10.—Assessed Taxes—

HEADS.	Actuals, 1895-96.	Budget estimate, 1896-97.	Revised estimate, 1896-97.	Estimate, 1897-98.	REMARKS.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Collection of Income-tax	1,84,000	1,81,000	1,81,000	1,93,000	The decrease in 1896-97 was due to the permanent Collector of Income Tax being on deputation and the Officiating Officer drawing less pay.
Provincial share	92,000	95,000	90,000	96,000	

11.—Forest—

A.—Conservancy and Works.					
I.—Timber and other produce removed from the forests by Government agency	39,000	2,90,300		1,76,100	Increased outlay is for cutting and delivering sleepers.
II.—Timber and other produce removed from the forests by consumers or purchasers ..	55,000	54,800		65,300	
III.—Confiscated, drift and waif wood	2,000	3,100		2,800	
VI.—Live-stock, stores, tools and plant	10,000	20,000		11,100	
VII.—Communications and buildings	50,000	63,400		82,400	The estimate for 1897-98 includes Rs 6,000 for a portable tramway in the Darjeeling Division and Rs. 12,000 for the construction of two head-quarters bungalows.
VIII.—Demarcation, improvement and extension of forests	30,000	37,200		43,600	
IX.—Miscellaneous	3,000	2,600		2,700	
Total A.—Conservancy and Works ...	1,89,000	4,72,000		3,84,000	
B.—Establishments.					
I.—Salaries	2,34,000	2,51,800		2,74,400	Increased provision made for the reorganization of the Subordinate Forest Staff sanctioned by the Secretary of State.
II.—Travelling allowance	32,000	34,300		36,900	
III—Contingencies	11,000	11,900		11,700	
Total B.—Establishment ...	2,77,000	2,98,000		3,23,000	
GRAND TOTAL ...	4,66,000	7,70,000	6,05,000	7,07,000	
Provincial share (*one-half*)	2,33,000	3,85,000	3,33,000	3,53,000	

12.—Registration—

Superintendence	54,000	58,000	53,000	57,000	Provision has been made for larger payments under commission to Rural Sub-Registrars and under contingent charges owing to the opening of new offices and the general expansion of the department.
District charges	7,49 000	8,01,000	7,81,000	8,16,000	
Total ...	8,03,000	8,59,000	8,34,000	8,73,000	
Provincial share—one-half	4,01,000	4,30,000	4,17,000	4,37,000	

13.—Interest on Ordinary Debt—

Interest on Provincial advances and Loan account...	1,91,000	2,26,000	2,18,000	2,15,000	Both the revised estimate for 1896-97 and the estimate for 1897-98 are based on the estimated mean balance. The rate of interest has been reduced to 3½ per cent. from 1897-98.

15.—Post Office—

Heads.	Actuals, 1895-96.	Budget estimate, 1896-97.	Revised estimate, 1896-97.	Estimate, 1897-98.	Remarks.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Conveyance of Mails South Lushai Hills	8,000	8,000	8,000	8,000	An extra provision has been made on account of the daily postal service between Chittagong and Lungleh.
Establishment in Postmaster-General's and Deputy Postmaster-General's Offices	.....	5,000	.....	.....	No provision necessary, as the charges have been transferred for audit and adjustment to the Postal Department.
Dak establishment	2,000	2,100	2,000	2,100	
		10,100		10,100	
Lump deduction		—100		—100	
Total ...	5,000	10,000	5,000	10,000	

18.—General Administration—

Salary of Lieutenant-Governor (8,333½)	1,01,000	1,00,000	1,00,000	99,000	
Staff and Household of Lieutenant-Governor ..	26,000	27,000	27,000	35,000	The increase in 1897-98 is due chiefly to the increase of Rs. 500 per mensem in the sumptuary allowance of the Lieutenant-Governor.
Tour expenses	38,000	34,000	25,000	34,000	
Legislative Council	24,000	26,000	26,000	25,000	
Civil Secretariats	5,72,000	5,66,500	5,91,000	5,78,000	The increase in 1896-97 is partly due to the payment of privilege leave allowances, to the employment of an officer on special duty and to increased expenditure on postage and contingencies.
Board of Revenue	2,95,000	2,88,700	3,00,000	2,87,000	The increases in 1896-97 are also due to privilege leave allowances which were not provided for in the original estimates.
Commissioners	6,22,000	5,92,800	6,19,000	5,94,000	
Civil Offices of Account and Audit	72,000	74,000	74,000	76,000	
Total ...	17,50,000	17,09,000	17,02,000	17,28,000	

19A.—Law and Justice—Courts of Law—

High Court	11,19,000	11,70,800		11,85,000
Law Officers	3,07,000	3,09,900		3,15,000
Coroner's Court	11,000	14,000		7,000
Presidency Magistrates	67,000	64,800		65,000
Civil and Sessions Courts	46,54,000	46,73,000		46,88,000
Courts of Small Causes	1,74,000	1,74,500		1,76,000
Criminal Courts	23,75,000	24,41,000		24,17,000
Pleadership examination charges	12,000	13,000		14,000
Refunds	1,07,000	1,30,000		1,10,000
Pay of peons	.....	.....		5,000
Total ...	88,26,000	89,81,000	88,90,000	89,42,000

19B.—Jails—

HEADS.	Actuals 1895-96.	Budget estimate, 1896-97.	Revised estimate, 1896-97.	Estimate, 1897-98.	REMARKS.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
JAILS—					
Superintendence	56,000	56,825		57,000	
Establishments	5,04,000	5,13,175		5,02,000	
Dietary charges	5,04,000	5,02,000		5,09,000	
Hospital ,,	76,000	65,000		78,000	
Clothing and Bedding of prisoners	91,000	1,07,000		95,000	
Sanitation charges	18,000	15,000	17,30,000	18,000	
Charges for moving prisoners	47,000	42,000		47,000	
Miscellaneous services and supplies	1,04,000	1,01,000		1,26,000	
Travelling allowance	7,000	8,000		8,000	
Contingent charges	61,000	40,000		42,000	The actuals of 1895-96 include charges for which provision has been made under the head Miscellaneous services and supplies.
Extraordinary charges for live-stock and tools and plant	8,000	11,000		12,000	
Total Jails	14,76,000	15,51,000	17,30,000	14,94,000	
Jail manufacture	7,83,000	6,85,000	7,40,000	7,38,000	The cost of European stores for the manufacture of chaukidari uniforms was unusually high in 1895-96.
GRAND TOTAL	22,59,000	22,36,000	24,70,000	22,32,000	

20.—Police—

Presidency Police	7,54,000	7,52,000	7,74,000	7,53,000	
Municipal Police	35,000	45,000	45,000	45,000	
Superintendence	1,65,000	1,51,000	1,53,000	1,51,000	The increased expenditure in 1895-96 was due to privilege leave allowance which are not provided for in the estimates.
District Executive Force	43,97,000	44,14,000	45,09,000	44,91,000	The revised estimate includes provision for grain compensation allowance. The larger provision in comparison with the actuals for 1895-96 is due to the extra expenditure caused by the redistribution of the Police Force in the Province.
Village Police	23,000	18,000	20,000	20,000	Based on actuals.
Special Police	5,34,000	5,33,000	4,84,000	4,99,000	The Gnatong Police is being amalgamated with the district police, and no provision has been made for it in 1897-98.
Upper Burma Police charges incurred in Bengal	.....	.....	.....	14,000	Will be made Provincial under the new contract.
Railway Police	1,21,000	1,15,000	1,15,000	1,30,000	The increase is on account of rent for accommodation of constables.
Cattle pounds	5,000	5,000	5,000	5,000	
Refunds	5,000	7,000	5,000	7,000	
Lump addition for increase to the pay of peons	.....	.....	.....	2,000	
Total	60,39,000	60,40,000	61,10,000	61,18,000	

21.—Marine—

Heads.	Actuals, 1895-96.	Budget estimate, 1896-97.	Revised estimate, 1896-97.	Estimate, 1897-98.	Remarks.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Salaries and allowances of officers and men afloat ...	63,000	70,000	71,000	69,000	
Victualling of officers and men afloat	17,000	20,000	20,000	25,000	Increased provision made in consideration of the rise in the prices of food grains.
Purchase of marine stores and coal for the building, repairs and outfit of ships and vessels	84,000	1,01,000	89,000	90,000	
Purchase and hire of ships and vessels	9,000	20,000	20,000	20,000	
Pilotage, pilot establishments and vessels	5,57,000	5,46,000	5,39,000	5,57,000	
Marine establishments	81,000	87,000	85,000	84,000	
Subsidies to steam-boat companies	24,000	20,000	29,000	20,000	Represents the subsidy granted to the River Steam Navigation Company for the conveyance of mails from Jatrapur to Dibrugarh and back. The actuals for 1895-96 include arrear payments.
Miscellaneous	33,000	51,000	26,000	40,000	The estimate for 1896-97 included a provision of Rs. 25,200 for contribution to Port Funds against Rs. 13,700 provided for in 1897-98.
State Yacht establishment	4,000	5,700	5,000	5,700	
Refunds	2,000	300	.....	300	
Total ...	8,74,000	9,21,000	8,75,000	9,11,000	

22.—Education—

Direction	72,000	72,000		66,000
Inspection	3,37,000	3,42,500		3,39,000
Government Colleges, General...	5,01,000	5,39,500		5,16,000
Ditto Professional	1,50,000	1,86,000		1,75,000
Government Schools, General	5,54,000	5,69,000		5,79,000
Ditto, Special	1,41,000	1,87,000		1,90,000
Grants-in-aid	6,14,000	6,25,000		5,98,000
Scholarships	1,87,000	1,94,000		1,88,000
Miscellaneous	52,000	56,000		65,000
Refunds	.....	2,000		1,000
Lump addition (for the introduction of the reorganisation scheme of the educational services and for increase in the pay of peons)	.....	3,000		20,000
Total ...	26,08,000	27,76,000	26,75,000	27,46,000

24.—Medical—

Medical Establishment	6,96,000	7,13,300	7,06,000	6,94,000
Hospitals and Dispensaries	4,39,000	5,60,300	5,28,000	5,13,000
Sanitation and Vaccination	2,25,000	2,28,400	2,15,000	2,22,000
Grants for medical purposes	5,000	3,000	8,000	7,000
Medical Schools and Colleges	3,04,000	2,93,000	3,18,000	3,14,000
Lunatic Asylums	1,17,000	1,20,000	1,23,000	1,21,000
Lock Hospital	15,000	16,000	13,000	17,000
Chemical Examiner	24,000	28,000	32,000	29,000
Refunds	1,000	1,000	1,000	1,000
Total ...	18,26,000	19,63,000	19,44,000	19,18,000

25.—Political—

HEADS.	Actuals, 1895-96.	Budget estimate, 1896-97.	Revised estimate, 1896-97.	Estimate, 1897-98.	REMARKS.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Entertainment of Envoys and Chiefs	1,000	2,000	1,000	2,000	
Durbar presents and allowances to vakils, &c. ...	9,000	17,000	10,000	14,000	
Miscellaneous	7,000	9,000	8,000	9,000	
Total ...	17,000	28,000	19,000	25,000	

