at this moment, and no substantive amendment having been proposed, there is nothing, as far as I can see, to vote upon, and it is quite premature for the Government to make any promise whether Act X of 1859 can be repealed in a portion of the country for which we are not now legislating.

The Hon'ble THE PRESIDENT said:—"I may add to what has just been said by the hon'ble member, the Secretary in the Revenue Department, that the question of repealing Act X of 1859 is not only not now before the Council, but it will never be. If the Government consent at any time to withdraw that Act from what is known as the regulation portion of the Jalpaiguri district, and to introduce another Act in its place, it will be open for the Government to do so under the Scheduled Districts Act with the sanction of the Government of India.

[*The President; Mr. Buckland; Mr. Lyall; Maharaja Sir Luchmessur Singh Bahadur of Darbhanga.*]

The remarks of my hon'ble friend, as to the unsuitability of this Act to the district in question, will be borne in mind, and if any proper and suitable representations come before the Government, showing the unsatisfactory working of the Act, and that any other Act would work more suitably, I can undertake that the Government will at some future time accept those representations, and give them their best consideration. But as I have said, the question of repealing Act X of 1859, so far as its application to the Jalpaiguri district is concerned, will not come before this Council.

The motion was put and agreed to.

The Hon'ble Mr. BUCKLAND moved that the Bill be now passed.

The motion was put and agreed to, and the Bill was then passed.

THE BENGAL SANITARY DRAINAGE BILL.

The Hon'ble Mr. LYALL moved that the following be substituted for subsection 2 of section 35 of the Bill to facilitate the construction of drainage works for improving the sanitary condition of local areas:—

“(2) The Local Government shall, before making, altering or repealing rules under this section, publish a draft of the proposed rules and alterations and a notification of the proposed repeals in three consecutive numbers of the *Calcutta Gazette*, and shall specify a date not less than one month from the date of publication, at or after which such draft and notification will be taken into consideration.

“(3) The Local Government shall receive and consider any objection or suggestion which may be made by any person with respect to such draft and notification before the date so specified.

“(4) Every rule so made or altered, and every repeal of any such rule under this section shall be thereafter published in the *Calcutta Gazette*.”

He said:—“This amendment is proposed in accordance with what passed in the Council a fortnight ago. The clause has been redrafted by the Secretary in the Legislative Department.”

The Hon'ble MAHARAJA SIR LUCHMESSUR SINGH BAHADUR of Darbhanga moved that the discussion upon this Bill be postponed for three months, inasmuch as the Bill has been so altered in Select Committee that it is desirable that

[*Maharaja Sir Luchmessur Singh Bahadur of Darbhanga ; the President ;
Babu Surendranath Banerjee ; Mr. Lyall.*]

the Bill be republished in order to afford an opportunity for such public bodies as the Chamber of Commerce, the British Indian Association, the Indian Association, and other Associations to express their views on the Bill as it has been revised.

HIS HONOUR THE PRESIDENT said:—"I think it will be more convenient if the hon'ble member would bring forward this amendment at the next stage of the Bill, when the motion for the passing of the Bill is before the Council. What is now before the Council is merely an amendment proposing some small alterations in the wording of a particular clause."

The Hon'ble MAHARAJA SIR LUCHMESSUR SINGH intimated his acquiescence in the remarks made by His Honour the President.

The Hon'ble BABU SURENDRANATH BANERJEE called the attention of the Council to the wording of section 11 of the amended Bill as it was laid on the table. A mistake had apparently been made in the drafting. The section, as it was now worded, did not correctly carry out the compromise which was accepted by the Council on my motion.

THE HON'BLE THE PRESIDENT said:—"The hon'ble member's remarks are quite justified. The alteration which has been made in the wording of the section does not carry out the intention of the Council, and I will see that it is properly carried out before the Bill is finally passed. It has been settled by the Council that section 11 will be amended as follows, namely, that the number of members who are to be present at a special meeting of the District Board, when a preliminary scheme is adopted or rejected, shall be not less than one-half of the whole number of members on the Board, and that the votes of not less than two-thirds of the members so present shall be necessary to the adoption or rejection of the scheme when they overrule the opinion of the Drainage Commissioners."

The Hon'ble MR. LYALL'S amendment in sub-section (2) of section 35 was put and agreed to.

The Hon'ble MR. LYALL said:—"In moving that the Sanitary Drainage Bill be passed, I desire to place before this Council, as shortly as possible, a

[*Mr. Lyall.*]

history of the Bill I now ask should be passed, and to state what advantages may be expected from the passing of such a Bill.

“The Bill, as the Council are well aware, is one of the results of the Belvedere Conference held so long ago as the 18th July, 1892. The resolutions then passed have been carried out so far as municipal areas are concerned in the additional sections 37A to 37K embodied in Act IV (B.C.) of 1894 which was passed last year. These sections enable action to be taken when the initiative is assumed by a municipal body, and provides for the joint action of the local authorities having jurisdiction over rural areas.