26.—Scientific and other Minor Departments—

Provincial Museums	17,000	18,000	17,000	17,500	
Imperial Institute	.....	500	.....	500	
Donations to Scientific Societies	14,000	16,000	16,000	16,000	Includes a grant of Rs. 2,000 to the Buddhist Text society.
Experimental cultivation	17,000	13,500	17,000	15,000	
Cinchona plantation	2,50,000	1,71,800	1,52,000	1,71,000	The high actuals of 1895-96 are due chiefly to the payment in that year of a portion of the purchase-money of the Nimbong plantation.
Public Exhibitions and Fairs	2,000	2,000	2,000	2,300	
Veterinary and Stallion charges	17,000	18,000	19,000	22,000	Increase due to larger provision for the purchase and keep of cattle.
Botanic and other Public Gardens	1,22,000	1,21,000	1,23,000	1,23,000	
Emigration	23,000	24,500	24,000	23,800	
Inspector of Factories	24,000	22,000	24,000	22,300	
Census	2,000	2,000	2,000	2,000	
Registration of railway traffic	6,000	5,800	6,000	8,500	
Registration of river and road borne traffic ..	18,000	18,000	18,000	17,800	
Provincial statistics	2,000	2,250	3,000	2,500	
Examinations	4,000	3,500	6,000	4,500	
Miscellaneous	6,000	4,00	2,000	4,000	
Refunds	1,000	750	2,000	500	
Inspector of Explosives	2,000	2,400	2,000	2,000	
				4,55,200	
Deduct—For rounding	.....	.....	.....	200	
Total ...	5,27,000	4,49,000	4,35,000	4,55,000	

29.—Superannuation—

Superannuation and retired allowances	18,19,000	18,60,000	18,90,000	19,46,000	This is an annually increasing charge.
Marine Department pensions	.....	.....	.....	57,000	These charges will be made Provincial under the terms of the new Provincial Contract.
Compassionate allowances	21,000	22,000	19,000	22,000	
Gratuities	7,000	8,000	6,000	7,000	
Total ...	18,47,000	18,90,000	19,15,000	20,32,000	

30.—Stationery and Printing—

Stationery Office at the Presidency	1,53,000	1,58,000	1,49,000	1,54,000	
Ditto purchased in the country	62,000	70,000	63,000	72,000	
Government presses	3,56,000	3,96,650	3,61,000	3,65,000	The increase is for increased printing work on account of famine.
Printing at private presses	1,000	1,350	2,000	1,000	
Stationery supplied from Central Stores	5,15,000	6,25,000	5,25,000	5,42,000	The estimate of the Superintendent of Stationery for 1896-97 was rather high.
Refunds	1,000	1,000	... ..	1,000	
Total ...	10,89,000	12,22,000	11,00,000	11,34,000	

32.—*Miscellaneous*—

Heads.	Actuals 1895-96.	Budget estimate, 1896-97.	Revised estimate, 1896-97.	Estimate, 1897-98.	Remarks.
1	2	3	4	5	6
Travelling allowances to officers attending examinations ...	Rs 2,000	Rs. 3,000	Rs. 3,000	Rs 3,000	
Rewards for proficiency in Oriental languages, and allowance to Language Examination Committee ...	6,000	6,000	6,000	6,500	
Cost of books and publications ...	1,000	1,000	1,000	1,000	
Donations for charitable purposes ...	1,34,000	1,02,000	1,05,000	97,000	The increased charge in 1895-96 was due chiefly to the special grant of Rs 32,000 made in that year for the purchase of land at Gobra for a new Leper Asylum.
Charges on account of European vagrants ..	7,000	6,000	6,000	6,500	
Rewards for destruction of wild animals ...	18,000	18,000	15,000	18,000	
Petty establishments ...	34,000	36,000	39,000	47,000	The increase is for Khedda establishment in Jalpaiguri and Angul.
Special Commissions of Enquiry ...	14,000	10,000	10,000	10,000	
Irrecoverable temporary loans written off ...	3,000	3,000	3,000	4,000	
Extraordinary item ...	4,000	..	.....	..	Represents part of a sum of Rs 5,000 stolen from the Dinajpur Treasury and written off.
Rents, rates and taxes ...	28,000	35,000	27,000	31,000	
Contributions ...	15,000	15,000	16,000	15,000	
Miscellaneous and unforeseen charges ...	1,000	6,000	4,000	8,000	
Miscellaneous refunds ...	15,000	6,000	15,000	10,000	
Total	2,82,000	2,47,000	2,59,000	2,57,000	

33.—*Famine Relief*—

Total charges from General Revenues ...	.....		18,50,000	92,31,000	
Provincial share ...	.	...	18,50,000	22,18,000	

42.—*Irrigation—Major Works (Working Expenses)*—

Orissa Canals ...	4,42,000	4,04,000		5,67,000	
Midnapore Canal ...	2,66,000	3,04,000		2,59,000	
Hijli Tidal Canal ...	59,000	50,000		55,000	
Sone Canals ...	5,31,000	6,17,000		5,65,000	
Total ..	12,98,000	14,65,000	13,75,000	14,46,000	

42.—*Irrigation—Major Works (Interest on Debt)*—

Orissa Project ...	10,24,000	10,24,000	10,24,000	10,24,000	
Midnapore Canal ...	3,29,000	3,30,000	3,29,000	3,29,000	
Hijli Tidal Canal ...	72,000	72,000	72,000	72,000	
Sone Canals ...	10,40,000	10,41,000	10,39,000	10,39,000	
Total .	24,65,000	24,67,000	24,64,000	24,64,000	

43.—Minor Works and Navigation in charge of the Public Works Department—

HEADS.	Actuals, 1895-96.	Budget estimate, 1896-97.	Revised estimate, 1896-97.	Estimate, 1897-98.	REMARKS.
1	2	3	4	5	6
WORKS FOR WHICH CAPITAL AND REVENUE ACCOUNTS ARE KEPT.	Rs.	Rs	Rs.	Rs	
CAPITAL.					
Works in Progress					
Calcutta and Eastern Canals	1,25,021	4,31 000		3,78,000	
Midnapore Canal	8,346	1,300		....	
Hijli Tidal ,,	1,46 000	24,000		..	
Orissa Coast ,,	39,141	41,000		19,000	
Damodar Project	—1,200	...		. .	
Orissa Canals	3,782	5,000		1,300	
Sone ,,	1,744	24,700		18,700	
Total Capital	3,22,814	5,27,000		4,17,000	
REVENUE.					
Orissa Coast Canal	67,022	71,000		61,000	
Calcutta and Eastern Canals	2,80,895	2,61,000		1,89,000	
Saran Canals	1,368	900		1,300	
Total Revenue	3,49 285	3 32,900		2 51,300	
Total works for which Capital and Revenue Accounts are kept.	6,72,099	8,59,900		6,68,300	
Works for which only Revenue Accounts are kept					
WORKS IN PROGRESS.					
Nadia Rivers	1,37,459	1,29,000		1,19,000	
Gaighatta and Buxi Khals	13 009	700		1,200	
Total works for which only Revenue Accounts are kept.	1,50,468	1,29,700		1,20,200	
Works for which neither Capital nor Revenue Accounts are kept.					
WORKS IN PROGRESS.					
Eden Canal	56,171	68,600		72,000	
Madhuban Canal	3,808				
Total works for which neither Capital nor Revenue Accounts are kept	59,979	68 600		72,000	
Total Irrigation and Navigation Works	8,82,546	10,58,200		8,60,500	
AGRICULTURAL AND DRAINAGE WORKS.					
Works for which neither Capital nor Revenue Accounts are kept.					
WORKS IN PROGRESS.					
Government Embankments and Works for the improvement of Government and Escheated Estates	5,51,393	7,44 800		6,64,500	
Midnapore Takavi Embankments under contract					
Gandak Takavi Embankments under contract	1,50,594				
Works in charge of Civil Officers					
Total Agricultural	6,51,987	7,44,800		6,64,500	
GRAND TOTAL	15,34,533	18,03,000	18,00,000	15,25,000	

43.—Minor Works and Navigation in charge of Civil Officers—

Heads.	Actuals, 1895-96.	Budget estimate, 1896-97.	Revised estimate, 1896-97.	Estimate, 1897-98.	Remarks.
1	2	3	4	5	7
	Rs.	Rs.	Rs.	Rs.	
Embankments under the contract system—					
Establishments	1,400	1,452		1,452	
Contingencies		148		148	
Maintenance charges of the Dankuni Canal	2,600	2,400		2,400	
Collection establishment of the Rajapur Drainage Scheme	.....	.....		4,000	
Total ...	4,000	4,000	4,000	8,000	

45.—Civil Works in charge of the Public Works Department—

Original Works	14,22,000	25,69,700	20,12,800	15,10,000
Repairs	9,41,000	9,80,000	9,64,200	9,97,800
Establishment	7,49,000	7,22,000	7,15,200	7,12,200
Tools and Plant	21,000	24,300	24,800	30,000
Suspense	—43,000	.....	.....	.....
Total ...	30,90,000	43,00,000	37,17,000	32,50,000

45.—Civil Works in charge of the Civil Department—

Ferry charges	5,000	10,000		10,000	
Refunds of Ferry receipts	20,000	24,000		26,000	
Contributions to Local Funds and Municipalities ...	61,000	50,000		50,000	
South Lushai Hills	56,000	56,000		50,000	
Marcus Square Recreation Ground	14,000	.....		.....	
Public Works in Angul	19,000	.....		.....	These charges will be adjusted in the Public Works Department books from 1st April 1897.
Ditto in Sikkim	2,000	.....		.....	These charges are being adjusted in the Public Works Department books.
Ditto in the Sibpur Engineering College ...	.....	90,000		.....	
Total ...	1,86,000	2,30,000	2,60,000	1,36,000	

The Council adjourned to Saturday, the 3rd April, 1897.

CALCUTTA;
The 14th April, 1897.

F. G. WIGLEY,
Offg. Asst. Secy. to the Govt. of Bengal,
Legislative Department.

Reg. No. 45G—800—17-4-97.

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 April, 1897.

Present:

The Hon'ble SIR ALEXANDER MACKENZIE, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.
The Hon'ble SIR CHARLES PAUL, K.C.I.E., Advocate-General of Bengal.
The Hon'ble NAWAB SYED AMEER HOSSEIN, C.I.E.
The Hon'ble M. FINUCANE.
The Hon'ble C. W. BOLTON.
The Hon'ble W. H. GRIMLEY.
The Hon'ble J. G. H. GLASS, C.I.E.
The Hon'ble C. A. WILKINS.
The Hon'ble H. H. RISLEY, C.I.E.
The Hon'ble RAI DURGA GATI BANERJEA BAHADUR, C.I.E.
The Hon'ble J. PRATT.
The Hon'ble SURENDRANATH BANERJEE.
The Hon'ble A. M. BOSE.
The Hon'ble RAI ESHAN CHUNDRA MITTRA BAHADUR.
The Hon'ble GURU PROSHAD SEN.
The Hon'ble MAHARAJA BAHADUR SIR RAVANESHWAR PROSHAD SINGH, K.C.I.E., of Gidhaur.
The Hon'ble M. S. DAS.
The Hon'ble A. H. WALLIS.
The Hon'ble SAHIBZADA MAHOMED BAKHTYAR SHAH.

NEW MEMBER.

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

CONDITION OF RAILWAY PLATFORMS.

The Hon'ble RAI ESHAN CHUNDRA MITTRA BAHADUR asked—

Has the attention of the Government been called to the condition of the platforms at Sheoraphuli, Bhaddeshwar, and Khana Junction stations, which

[*Rai Eshan Chundra Mittra Bahadur; Mr. Glass; Mr. Risley; Babu Surendranath Banerjee.*]

are all so low that ladies can with difficulty get out of the Railway compartments into the platforms, and from them to get into the train? Is the Government aware that Bhaddeshwar is a great place of trade, and that Sheoraphuli is a junction station for the Tarakeswar Railway, and that hundreds of Hindu ladies have daily to make use of the platform of the Sheoraphuli station? Was there not a petition presented to Mr. R. C. Dutt, then Magistrate of Hooghly, for the raising of this platform? Will the Government be pleased to state how that petition has been disposed of, and also to take steps for the removal of the much felt grievance to which I have called attention?

The Hon'ble MR. GLASS replied:—

"The attention of Government has not been drawn to the condition of the platforms at Sheoraphuli, Bhaddeshwar and Khana Junction on the East Indian Railway. It has been ascertained that a petition was presented to the Magistrate of Hooghly some time ago urging that the Sheoraphuli platform be raised: the Railway authorities were addressed in the matter by that officer and asked to take steps to remove the grievance, but apparently no reply has yet been given. The Public Works Department of this Government have also recently addressed the East Indian Railway enquiring what it is proposed to do to improve the platforms, but as the Agent has been absent from headquarters no reply has been received. A reply is, however, expected on his return."

The Hon'ble Mr. RISLEY added some remarks about the condition of the Khana junction platform.

SUBORDINATE JUDICIAL SERVICE.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Will the Government be pleased to state whether the members of the Subordinate Judicial Service who have been appointed Sessions Judges are subject to the same rules as regards leave, travelling and deputation allowances, as Assistant Sessions Judges in Bombay and the Central Provinces?

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

The Hon'ble MR. BOLTON replied:—

"The Officers referred to in the Hon'ble Member's first question are members of the Subordinate Judicial Service temporarily appointed to be also Assistant Sessions Judges, and they remain subject to the rules of that service as regards leave and allowances."

The Hon'ble BABU SURENDRANATH BANERJEE asked—

(*a*) In the rules framed by Government in 1894 for the appointment and promotion of officers in the Judicial Branch of the Provincial Civil Service, and published in the *Calcutta Gazette* of the 14th March, 1894, promotion to grades below that on Rs. 600 a month is said to be given ordinarily according to seniority, subject to fitness and approved conduct, while the right to promotion to the senior grades is reserved to the Lieutenant-Governor by special selection for merit without regard to seniority. Will the Government state whether in any case this right has been exercised by the Lieutenant-Governor, and if not, will His Honour now exercise the right with a view to give encouragement to meritorious officers in the service?

(*b*) Will the Government state whether there are any fixed rules for the transfer of Subordinate Judicial Officers? If not, will the Government frame such rules subject to such exceptions as any special case may require?

(*c*) Does priority of registration of the name of a candidate for the Subordinate Judicial Service ensure the appointment of the candidate whose name is thus registered to an acting or permanent Munsifship? If so, will the Government state whether such a rule is observed and appointments are made in accordance therewith?

The Hon'ble MR. BOLTON replied:—

"(*a*) The right alluded to has been exercised by His Honour.

"(*b*) There are no fixed rules for the transfer of officers in the Subordinate Judicial or any other Service, and the Lieutenant-Governor sees no necessity for such rules.

"(*c*) Under the rules for admission into the Judicial Branch of the Provincial Civil Service, priority of entry in the register confers no right of priority of appointment; and a candidate's name

must be struck off the register if he fails to obtain an appointment before he attains the age of 29 years. Other things being equal, priority of registration is taken into account; but it is necessary sometimes to make exceptions, and these may result in particular candidates not securing appointments before they reach the age limit."

ESTATES PARTITION BILL.

The Hon'ble MR. FINUCANE presented the Preliminary Report of the Select Committee on the Bill to amend the law relating to the partition of estates. He said:—

"As we have made numerous alterations in the Bill, we have presented only a preliminary report, and propose to have the Bill re-published. The principal changes which have been made are that we have lowered the limit of partibility of revenue from Rs. 100 to Rs. 20, and we have re-cast the whole of Chapter V regarding the survey and record-of rights. The Select Committee describe the change made in that Chapter thus:—

'We have re-cast this Chapter. The Bill, as introduced, provided for the making of a complete survey and the preparation of a record-of-rights, including the determination of the status of all tenants and the decision of all disputes by the Deputy Collector, whose decisions were to be deemed to be correct until the contrary was proved and were to be appealable only to the Revenue authorities.

'Under the Bill for amendment of the Bengal Tenancy Act, which is now before the Council, Revenue Officers are to be deprived of the power of deciding disputes as to possession, right and title, and their orders are not to have the force and effect of decrees of a Civil Court. We think that still less should powers to decide disputes be given them in partition proceedings.

'The determination and recording of the status of tenants are not necessary for the purpose of apportioning the revenue of estates under partition, and for this reason, and because the proprietors unanimously object to complicating the proceedings by recording the rights of the tenants, we have omittted this status of tenants from the particulars which the Deputy Collector is to record in making a survey.

'We have provided that the Deputy Collector shall make a survey showing the area of land held by each tenant and prepare a record of existing rents (*i*) as stated by the landlord, (*ii*) as stated by the tenant, and (*iii*) as taken for the purposes of the partition. We have also provided that a copy of extracts relating to their holdings containing these particulars shall

be given to the tenants. We think these extracts will sufficiently protect them against the risk of having the partition proceedings made use of to their detriment. We have attached no special evidential value to the entries made by the Deputy Collector in the survey papers and record of existing rents. They may be referred to by the Courts as evidence of the contemporaneous admissions or allegations of the parties as to the amount of the rent at the t rd was prepared, and as evidence of what was the Deputy Collector's opinion as t nt of the rent, and no more. We do not think it necessary for the purposes of th esirable on general grounds, to empower the Deputy Collector to decide any elating to rent or status in the course of partition proceedings, and have mod the Chapter accordingly.'

"The other amendments made by the Select Committee are purely of a technical nature, and I need not take up the time of the Council in referring to them. The Lieutenant Governor has ordered the P minary Report and the Bill as amended by the Select Committee to for the purpose of eliciting opinions."

AMENDMENT OF CERTAIN SECTIO OF BENGAL TENANCY ACT, 1885.

The Hon'ble Mr. Finucane also introduced the Bill to amend sections 30, 31, 39, 52 and 119 and Chapter X of the Bengal Tenancy Act, 1885, and moved that it be read in Council. He said:—

"Sir,—The duty now devolves upon me to move that the Bill to amend sections 30, 31, 52 and 119 and Chapter X of the Bengal Tenancy Act, 1885, be read in Council. This Bill, with a full statement of its Objects and Reasons, has been in the hands of Hon'ble Members for some days back. Hon'ble Members are aware that the discussions which eventuated in the Bengal Tenancy Act began in connection with a small Bill 'to provide for the more speedy realisation of arrears of rent, and to amend the law relating to rent' which was originally suggested by the Hon'ble Kristo Das Pal, and introduced into this Council in 1878. These discussions were carried on continuously from the date of the appointment of the Bihar and Bengal Rent Commissions in 1878 and 1879, throughout the periods of office of two Viceroys, Lord Ripon and Lord Dufferin, and of two Lieutenant-Governors, Sir Ashley Eden and Sir Rivers Thompson, down to 1885 when the Bengal Tenancy Act was passed.

"Discussions which began with a small Bill for facilitating the realisation of arrears of rent and the settlement of rent, in private estates, by Revenue Officers, ended with the Bengal Tenancy Act. There were some who held at the time that Act was under consideration that the land was the absolute property of the zamindars who were, or ought to be, entitled to do as they pleased with it, and, according to them, the Bill which resulted in the Act of 1885 ... revolutionary and confiscatory character. There were others who held ... the common law and immemorial custom of India the raiyats were ... permanent settlement, entitled to hold their lands at the *pargana* ... were fixed and unalterable rates, that the permanent settlement was ... ver intended to deprive them of that right, but on the contrary that Lord Cornwallis' intention was to secure the raiyats in the possession of their lands at rates as fixed and unalterable as the revenue payable to the British Government by the zamindars. According to these latter authorities the Act was an earnest but ... successful attempt to restore to the raiyats of Bengal some of those ... rights of which they had been deprived subsequently to the date of ... permanent settlement and were then being deprived. According to those who held this view the Tenancy Bill of 1885, far from being revolutionary or confiscatory, was, on the contrary, inspired by that spirit of true conservatism, which cuts down the parasite so that the tree may flourish. The Act was a compromise between these conflicting views.

"I think it may be truly said, that no Act passed by the Indian Legislature was ever submitted to such prolonged, careful and searching investigation as the Tenancy Act. No Bill was ever more ably defended, on the one hand, by the eminent men who supported it, and none, on the other, was ever so severely criticised and stoutly opposed by those who were not in favour of it. The result of seven years' discussion was, as I have said, the compromise embodied in the Act as it stands.

"Bearing these facts in mind, it will doubtless be felt by the Council, and outside of the Council, that it is no light matter to re-open discussion on any of the fundamental principles then accepted as a settlement of the questions at issue, and strong reasons will naturally be expected to justify the adoption of such a course.

"These reasons it is my duty, and it will be my endeavour, to lay before the Council.

[*Mr. Finucane.*]

"The literature connected with the Tenancy Act before the date of its passing fills 14 large volumes in the records of the Bengal Secretariat. As Macaulay said in one of his essays, writing of Dr. Nare's Memoirs of Lord Burleigh, compared with the labour of reading through these volumes, all other labour would be agreeable occupation.

"But I trust that it will not be necessary for Hon'ble Members to undergo this labour in order to master the provisions of this Bill.

"Macaulay goes on to tell of a criminal who was suffered to make his choice between reading the works of a certain historian and the galleys. He chose the history; but when he had gone a certain length and came to read of the war of Pisa, it was too much for him. He changed his mind and went to the galleys. I hope that the literature connected with defects, some real and some, as I think, imaginary, discovered within the past five years in the Tenancy Act, and the literature which may spring up from the introduction of this Bill, may not be to those who in the future may have to study the law and literature of landlord and tenant in Bengal, what the war of Pisa was to Macaulay's criminal.