“The Bill now before us is the counterpart of that Bill, and provides for the initiative being taken by the rural local authority.

“It has been before this Council since the 9th of February 1894. It has been twice referred to a Select Committee and has been twice criticised by every public body in Bengal. The Bill as now amended differs in many details from that originally laid before Council, but its scope is the same.

“I do not propose to detain the Council by going into the details of the Bill, but there are a few points to which I would desire to draw notice. The first is the initiation of the scheme. This point has been the subject of much discussion. At the Belvedere Conference the majority were in favour of leaving the entire decision to the District Board, and this has been carried out in the Bill now before us, but combined with provisions which enable local public opinion to be fully consulted.

“Local interests are further safeguarded by the appointment of local representatives as Drainage Commissioners. If local opinion is against any scheme, it can only be adopted by the District Board at a special meeting at which at least half the number of the Board are present and by a majority of two-thirds of this number. Even after this, the Local Government has the power of veto. I was one of those who voted in the minority at the Conference, and I hold that the safeguards provided in the Bill are ample to prevent the possibility of a scheme being carried out contrary to the wishes of the people concerned and who will have to pay for it.

“I desire in the next place to say a few words regarding the probable working of the Bill after it has passed into law. I have seen fears expressed that officers enthusiastic for sanitation will propose schemes costing much money and involving a hopeless contest with the forces of nature.

[*Mr. Lyall.*]

“I think the Council need have no fear of such results. In the first place there would be strong, and probably successful, local opposition to any such scheme, and even if such a scheme did come up, the Local Government would certainly veto it.

“But when rivers change their courses under the operation of natural causes, and the old courses cease to be main drainage channels, people are apt to forget that these channels had a double duty to perform, and that in addition to being main drainage channels they were also local drainage channels. The beds of these dead rivers generally become fit for cultivation, and the greater part can be cultivated without danger, but the ordinary zamindar, talukdar, or raiyat knows little or nothing of the functions which the bed of the river still has to perform, and in such cases we generally find that the whole bed is cultivated.

“The result naturally is impeded drainage and deterioration in the public health, and until now there has been no law under which this action could be prevented. The Penal Code in section 268 requires that in order to constitute an offence the damming of small streams must cause common injury, danger, or annoyance to the people in general or to individuals. Now, injury to public health is not the immediate result of damming a river or cultivating its bed; the result follows slowly, probably years after, and the High Court decided in the Chittagong cases in 1893 that a conviction under section 268 could not be maintained when the result was so remote. The leading case for years as regards the power of the Magistrate to issue executive orders in such cases under the Procedure Code has been the judgment of a Bench presided over by the late Mr. Justice Morris, and when the Belvedere Conference was held that was the leading case, and Magistrates were thus unable to take action either judicially or executively. Since this Bill has been under discussion, I am glad to say that the High Court have come to another decision, and have upheld the action of the Magistrate of the 24-Parganas as regards the Soonti river. Section 27 of the Bill the Council are now asked to pass is therefore in accordance with the latest case law on the subject and makes it clear that a Magistrate has the power to prevent obstructions being placed in drainage channels and to order their removal. At the time of the Permanent Settlement all water-courses were exempted from assessment. The zamindars have therefore no ground for complaint, as they pay no revenue for such lands and in fact gain free of assessment all the land

[*Mr. Lyall.*]

not required to be kept open for a drainage channel. This principle is to some extent embodied in section 16 of the Bill, and recent encroachments will be removeable without compensation. Where limitation has accrued it is proposed to give compensation under the Land Acquisition Act in force for the time being. The Bill now before Council, though capable of being extended so as to provide for larger schemes, is also capable of being utilized for smaller schemes, and its chief usefulness in my opinion will lie in its judicious application to such schemes. In fact, I look on it as mainly a Bill to prevent the further deterioration of the drainage of Bengal, and to improve it when it can be done at a small cost, and in confirmation of this view I would point to what has been done in one or two cases and also what can be done. The first case is that of the Soonti river in the 24-Parganas which I have above referred to. The Council are all aware how unhealthy Baraset has become of late years, and in 1883 an elaborate scheme under the Drainage Act for the drainage of the Dhokera Bil and the improvement of the Soonti and Nomye rivers was drawn up, the estimated cost being Rs. 4,78,068. The proprietors very naturally would not agree to this, and the scheme was dropped.