"It is not, as you Sir informed the Council at one of the first meetings over which you presided, the intention or wish of Government now to re-open the whole field of discussion on every question relating to the law of landlord and tenant in Bengal; nor is it intended to open the way to a no-rent agitation on the one side, or an agitation for undoing what was done in favour of the tenantry of Bengal by the Act of 1885 on the other.

"The object of this Bill is to make amendments in certain specified sections with a view to giving effect to the intentions of the authors of the Tenancy Act of 1885, in respect of which sections experience has shown that they were so worded as to give room for misunderstanding of their meaning, or in respect of which, though the meaning and intention are clear, yet the agency and procedure provided for giving effect to them have proved by experience to be unsuitable. It is hoped and intended that the discussions on the Bill may be confined to the particular sections which it is proposed to amend.

"I need not occupy the time of the Council with a lengthened narrative of the origin and history of the present Bill. Among the authors of the Tenancy Act Sir Steuart Bayley was one of the chief. While he was Lieutenant-Governor of Bengal, survey and settlement operations were not undertaken on

so extensive a scale as they have since been, and no great difficulty was experienced in carrying out provisions of Chapter X of the Tenancy Act. The vaticinations of those who predicted that the Act (the operation of Chapter X especially) would convulse society, lower the value of landed property and set landlord and tenant by the ears were all falsified by events. The value of proprietary rights and of tenants' rights has never been higher, the relations of landlord and tenant have never been more harmonious, and never have there been fewer agrarian riots or disturbances in these provinces than since the Tenancy Act was passed. But when Sir Charles Elliott took charge of the administration of Bengal, difficulties arose and discussions took place between Revenue Officers carrying out settlements of rent and revenue, the Board of Revenue and the Bengal Government, which lasted during the whole period of Sir Charles Elliott's administration. The outcome of these discussions was a Minute by the late Lieutenant Governor, in which he recorded the opinion that the procedure prescribed by Chapter X of the Tenancy Act was too cumbrous, dilatory and expensive to permit of the settlement of rents being carried out under it on a large scale, at a reasonable expenditure of time and money. Sir Charles Elliott, therefore, recommended legislation. At this stage the administration of Bengal was assumed by your Honour, and one of your earliest acts as Lieutenant-Governor was to summon a Conference to Belvedere to consider Sir Charles Elliott's Minute and other documents bearing on the subject of the amendment of the law.

"Both Members of the Board of Revenue, the Revenue Secretaries to the Governments of India and Bengal, the Secretary to the Board of Revenue, the Director of Land Records and some of the Settlement Officers were present at that Conference, and the conclusion almost unanimously agreed to was that Chapter X of the Act and certain other sections required amendment so as to render them more clear and workable. A Minute was subsequently drawn up by Your Honour on the whole subject and a Bill was prepared under your instructions, in which the conclusions come to by the Conference were embodied. The Bill was submitted to the Government of India and by them to the Secretary of State, who, as well as His Excellency the Governor-General in Council, have accorded their sanction to its introduction in this Council.

"It will thus be seen that this Bill is not the work, and does not represent the views, of any particular individual. It is the result of lengthened discussions,

in which various officials and others have taken part, and it represents the mature conclusions to which the Government of India and the Government of Bengal, as a whole, have come after careful consideration.

"I now proceed to explain the changes in the Act proposed to be made by the present Bill, and the reasons for these proposals. They may be divided broadly into three classes, namely, proposals intended—

(1) to clear up doubts and difficulties of procedure which have arisen in the course of experience in the working of Chapter X of the Bengal Tenancy Act, 1885;

(2) to facilitate the settlement of rents when undertaken on a large scale, either for the purpose of settling land-revenue or on the application of private individuals;

(3) to amend the substantive law relating to the enhancement and reduction of rents, so as to make certain provisions of the law workable, and to give effect to the intention of its authors regarding certain points on which, owing to want of sufficient clearness in the wording of the law, or to the interpretations put on it by the Civil Courts, it has been found in practice to be inoperative.

"The principal changes in procedure proposed in Chapter X of the Tenancy Act are these two:—(1) Under the Act revenue officers were intended and empowered to decide all disputes that came before them at any time up to the final publication of the records, in the same way, and following with slight modifications the same procedure, as the Civil Courts, whether such disputes related to possession, right, title, status or any other question that might arise from an entry made or proposed to be made in, or an omission from, the record. Their decisions were to have the force and effect of decrees of the Civil Courts, and were to be subject to appeal only to a Special Judge appointed by Government for the purpose, and from him to the High Court; but it was not intended that the correctness of their orders on any dispute so decided should be liable to be questioned in the ordinary Munsifs' Courts. Now it is proposed that Revenue Officers shall not finally *decide* any questions of the kind, nor are their orders to have the force and effect of decrees of the Civil Courts. When a dispute is raised on any of the classes of questions just mentioned, Revenue Officers will endeavour to ascertain to the best of their ability the true state of things, and

after hearing what the parties concerned have to say, they will pass a summary order directing that entry to be made in the record which appears to them to be the proper one. These entries will be presumed to be correct, but any one who is dissatisfied with them can contest their correctness in the ordinary Civil Courts having jurisdiction to entertain a suit for recovery of rent of the land which forms the subject-matter of the dispute.

"I will explain later on why this change is proposed. Here I merely note the fact.

"(2) The second great change proposed in the procedure prescribed in Chapter X is in the method and agency for the determination of fair-rents. Under the present law, Revenue Officers are bound to settle rents, as in the case of decision of disputes, on the same principles, in the same way, and following the same procedure as the Civil Courts; their final orders or decisions fixing fair rents are appealable to the Special Judge, but no second appeal, as regards the question whether the rent is pitched too high or too low, lies to the High Court against an order of a Revenue Officer fixing a fair rent.

"Under the Bill it is proposed that the orders of Revenue Officers fixing fair rents shall not be appealable to the Special Judge, but to the superior Revenue authorities, and that the finding of the Revenue authorities as to what the amount of the fair rent is, shall be final, except in certain specified classes of cases, in which it is left open to the parties to contest in the Civil Court the orders of the Revenue authorities even as to the amount of a fair rent settled, but only on certain specified grounds.

"If I have succeeded in making these two points clear, it will be manifest in the first place that the Bill not only does not curtail the powers of the ordinary Civil Courts, but, on the contrary, that it actually enlarges the powers of these Courts, that it transfers to them from the Revenue Officers the decision of all disputes involving questions of possession, status, right, and title, that it allows an appeal to the High Court on every point on which an appeal now lies to that Court, and that all it does is to alter the procedure for settlement of rent and to transfer the right of appeal on questions of fixing rents from the Special Judge to the Revenue authorities. It is true it allows no resort to the ordinary Munsiffs' Courts or to the High Court as to the amount of a rent settled, except on certain specified grounds, but neither does the present law.

[*Mr. Finucane.*]

"I now proceed to state reasons why the first of the changes mentioned above, namely, the transference of the decision of disputes to the Civil Courts, is proposed. The framers of the Act of 1885 thought that on a Revenue Officer beginning a record of rights, he would find himself face to face with numerous cases in which, on the one side or the other, the status of the raiyat, the area of the holding, the amount of the rent payable, were the subject of dispute. Unless he could deal with these disputes, the record would, they thought, be of little value, and it was, in their opinion, obviously absurd to empower one officer to settle the question of status and area, and then to send another to settle the question of rent. It appeared to them equally unreasonable to empower a Revenue Officer, with all the parties and witnesses before him, to decide disputes and then to allow the whole matter to be re-opened from the very beginning in a Civil Court.

"The natural result of such a course must, it was supposed, be to leave behind the Revenue Officer a crop of litigation for the Civil Courts to deal with after the Revenue Officer had left. Hence the Select Committee on the Tenancy Bill empowered the Revenue Officers to decide all disputes that might arise out of their own proceedings, instead of leaving them over for the decision of the Civil Courts.

"It will be asked, why is it now proposed to depart from the conclusion then come to in this respect? The answer is—*firstly*, that the Revenue Officers themselves have, in recent years, declared that the burden of deciding questions of possession, status, right and title, following the procedure of the Civil Procedure Code, is too heavy for them, and have begged to be relieved of it; and *secondly*, that the High Court have declared that the class of officers employed on survey and settlement proceedings are unfit for the work of deciding questions of status, right and title.

"In one of their judgments the Hon'ble Judges of the High Court expressed the opinion that the Legislature could not have intended to transfer civil suits as to rights in land between tenant and tenant to the Revenue Officer, and in another they declared that they did not think that the Legislature contemplated the formidable result that officers, such as those entrusted with the duty of preparing records of right, should be permitted to enquire into disputes as to the titles to land of indefinite extent.

"It will be shown presently that the intention of the Legislature in reality was that Revenue Officers should enquire into and decide all disputes coming

before them. But however that may be, the proposals now made in this respect are in accordance with the views of the Hon'ble Judges as enunciated in the decisions to which I have referred, and as they are also in accordance with the wishes of the Revenue Officers concerned, it is hoped that they will meet with general approval.

"The sole objection to this part of the Government proposals is in this, that, as the authors of the Tenancy Act feared, the Revenue Officers will leave after them disputes which they have raised but not finally settled, and as these disputes will, if the parties wish to have them decided at all, have to be decided by the Civil Courts, the suitors, especially those of the poorer classes, may find the cost of litigation in the Civil Courts much higher and the results not more satisfactory than the decisions of the Revenue Officers have been. This is no doubt a serious risk; but the difficulties put in the way of Revenue Officers by the decisions of the superior Civil Courts are so great that some change in the law is considered clearly necessary, and no more satisfactory solution of the problem has in the opinion of Government been suggested than that now proposed in the Bill.

"The difficulties experienced, and the way in which it is proposed to meet them, cannot, I think, be more clearly explained than they are explained in paragraphs 2 to 5 of the Statement of Objects and Reasons, from which the extract which I am about to read is taken :—

'The intention of the framers of the Tenancy Act, as explained in Council by Sir Steuart Bayley, when presenting the Report of the Select Committee, clearly was *that all disputes affecting the record-of-rights or fixation of rents* were to be formally and finally decided by the Revenue Officer, subject only to appeal to the Special Judge, and to a second appeal to the High Court in certain specified cases. Entries in the record, which were not disputed up to the time of final publication of the record, were to be presumed to be correct till the contrary was proved. If a dispute as to any entry in, or omission from, the record arose, it was to be decided by the Revenue Officer, and his decision was to have the force and effect of a decree. So that every entry in the record as finally published was to have attached to it either (*a*) the presumption of correctness, or (*b*) the force and effect of a decree of a Civil Court. Objections might be made at any time during the publication of the draft record, which the Revenue Officer was to summarily hear and consider, and disputes raised at any time before the final publication of the record were to be heard and decided. The distinction, between an objection and a dispute was not, however, clearly defined, and the result has been that the Civil Courts have in some cases held that the Revenue Officer

is bound to hear, as civil suits, trifling objections which can be adequately disposed of summarily, to the satisfaction of the parties, without the expense and delay entailed by the formal procedure of a civil suit. On the other hand, where Revenue Officers have heard and decided disputes, following the procedure of the Civil Procedure Code, in which cases it was intended that their decisions should, subject to appeal to the Special Judge, be *res judicata* between the parties, the Civil Courts have in some cases held that their decisions, though not appealed against, were not *res judicata*, that no finality attached to them, and that it was open to the parties to re-open the questions decided in the ordinary Civil Courts.

'Further, the Courts have held, where a survey is ordered to be made, and a record-of-rights prepared, of a particular estate or local area, and a dispute arises as to whether certain lands formed part of that estate or local area, that the Revenue Officer has no jurisdiction to hear and decide the dispute, and that when a dispute arises as to whether land claimed rent-free was properly so held or not, the Revenue Officer has no authority to hear and decide the dispute; and, again, that when a dispute arises as between one landlord and another landlord, or one tenant and another tenant, regarding the ownership or occupation of land, the Revenue Officer has no authority to hear and decide the dispute. It has, in short, been held that the Revenue Officer can only hear and decide a dispute between a landlord and tenant, when the relationship of landlord and tenant is proved or admitted to exist.

'The effect of these decisions is to curtail to a very great extent the powers of the Revenue Officer to decide disputes arising out of his proceedings, to leave gaps in the record-of-rights, and to drive the parties to litigation after the Revenue Officer has left the ground, even as regards matters which he has nominally decided.

'That this was not the intention of the framers of the Act is shown by the following extract from Sir Steuart Bayley's speech in Council in presenting the Report of the Select Committee on the Tenancy Bill as passed:—

"What we have done, then, has been to give the Revenue Officer, in the first instance, power to settle *all* disputes that may come before him. Where no dispute arises, he will record what he finds, he will not alter rents, and his entries will only have a presumptive value in cases afterwards brought before the Courts; where a dispute arises, he will decide it, on the same grounds, by the same rules, and with the same procedure, as a Civil Court. His decision will be liable to appeal like that of the ordinary Civil Court to a Special Judge, who may or may not be the Judge of the district, and will be subject to a further special appeal to the High Court. In appeal, the High Court may settle a new rent, but in so doing is to be guided by the other rents shown in the rent-roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low, but if a second appeal is preferred, as it may be on the ground that the Special Judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, or has given the raiyat a wrong status, and if the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be.

"The decision of the Revenue Officer in disputed cases, subject to these appeals, will have the effect of a judgment of the Civil Court and will be *res judicata*, thus bearring a fresh suit for enhancement for 15 years."

'It is clear that the decisions of the Civil Courts above referred to are not in accord with the intention of the framers of the Act expressed in the preceding extract, and it is thought that if the decisions of Revenue Officers are not to have finality on all questions that come before them, subject to appeal to the Special Judge, it is desirable to relieve them altogether of the duty of deciding disputes as civil suits, and to confine them, in the first place, to the preparation of a record of existing facts, rents and status. This record will be prepared, after careful investigation, under such rules as the Local Government may prescribe. It will be published in draft; objections made to any entry in or omissions from it will be carefully considered and disposed of under such rules as may be prescribed by Government; then it will be finally published, and the presumption of correctness will be attached to entries made in it. If the parties afterwards wish to dispute the correctness of any entry other than an entry of rent settled or any omission, they can do so in the Civil Courts.'

"For these reasons then it is proposed that Revenue Officers shall be relieved altogether of the duty of deciding disputes. They will in preparing records of right confine themselves to ascertaining and recording, to the best of their ability, existing facts of possession and status. Presumptive evidential value of correctness will be given to the entries made by them in their records, and it will be open to the parties concerned to question the correctness of these entries in the Civil Courts.

"I now come to the reasons for the second important change proposed, namely, that in the procedure, method and agency for settling rents. The method of settling rents prescribed in the Tenancy Act is briefly this—the existing rents are presumed to be fair, and any one who wants to alter them has to show, by legal evidence, the grounds of the proposed alteration. The present Act provides that in all proceedings of settlement of rents under Chapter X the Revenue Officer shall, subject to rules made by the Local Government, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and their orders fixing fair rents are appealable to the Special Judge. This implies that each individual case must, (subject to joinder of tenants holding under the same landlord in the same village,) be dealt with separately, a separate record being made and the evidence being separately recorded in each individual case. Now when settlements of revenue are being made on a large scale as they are in Orissa and Chittagong, and rents have consequently to be settled for all the tenants of an entire Division containing hundreds of thousands of holdings, it must be manifestly impossible to treat the settlement of rent in the

case of each individual tenant judicially and as a separate civil suit if the proceedings are to be completed within a reasonable limit of time and at a reasonable expenditure of money. Moreover, it is not necessary for the ends of justice to treat each individual tenant's case separately. When, for example, a rise or fall in the prices since the rents were last fixed has been established to the satisfaction of the Court or the Revenue Officer, and an alteration in the rents generally is sought on the ground of rise or fall in prices since the rents were last fixed, it would obviously involve great waste of time and money to record the evidence on the point of alteration in prices over and over in each separate case. The same remark applies to a prevailing rate. If a prevailing rate is once established for a village or local area, it should not be necessary to record all the evidence in support of it over and over again in each individual tenant's case. But it *is* necessary to do this if the judicial procedure is to be followed in the settlement of rents. To meet these and other difficulties, it is now proposed to dispense with the judicial procedure altogether in the settlement of fair rents by Revenue Officers, and to substitute more elastic methods of settling rents under the supervision and control of the Superior Revenue authorities, whose findings will be liable to be contested in the Civil Courts on certain specified grounds and on those grounds only.

"Nobody who has not travelled through Bengal, Bihar and Orissa, and studied on the ground the existing land-tenures, can fully comprehend the immense variety and complication of tenures and of rent systems that prevail in these Provinces.

"In Chittagong, on the one side, small plots of permanently-settled and temporarily-settled lands measuring a half an acre or less—plots of what are known as long-term and short-term taluks, *itmams*, *daritmams*, and various other tenures of the kind, not to speak of plots embraced in ordinary occupancy and non-occupancy raiyats' holdings—are all interspersed like squares on a chess-board in the same village. The same person is often proprietor, and, having created a tenure under himself in favour of another person, then becomes an occupancy tenant under the tenure-holder of his own creation in land of which he is also proprietor.

"In Backerganj there are no less than 13 different grades of intermediate tenure-holders between the proprietor and the actual cultivator, and the same person often holds shares as proprietor and again as tenure-holder under

another tenure-holder and as occupancy raiyat under yet another, all in the same plot of land. To give a concrete example. In a particular estate in that district one Kamiruddin has a small plot of land. He holds a fractional share, represented by $\frac{7021}{12288}$ of that plot as an occupancy raiyat under a *howladar*, a share represented by $\frac{117}{3072}$ under another *howladar* as tenant at fixed rates, $\frac{105}{3072}$ as occupancy raiyat under the same *howladar*, and $\frac{147}{12288}$ as under-raiyat.

"Again in Chota Nagpur, in another direction, rent is assessed not by an acreage rate, but by guesswork according to the number of ploughs the tenant may have or the quantity of seed sown by him. In Bihar, in another direction, the system of tenures is comparatively simple and is analogous to that prevailing in the neighbouring districts of the North-Western Provinces; but even there proprietary interests are extremely complicated, and a proprietor has been known to hold the one-millionth part of an estate, the Government revenue of the whole estate being one anna.

"How is it possible for a Judicial Officer sitting in a Court with no experience of these things to understand these complications of tenures or to fairly assess the rents that they ought to pay?

"But even if an officer sitting in Court could understand the intricacies of tenures, still the assessment of fair rents on a large scale under the procrustean rules of judicial procedure would be extremely difficult.

"As Sir John Shore wrote more than 100 years ago:—'The infinite varieties of soil and further variations of value from local circumstances are absolutely beyond the investigation and almost the comprehension not merely of a Collector, but of any body who has not made it the business of his life.'

"Sir Charles Elliott wrote 80 years later when he was Settlement Officer in the Central Provinces:—'The art of fixing rent is an almost lost one. If you ask any zamindar why such a field pays such a rent, the most intelligent of them can give you no answer but that his fathers fixed it so.'

"Now, such being the complications of tenures and such being the difficulties in the way of settling rents, on a great scale, it is considered by Government that the best agency for overcoming these difficulties is that of Revenue Officers, who can go on the ground, see the land for themselves, observe and ascertain the facts on the land, and consult the people concerned in their villages. It is

thought that the hard-and-fast rules of the law of evidence and of the Civil Procedure Code are not suited to proceedings of this kind. It follows that it is not desirable to tie Revenue Officers down by the Civil Procedure Code or prescribe any one method of settling rents, and to insist that Revenue Officers shall follow that method only.

"A good Settlement Officer who is tactful and sympathetic will make a good settlement without any law. He will consult the people concerned, be guided largely by what they think, and generally carry them with him. He will recognise the facts that the people who have lived on the land all their lives know very much more than he can of its capabilities, that the present rent is the result of the past history of the holding and of the haggling of all the ages, and he will not, if he is wise, ignore that history or attempt to raise or lower all rents to one dead level according to his own preconceived notions of the fitness of things. The landlords and raiyats are generally reasonable when brought together in their villages, surrounded by their neighbours and restrained by the public opinion of their fellows. Hence it is deemed to be a matter of cardinal importance that officers settling rents should be free to consult the people in their villages, to note what they say, and themselves to observe facts on the spot and make use of the knowledge thus acquired in coming to a conclusion as to what a fair rent would be. But this the law of evidence and the Civil Procedure Code do not allow them to do.

"Again, an inexperienced Revenue Officer may, under the present law, do great mischief either by excessive enhancements or reductions of rent. The superior Revenue authorities have no real control over him under the law as it stands, and his decisions, however manifestly wrong, can only be reversed by a regular appeal to the Special Judge, which appeal can only be made within 30 days of the passing of his order, and when made may take a very long time to decide. Moreover, as I have already indicated, if each and every landlord and tenant in a vast estate or local area under settlement of rents were to contest the Revenue Officer's orders or proposals for settling fair rents, and to fight out every case as a civil suit as they are entitled to do, under the present law, it is clear that the proceedings would be interminable, and the expense intolerable. Happily the raiyats and landlords have not fought out every case. They have generally accepted reasonable proposals; but, admitting this to be the rule, there have

been exceptions where the tenants kept aloof and rents were settled behind their backs, which were manifestly unfair. These rents were not appealed against to the Special Judge within the period of limitation. They became binding on the parties, and the Revenue authorities had no legal power to alter them. The law ought not to be based on the assumption that recourse to it will not be generally needed, and that people will always be moderate and reasonable.