“On receipt of letter No. 894, dated the 13th March 1893, from the Sanitation Branch of the Bengal Office, the Magistrate of the 24-Parganas undertook a series of petty improvements in the Soonti river. In the year 1893-94, nine miles of the bed were cleared by the removal of 40 bunds and fishing weirs and the clearing of trees and other obstructions from the channel. The cost was Rs. 1,039, of which Rs. 400 were paid by the Baraset Municipality and the balance by the District Board. In the following year, 1894-95, a further distance of ten miles was similarly cleared at a cost of Rs. 938. The District Engineer reports, under date 22nd June, that ‘the health of the locality had much improved, and the water of the nadi which was filthy before is now used for drinking purposes,’ and again he says, ‘the drainage of the adjacent tract has much improved, and the villagers alongside now enjoy better health.’ This is an instance of what has been done executively and without a law such as we are now asked to pass, but the Council must remember that the success or otherwise of the action of the Magistrate entirely depended on the view taken of it by the High Court, and that had the old decision of Mr. Justice Morris been upheld, the Magistrate would have been powerless. The law the Council are now asked to pass will place the legality of such action beyond doubt, and

[*Mr. Lyall.*]

I hope to see many such schemes worked out by the joint voluntary action of District Boards and Municipalities, and without additional taxation.

“The Eden Canal is an instance of more extensive works, which the Council are no doubt all familiar with, and I need only say here that the opening of that canal and the improvement in the drinking water and drainage effected by it were followed by a marked amelioration of the health of the places on the river bank.

“There are many places in Bengal where improvements can be carried out on lines similar to one or another of the two cases just mentioned. I hold in my hand a paper which has been circulated to all members of Council containing a note by the late Magistrate of Dinajpur, Mr. Tute, showing how the drainage of that very malarious district can be improved at a very small cost following the lines of the action taken by Mr. Collier in the case of the Soonti river. Another scheme about to be carried out by the Irrigation Department at the joint expense of the Local Government and the District Board is the canalisation of the dead river Kausiki in the Hooghly district. This is more on the lines of the Eden Canal, and will be supplied with water from that source. This is another case where the work will be carried out without taxation at the joint expense of Government and the Local Board, and no doubt many similar cases will occur.

“I do not propose here to say more than a very few words on the subject of the assessment of cost. That was fully discussed a fortnight ago. That discussion has been the subject of considerable comment in the press, and the Government of Bengal and this Council have been twitted with their inability to devise a collecting machinery which will secure the realisation of the costs of the scheme from all who benefit, but none of our critics have supplied us with a better scheme. We assert that the number of those who will benefit by any drainage project who do not pay Road Cess is so small that the amount they would pay under any of the alternatives proposed would be more than swallowed up in the cost of collection. The rate, it must be remembered, is a temporary one, extending at the outside to 30 years; and Government has rightly declined to establish a new collecting machinery for a temporary purpose when an existing machinery existed capable of doing the work easily and cheaply, and with a minimum of annoyance to those who pay.

[*Mr. Lyall; Maharaja Sir Luchmessur Singh Bahadur of Darbhanga; Mr. Risley.*]

“I do not, Sir, expect any great or sudden changes from the passing of this Bill. Just as the deterioration of drainage takes time, and its effects on the public health are not felt for years after the mischief has begun to act, so the improvement of drainage will, in most cases, be a work of time, though experience has shown that improvements have a more rapid effect than impediments.

“The passing of this Bill will place a strong weapon in the hands of those responsible for the health of the province—a two-edged sword in fact which will cut both ways,—in one way to facilitate the removal of existing obstructions, and in the other to prevent new obstructions being created.

“I do not anticipate any extensive use of the penal clause of the Bill. The fact of the existence of such a clause will have the effect of preventing the obstruction of drainage in the future.

“I ask the Council to pass this Bill, not as a perfect Bill, but as an honest attempt to do all possible to reduce the malaria which is the bane of the alluvial districts of Bengal by removing to some extent one of the chief causes of that malaria.”

The Hon'ble MAHARAJA SIR LUCHMESSUR SINGH BAHADUR OF DARBHANGA said.—“I beg leave to move that this Bill be referred back to the Select Committee, or at all events that the final consideration and passing of the Bill be postponed for three months. The hon'ble member in charge of the Bill has admitted that the Bill itself is not a perfect Bill. Well, nothing in this world is perfect, but I think if some little time were given to local bodies to submit their opinions upon the revised Bill, we shall be getting a little nearer perfection than we are at present. The Bill has been so altered by the Select Committee that I think no harm can possibly be done by our delaying the passing of the Bill for a period of three months. No scheme of drainage can be taken in hand during the rainy season, and if any schemes of drainage or for the clearing out of silted rivers are in contemplation, they cannot be taken in hand before the cold weather; so that practically there will be no harm done to any scheme whatever by postponing the discussion upon this Bill for three months.”

The Hon'ble MR. RISLEY said:—“With your Honour's permission, I will take this opportunity of examining certain allegations which have been made regarding the supposed moral obligations of the Government in respect of the financial portions of this Bill. These allegations have been made