"For all these reasons it is proposed to transfer the control of Revenue Officers in settling rents to the Revenue authorities, who are not to be tied down by the rules of judicial procedure, and it is also proposed to make the method of settling rents more elastic than it now is.

"The proposal as to procedure to be followed by Revenue Officers is that it shall be regulated by rules made by the Local Government, but the principles on which rents are to be settled by them are substantially in accord with the provisions of the present Act regulating enhancement or reduction of rents.

"The new section 104A. of the Bill enables the Revenue Officer to settle rents (1) by compromise, with the assent of the parties, when satisfied that the rents agreed upon are fair and equitable, or (2) to propose rents which, if accepted, may be settled as fair, or (3) to frame a Table of Rates where the conditions are such as to render this practicable, and to apply the rates to areas resulting from survey, or (4) to maintain the existing rents or to enhance or reduce them on the grounds specified in the Tenancy Act, or to settle them partly in one or more of these ways and partly in another.

"The first, second and fourth methods require no justification. They are in accord with the present law. It is obviously right that landlord and tenants should be encouraged to settle their differences among themselves, and that Settlement Officers should endeavour to make proposals which they may accept as being reasonable. It is because we have had Settlement Officers who were guided by these considerations that we have been able to carry on settlements of rent and revenue by amicable compromises on a large scale during the last twelve years. But you cannot always count on Settlement Officers being tactful, or on raiyats and landlords being reasonable, and when the former are injudicious or the latter unreasonable, and recourse to compulsory measures is necessary, it is submitted that the machinery of the law ought to be such as to permit of the vagaries of injudicious Revenue Officers being put straight, and unreasoning raiyats and zamindars brought to listen to reason.

[*Mr. Finucane.*]

"It is hoped that Revenue Officers will, in the future, continue to make amicable settlements, as they have hitherto done, but where they cannot do so, then they must have recourse to the third and fourth methods of settling rents. The fourth method merely reproduces the present law. The existing rents are to be presumed to be fair, and are to be enhanced or reduced on the grounds mentioned in Act.

"The system of Tables of Rates is new. That system was proposed originally by the Bengal Rent Commission, but it was abandoned when the Tenancy Act was being passed, because it was thought to be generally impracticable; it was admitted, however, at the time that there were some areas in which it was practicable to frame Tables of Rates. It is believed that this is the case in parts of Orissa, to which Province the Tenancy Act was not extended when passed. The provisions of the Bill for framing Tables of Rates follow to a large extent the proposals of the Rent Commission and those of the Bill of 1884. The Revenue Officer in framing his table is to have regard to the nature of the soil, situation of the land, means of irrigation, and other like considerations. The tables will be published, objections to them considered, and when finally approved by the superior Revenue authorities, they may be presumed to be correct, but the Revenue Officer is not to be bound to apply them in any particular case in which it may be unfair or inequitable to apply them.

"That the Revenue authorities are a more suitable agency for settling rents on a large scale than the Civil Courts has always been admitted, and was expressly asserted both by the Bengal Rent Commission and the Select Committee that reported on the Tenancy Bill just before it was passed. It has always been recognised that Government Officers, in settling rents for the purpose of ascertaining the assets on which revenue is to be based in temporarily-settled estates, should have more discretion in the matter of altering rents than was allowable to private individuals in suits in the Civil Courts. The Bengal Government, however, in 1885, with a view to showing that they claimed nothing in the way of enhanced rents in their own estates or in estates under settlement of revenue, which they were not prepared to concede to private landlords, consented to have the same rules and the same procedure applied to their own estates as were proposed for fixation of rent in private estates; but apparently the difference was not sufficiently considered, between the difficulties of a settlement of rents on a great scale and a settlement of rent of individual

tenants by a Revenue Officer or Civil Court. In individual cases it is easy to follow the procedure of the Civil Procedure Code, but where hundreds of thousands of tenants' rents have to be settled, it is obviously most difficult, if not impossible, to follow the Civil Procedure Code, and to complete the proceedings within a reasonable time at a reasonable expenditure. It is not now, however, proposed to differentiate between the settlement of rents in Government and that in private estates. The procedure proposed for settlement of rents in Government estates and in areas under settlement of revenue will, as heretofore, be open to private landlords if they wish to have recourse to it.

"On the point that Revenue Officers are the best agency for settling rents on a large scale the Select Committee wrote thus:—

'The questions whether a rent is open to settlement, and, if so, the amount at which it should be settled, are of a complex nature depending on two very different sets of considerations. They depend in the first place on issues, relating to such matters as the existence of the tenancy, the extent of the land, the status of the tenant, the conditions under which he holds, &c., and possibly involving points of law, which could not satisfactorily be decided without the security afforded by an ultimate appeal to the highest judicial authority. They depend in the second place on considerations of an economical nature, such as the state of prices prevailing at different periods, the effect of improvements, and so forth, which it is universally admitted cannot be adequately dealt with either in the first instance or on appeal except after local enquiry and by persons possessed of special technical knowledge.'

"The Government of Bengal undertook in 1885 (and it was the only Government in India that had up to that time done so) to settle, by the Agency of Revenue Officers, all rents in areas under settlement of revenue, because it was considered fair to the landlords that the rentals on which the revenue is based should be authoritatively settled and be capable of realisation through the Courts, for otherwise Government might arbitrarily assess its revenue at a certain percentage of arbitrarily assumed rentals when there was no real guarantee that the landlords could realise those rentals. Government also undertook to settle rents on the application of the landlords or tenants in private estates by the same agency, and following the same procedure.

"But if Government is to undertake so great a task, it is clearly necessary that it should have at its disposal workable methods and machinery for performing it. It is submitted that the judicial and the Civil Court procedure, which requires evidence to be recorded in each individual case, does not provide the requisite means for settling rents in the million of holdings of Orissa now

under settlement of revenue, nor in private estates in Bihar and elsewhere, when the landlords or tenants apply for settlement of rents on a large scale.

"I have dwelt on these two points, the transference of the power of settling rents to the Revenue authorities, and the withdrawal of the trammels of judicial procedure among other reasons because, as is well known, the people of Bengal are, as I think rightly, jealous of any interference by the Executive with the powers of the Civil Courts, and it may be supposed that this Bill involves such interference.

"Sir, if there be any two things introduced by the British Government into Bengal, which are held by the people of these Provinces to be sacred and not to be touched by the irreverent hands of the Executive, they are the Permanent Settlement and the independence of the Civil Courts. Your Honour announced in one of your earliest public or *quasi*-public utterances that you had no intention of attempting to interfere with the privileges or to lower in any way the status and dignity of the Judiciary, and you have recently ridiculed the idea of attempting to interfere with the Permanent Settlement. If I may presume to make a remark on these subjects myself, it would be this that I think that the people of Bengal are rightly jealous of the preservation intact of these two great benefits conferred upon them by our Rule. It is, in my opinion, to the permanent settlement that the people of Bengal largely owe that superior prosperity which they enjoy, compared with the natives of some other parts of the Empire, and it is to the reign of law impartially administered that they owe the maintenance of their civil rights. It is submitted that neither the Permanent Settlement nor the jurisdiction of the Civil Courts is affected by this Bill.

"Save in the cases connected with the settlement of land revenue, the Bill does not oust or touch in any way the right of the landlords and tenants to have their rents settled by the Civil Courts if they think fit. Excluding cases connected with settlement of land revenue, it is only on the application of the landlords or tenants themselves that the machinery provided in the Bill for settlement of rents can be brought into motion. The Bill merely offers the landlords and tenants an alternative procedure and agency to that for settling rents of the Civil Courts, and if they prefer the procedure and machinery of the Civil Courts, it will be open to them, notwithstanding anything contained in this Bill, to have recourse to the Civil Courts for settlement of their rents.

[*Mr. Finucane.*]

I fully admit that the people of Bengal, at all events, have confidence, and rightly so, in the decisions of the Civil Courts, but the fact that the rights of over five million raiyats has been determined, and the rents of one and a half million raiyats settled by Revenue Officers in Bengal, during the past ten years, as a rule by consent of the parties to their proposals, without going through the lengthened formalities of judicial procedure, shows that the people of Bengal have also confidence in decisions and orders of the Revenue Officers properly controlled and guided. Revenue Officers have in Bengal since the passing of the Tenancy Act determined the status and recorded the rents of about five times the number of agricultural tenants, and they have settled fair rents for one and a half times the number of tenants in Great Britain and Ireland, together, and this great work has been effected without disturbances or disorder of any kind, while the number of appeals preferred to the Special Judges against their orders and decisions has been infinitesimally small.

"It is hoped, then, it has been shown, *firstly*, that the Bill does not trench on the jurisdiction of the Civil Courts, but on the contrary enlarges it, and *secondly* that the Revenue Officers are in a better position to settle rents on a larger scale than the Civil Courts.

"There are other minor amendments proposed in Chapter X, which are described in paragraphs 21 to 31 of the Statement of Objects and Reasons. They are chiefly explanatory of the present law, or consequent on the important changes which I have mentioned.

"As I have detained the Council already too long, and other business awaits us, I propose to pass over these minor amendments and to come at once to the third and final object of the Bill, namely, the amendments proposed in the substantive law relating to the enhancement or reduction of rent.

"To avoid trespassing longer on the time of the Council than is absolutely necessary, it will perhaps be sufficient for me to read paragraphs 14 to 20 of the Statement of Objects and Reasons, in which these amendments are stated, and the reason for them given :—

'14. The third object of this Bill is to amend the substantive provisions of the law relating to the enhancement of rent, so as to make them workable on certain points on which they are now practically inoperative.

[*Mr. Finucane.*]

'In suits and proceedings for enhancement of rent on the ground of prevailing rate, the Civil Courts and Revenue Officers are bound to confine their enquiries and comparisons of rates to the same village, and the definition of what is a prevailing rate is so vaguely worded that in practice it is found almost impossible to enhance rents on this ground. A revenue survey village in Bengal may contain 100 acres, or several thousand acres, or may consist of scattered blocks. In does not necessarily furnish a proper standard of comparison. As regards the meaning of the term "prevailing rate" there is only one decision of the High Court bearing on the subject, and that declares that a prevailing rate is *not* an average rate, but does not explain what it is. The view taken by the Special Judges generally has been that a prevailing rate is a uniform rate paid by a majority of the raiyats for lands of the same class in the village. This was the interpretation generally put on the term "prevailing rate "under Act X of 1859.

'15. The effect of the wording of section 30 of the Act, as it stands, is to give a ground of enhancement which cannot be worked.

'It is proposed to somewhat enlarge the area for comparison, while an attempt is made to define what is meant by "prevailing rate" (*see* sections 2 to 4 of the Bill). Whatever objections there may be to this ground of enhancement generally, it is universally admitted that when land is held at a pepper-corn rent by reason of fraud or collusion between the proprietor's *amla* and the raiyats, there is no other ground on which the zamindar can obtain an enhancement up to a reasonable rate, except that of the "prevailing rate," and in such cases it is just that this ground of enhancement should be made a workable one. The intention of the amendments proposed in sections 30 and 31 of the Act, and of the new sections 31A and 31B, is to effect this object, without at the same time endangering the interests of the tenants by making an average rate a prevailing rate, thus rendering it possible to level all the lower rates up to such average rate while maintaining all the higher rates, however much in excess they may be of the average rate. As under the definition now proposed a prevailing rate will always be found where rates exist at all, and the effect of the new definition will be to greatly facilitate the enhancement of rents, and as rents are known to be already too high in certain districts, power is taken by Government to withhold the operation of the new definition from any district or part of a district. In order to guard against all the rates being levelled up to the maximum rate by manipulation of new prevailing rates from time to time, it is provided in section 31B that a prevailing rate once determined shall not be liable to enhancement except on the ground of rise in prices.

'16. It is also proposed to amend section 39 of the Act by repealing the words "prepared for any year subsequnt to the passing of this Act" (*see* section 5 of the Bill). These words were not contained in the earlier editions of the Tenancy Bill, or in the Bill as it came in its final shape from the Select Committee, but were introduced into the Bill as passed, on the motion of Sir William Hunter, on the ground that there were no adequate safeguards for the accuracy of price-lists prepared for periods antecedent to the passing of the Tenancy Act.

But though this may be so as a general rule, it is evident that there are cases in which adequate safeguards of the accuracy of price-lists, prepared for periods antecedent to the passing of the Tenancy Act, may and do exist, and in which the absence of the attachment of a presumption of correctness to lists carefully prepared causes serious injury and unnecessary inconvenience. Where, for example, a settlement of land-revenue or of rents is being made in large tracts, the Revenue Officer, after examination of traders' books of account, oral enquiry from witnesses on the spot, investigation of official price-current lists, jail registers, commissariat accounts, previous settlement records, and all other available sources of information, will, under the control of the Board of Revenue, be in a position to frame sufficiently correct price-lists for passed periods, to which the presumption of correctness may, after local publication and disposal of objections, be safely attached.

'17. It is reasonable that price-lists thus prepared should be capable of being used in evidence in all suits and proceedings for settlement of rent in such areas; but, under the law as it stands, all the information and evidence on which the Revenue Officer may have based his price-lists would, it is believed, have to be put on the record of each individual case, before an enhancement of rent could be based upon them. To remedy this state of things, it is proposed to repeal the words above quoted.

'18. The Local Government may, it is thought, be trusted not to order the preparation or publication of price-lists for past periods where there are no sufficient materials for the preparation of such lists, or no adequate safeguards for their correctness. But where such materials do exist, and there are adequate safeguards for the correctness of the lists, there is no reason why Government should be debarred from ordering the preparation of them, or refusing to attach the presumption of correctness to them when prepared. To prepare price-lists for past periods, which would have no evidential value, would be useless, and, when lists have been prepared after careful local investigation and examination of all available sources of information, to require all the evidence and information on which they have been based to be reproduced on the record of each individual tenant's case, is unnecessary waste of time and money.

'19. An addition is proposed to section 52 of the Act (*see* section 6 of the Bill). It has been held by some Special Judges, interpreting a decision of the High Court, that when additional rent is claimed on the ground of excess area, the landlord must indicate the precise plots or pieces of land acquired by the tenant in excess of the original holding, while section 52 itself does not provide for the assessment to rent of excess lands where there are no rates for lands of a similar description in the vicinity, but lump rentals.

'20. The section, as amended, indicates that it should not be always necessary, in order to prove excess area, to point out the particular plots that were acquired since the original letting, and provides a rule for assessment of such excess areas, when proved, where there are no rates in force. Where the original letting was at so much a bigha, and it is shown by measurement, by the same standard and under the same conditions, that the tenant is holding

a larger number of bighas than he is paying rent for, it should not be necessary for the landlord to point out the particular plots which the tenant has acquired in excess of the original area comprised in his holding.'

"I have now endeavoured to explain, so far as the limits of a speech and the patience of the Council can be expected to permit, all the main provisions of the Bill which, it is hoped by Government, will be generally acceptable to all those who are interested in the land. The Bill, if passed, will facilitate the settlement of rents with a view to the settlement of revenue; it will also facilitate the settlement of rents in private permanently settled estates where the landlords or tenants apply for such settlement; and it will facilitate the enhancements of rent where rents are unduly low, and remove grievances of which the landlords now complain. It does not, it is submitted, trench on the jurisdiction of the Civil Courts, but on the contrary enlarges that jurisdiction. I now move that the Bill be read in Council. If this Motion is carried, the Bill will be circulated and opinions will be invited upon it before it is further proceeded with."

The Motion was put and agreed to.

The Bill was read accordingly.

RAIN-GAMBLING BILL.

The Hon'ble MR. BOLTON moved that the Report of the Select Committee on the Bill for the suppression of rain-gambling be taken into consideration.

The Motion was put and agreed to.

The HON'BLE MR. BOLTON also moved that the clauses of the Bill be considered in the form recommended by the Select Committee. He said:—

"I move, Sir, that the Report of the Select Committee on the Bill for the suppression of rain-gambling be taken into consideration. When introducing the Bill, I fully explained the necessity for legislation and the very limited object for which it had been undertaken, and, with a single exception, no Member of the Council raised objection to this measure, while many Members expressed their strong and cordial approval of

it. Since that date the Bill has been subjected to much opposition and criticism as groundless as it was unexpected, and it is desirable that I should again explain its precise intention and scope. I cannot but think that if its critics had taken the pains to consider carefully its brief provisions, and to read with equal care the report of the proceedings of this Council, the public would have been spared the agitation which has been set on foot, proceeding from misconception of the intention of the Government and imaginary fears. Far-reaching consequences have been attributed to this Bill, which the Government certainly never contemplated, and see now no reason to anticipate. That strenuous opposition should be offered to the measure by those Marwaris who are directly or indirectly interested in the rain-gambling establishments is natural, but it is surprising that they should have received the support of others in protesting against legislation; the more so as the leading members of the Marwari community are anxious that rain-gambling should be suppressed.

"Now, Sir, what are the simple facts of the case? The law of England, the law of India, and, I presume, the law of every country which can lay claim to a civilised and enlightened administration, prohibits the practice of gambling in public or common gaming-houses, kept for the profit or gain of the persons keeping such houses. Apart from its evil consequences, from a moral point of view, such gambling is regarded as a public nuisance, and as a measure of Police, its suppression is enforced. In Bombay public rain-gambling was found to exist, and six years ago its suppression was decreed by an Act of the Legislature of that Presidency. Rain-gambling has existed in Calcutta for many years. It was long confined to the Marwaris, but in recent years it has extended to other classes of the community, and has become a serious scandal. Three public gaming-houses are openly kept in one section of the town, complaints have been made of the evil done to many who resort to them, and of the spreading of this evil to even *purdah nishin* ladies of respectable families through the agency of women employed by the owners of the houses, and the Police have represented that a serious public nuisance exists. Could the Government, consistently with its action in enforcing the law against other common gaming-houses, have persisted in ignoring this state of things? But one answer can be given to the question. The Government was bound to interfere; and it decided to do so. The existing law, however, though its spirit unquestionably condemns this gambling, could not be brought into action, as the definition of

common gaming-houses, framed long before rain-gambling had assumed its present character, does not cover that form of public gambling. It was necessary, therefore, to amend the law, and the present Bill was framed. Its sole and specific object, as the preamble shows, is to secure the suppression of the practice of rain-gambling, and it is inconceivable that any opposition should have been raised to the passing of such a measure, except by those whose profits will disappear with its enactment into law. Objection has been taken to the rapidity with which this Bill is being passed through the Council. The Bill had, in the ordinary course, to be submitted to His Excellency the Viceroy in Council for approval, and this necessarily involved some delay. When that approval was received, no reason whatever existed for deferring the introduction and passing of the measure to another Session. It had, therefore, to be pushed through during the remaining weeks of the present Session. Delay in proceeding with it would have been entirely uncalled for. The facts which rendered legislation necessary were fully ascertained and clear, and further inquiry was superfluous. The Associations interested had been consulted, and had, with a single exception, recommended legislation; and the immediate passing of the Bill could injure only the keepers of the gaming-houses, whose very business it is the object of the Bill to suppress. The suggestion which has been made that this Bill is the commencement of a crusade on moral grounds against all forms of betting or play for money calls for no serious notice. The Government is concerned with this Bill only, and it is designed solely for the suppression of one form of public gambling, and goes not one step beyond the existing law, which leaves other gaming untouched. I trust, then, that the Council will, by its vote to-day, bring these Burra Bazaar gambling establishments within the letter, as they are already within the spirit, of the law against public gambling.

"I confess, Sir, that the Hon'ble Mr. Wallis' object in recording his Minute of Dissent to the Report of the Select Committee is not clear to me. He observes that he disapproves of gambling in any form, and would be only too glad if it could be put a stop to by legislation or otherwise, and yet he takes exception to this Bill, which is designed to suppress one form of public gambling, and the efficacy of which for this specific purpose cannot be doubted. The Hon'ble Member might surely have been expected to receive this Bill with satisfaction and approval. He is thus, I am constrained to remark, inconsistent in his general objection to the Bill; but he is even more so in his special

[*Mr. Bolton.*]

objection. While expressing a fear that this Bill may be the precursor of repressive legislation against all other forms of wagering, he, at the same time, condemns it as being less comprehensive than the Bombay Act, which includes wagering within the definition of 'gaming', and thus brings wagering of all kinds within the prohibition of the law.

"I must draw attention, Sir, to the notices of amendments for discussion at this meeting, which have been received from the Hon'ble Babu Guru Proshad Sen and the Hon'ble Mr. A. M. Bose. Both Hon'ble Members propose to move that section 47 of Act IV (B.C.) of 1866 and section 6 of Act II (B.C.) of 1867 be repealed. These amendments travel beyond the scope of the Bill, and would materially effect the existing law against public gaming. The Bill before us is one for the suppression of rain-gambling, and it seeks to effect that object by adding rain-gambling to the other forms of gambling which become illegal when practised in common gaming-houses. The proposal to introduce this simple change in the existing law cannot be held to invest this Council with authority to proceed to amend any of the substantive provisions of that law. An amendment of this far wider character would require the sanction of the Governor-General in Council, and that sanction has not been obtained. I must, therefore, apply to you, Sir, to disallow these amendments of the Hon'ble Members before the Select Committee's Report is discussed, and I believe that the Hon'ble the Advocate-General is with me in this matter.

"Two other amendments are proposed by the Hon'ble Mr. A. M. Bose. The first is, I conceive, in order, but it will be my duty to oppose it as entirely unwarranted. The second, which provides for a right of appeal against any conviction for rain-gambling, is both out of order and superfluous. The right of appeal is already given by the Code of Criminal Procedure, and provision for it is not needed in the present Bill. The Hon'ble Member's amendment, being in general terms, would, moreover, have the effect of withdrawing the restrictions on appeal which are laid down for all cases in sections 411 and 413 of the Code. So important a change in the law cannot be discussed in this Council without the sanction of the Governor-General in Council. I would request, therefore, that this amendment also be disallowed."

The Motion was put and agreed to.

[*Mr. Das; Babu Guru Proshad Sen.*]

The Hon'ble MR. M. S. DAS said:—"In the Select Committee we decided that the little word 'anything' should be printed as two separate words. It was the suggestion of the Hon'ble Mr. Wilkins and was approved by all the Members of the Select Committee. I suppose the Secretary will take care that it will be printed as two separate words in the Act."

The point was noted.

The Hon'ble BABU GURU PROSHAD SEN said:—"I wish to show that my amendment is in order. The section, the repeal of which I propose, stands thus in the gambling laws 'When any cards, dice, gambling-table, cloth, boards or table, instruments of gaming are found in a house, etc., etc., etc., it shall be evidence, until the contrary is made to appear that such house, etc., etc., is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming.'

"Under the present Bill the words 'instrument of gambling' as used in that section, will stand extended to include spouts, tanks, &c. To this extent the Bill enlarges the section which I wish to get repealed. Therefore my present motion is an amendment of the Bill and exactly within its scope.

"But I also claim to come under Rule 21 of the Rules for the Conduct of Business.

"I respectfully beg to submit that the rule entitles Members to make original motions in respect of all matters by giving previous notice. If it is to be held that this motion can only be made by obtaining the previous sanction of the Government of India, the right comes to be nugatory, and no such restrictions exist in the rules.

"I submit further that if this Government receives a sanction from the Government of India to make a specific change in a certain law, the whole of that law comes for consideration before the Legislature, and any private member is entitled, under section 21, to bring any other section of the said law for consideration before the Council, and there are good reasons why this should be so. Government wants to enlarge the scope of a Penal Act; Members say: 'You are welcome to do so, but at the same time take away a part of the stringent procedure under which this penal law is enforced.' They say that if there be urgency in the one case, there is urgency in the other.

"They say that 'We cannot consent to the enlargement of a penal law without providing at the same time that the people are not unnecessarily molested by leaving the other portions of the law as it is.'

"The section in the gambling law which I wish to get repealed, refers to a previous section under which search has to be made. Once this search is made and a pack of cards or innocent things like that found, the prosecution case is complete. The onus is shifted, the accused has to prove his innocence, or stand convicted as an offender contrary to all canons of criminal trials as it prevails in this country It is not that a conviction under the Act is a light matter in India. It is true that there may be a few rupee fine, but a convicted gambler is a marked man in society for all his life long. Happily this much of public opinion we have yet left amongst us.

"It is said that the Indian law is in this respect in accord with the laws of England. The circumstances of the two countries differ. In spite of what Your Honour's Government and the Government of your predecessors have been doing for improving the Police, there is yet admittedly much left to improve, and this much I feel myself justified in saying from my place in the Council that the Police do not yet enjoy the full confidence of our honest people. It is true that the warrant for the search proceeds either from a Magistrate or District Superintendent of Police, who are moved only on credible information; but this credible information on which these authorities are moved, come in the back of the accused, and there is no test of its accuracy nor any punishment laid down for an illegal raid."

The Hon'ble MR. A. M. BOSE said:—"Permit me to add a few words, as the question which has been raised affects also the amendment standing in my name. The Government has submitted this Bill for the suppression of rain-gambling, not in a form complete in itself, not as a complete Bill which defines the offence and provides a procedure and a penalty. It asks the Council to amend the general gaming law that now obtains—to amend the provisions of that law only so far as to include rain-gambling within its scope. Under these circumstances I respectfully submit that it is open to the Council or to any member of it to say that, before the general gaming laws are so amended as to include this particular form of gambling, certain provisions of that law ought also to be amended, and that unless they are amended, this Bill ought not to be passed. I submit that as a matter of order it is open to us to propose such

amendments. Then, with reference to the objection that the sanction of the Governor General has not been obtained to such amendments, I beg to point out that while as a matter of administrative and executive practice Bills are and have to be submitted to the Government of India before introduction in a Local Legislature by the Governments concerned, there is no limitation placed upon amendments which may be proposed by any Member of the Council when the Bill has once been introduced, provided those amendments are germane to the object in hand, there is nothing in any of the 55 Rules which have been laid down for the conduct of business in this Council prohibiting the proposing of amendments unless those amendments have been previously placed before the Government of India. I submit that the proceedings of this Council are regulated by these rules, and that there is no room for doubt upon this point. If the question of order is absolutely clear to Your Honour, I have nothing to say, but if there is any room for doubt, I hope your ruling will be in favour of allowing these amendments to be put so that the matter may be discussed on its merits."

The Hon'ble Sir Charles Paul said:—"I think that both the Hon'ble Members who have last spoken have been labouring under a very serious mistake. I would ask them to take their memories back and remember what the Hon'ble Mr. Bolton has explained very clearly this morning, that the object is to include houses for rain-gambling within the definition of common gaming-house in the existing law. They will find that we are not now amending the substantive portions of the law which is contained in the Acts of 1866 and 1867. We are only extending those provisions to a certain form of gambling, and therefore all that can be urged on the present occasion is that one particular provision shall not apply. The Hon'ble Mr. Bose has very ingeniously put forward an alternative amendment which is not open to the objection; he felt the difficulty of the situation, and hence his amendment. Now he says the law is clear and beyond doubt. As an advocate a man is allowed to assume many things; but when you come to consider the reason of the thing you will see that when we are applying the provisions of the law to other forms of gambling we have really no power to amend that law itself. Both the reasons which have been given by the Hon'ble Member in charge of the Bill are right; first that the amendment is not within the scope of the law, and secondly that we have no power. The complaint made that the Magistrates are shut out from giving their own view of the law is really without foundation."

[*The President.*]

The Hon'ble THE PRESIDENT said:—"I entirely concur in the view which has been taken by the Hon'ble the Advocate-General. This, it must be remembered, is a subordinate Legislature. I have received no permission to amend the Gambling Acts. I have only received specific sanction to include rain-gambling-houses, a certain class of gaming-houses, within the purview of the existing law. I also agree with the Hon'ble the Advocate-General that the Hon'ble Mr. Bose's alternative amendment may be put as it is not out of order. But before formally closing the discussion of this matter, I wish to observe that there has been a good deal of misapprehension as to the scope and aim of this Bill, and especially as to the scope of the section of the law which it is now proposed to repeal. I shall therefore in disposing of this matter finally call attention to what the law really is. It has been said in a facetious article in a newspaper, and it has also been said elsewhere, that under this section of the law the Police may enter the Bengal Club or even Belvedere and seize upon any cards they may find there, and rush off with the members of the Bengal Club and with the Lieutenant-Governor himself and place them before a Magistrate as coming within the purview of this section. Nothing could be more absurd and silly than remarks of that description. Section 6 can only apply to houses which are entered and searched under the provisions of section 5, and searches can only be made under that section when the Commissioner of Police, the District Magistrate or other officer has been satisfied upon reliable information, and after such enquiry as may seem to them necessary, that a certain house, place or enclosure is kept as a common gaming-house. And what is a common gaming-house? It is a house—hell as it is ordinarily called in England—which is run for the benefit and advantage of the owner or occupier thereof. And this provision only applies to houses which have been entered into after full enquiry. And surely common sense tells us that when you have made that enquiry upon information received, if you find instruments of gaming, that is *primâ facie* evidence in the case. The Hon'ble Babu Guru Proshad Sen has observed that the circumstances of India and England are very different, and therefore it is no excuse to say that the provisions of the law have been borrowed from the English law on the subject. But what does the Hon'ble Member say to the fact that all the Legislatures in India have proceeded on the same lines; for that section exists in the Gaming Acts of every presidency—in the Acts passed for the North-Western Provinces, in the Punjab, Bombay, and in Madras and in Burma.

[*The President; Mr. Bose.*]

And if the section has been taken from the English Act on the subject, it only shows that the Legislatures in passing that provision were guided by the long experience of the past and by the absolute necessities of the case. I rule the amendment out of order. The Hon'ble Mr. Bose's second amendment is not out of order."

The Hon'ble THE PRESIDENT ruled the following motions to be out of order:—

(1) By the Hon'ble BABU GURU PROSHAD SEN.

That the following section of Act II of 1867 (B.C.) and the corresponding section 47 of Act IV of 1866 (B.C.) be repealed:—

"*Section 6 of Act II of 1867 (B.C.).*—When any cards, dice, gaming-table, cloth, boards or other instruments of gaming are found in any house, tent, room, space or walled enclosure entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, tent, room, space or walled enclosure is used as a common gaming house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate of Police Officer, or by any person acting under the authority of either of them."

(2) By the Hon'ble MR. A. M. BOSE.

That the following section be added to the Bill:—

"Section 47 of Act IV of 1866 (B.C.) and section 6 of Act II of 1867 (B.C.) are hereby repealed."

The Hon'ble MR. A. M. BOSE moved that the following section be added to the Bill:—

"The provisions of section 47 of Act IV of 1866 (B.C.) and of section 6 of Act II of 1867 (B.C.) shall not apply to any offence created by the operation of this Act."

He said:—"Before I make some observations on the amendment itself, I venture to express the hope that at any rate no objection on the merits will be taken to this amendment on the ground that it deals with a special form of gambling, while it leaves untouched the general provisions with regard to gambling. It is not the fault of my amendment if that should be the consequence of its adoption. By the ruling just given, I am limited perforce to the question of rain-gambling. And then I labour under another and an

unusual disadvantage, namely, I have to follow, Sir, your exposition, partly at any rate, with regard to the merits of the amendment I have to discuss. And if I point out what I submit is the true effect of sections 5 and 6 of Act II of 1867, I do so, I need hardly say, with the utmost possible respect to what has fallen from Your Honour. I am fully aware that the provisions of section 6, for instance, of Act II of 1867 will apply only after search has been made in accordance with the provisions of the previous section 5 of the same Act. I admit that there is a complete procedure as the law stands, and I have to submit reasons why I think it is not a desirable procedure, before I ask the Council to accept my amendment in connection with this Bill for the suppression of rain-gambling. Information is received either by a Magistrate or by some other officer vested with the full powers of a Magistrate or by a District Superintendent of Police as to a certain house being a common gaming-house; he holds a secret inquiry without of course any notice to the accused, and is satisfied or believes that it is a common gaming-house. Then he empowers certain officers of police, not below such rank as the Lieutenant-Governor shall appoint on that behalf—I do not know whether any such rank has been so specified—to enter such house, by force, if necessary, and to make an exhaustive search. Then if this police officer, whoever he may be, says before a Magistrate that he found, and produces, say, a pack of cards as the result of that enquiry and search, it must be taken as evidence, until the contrary is established, that the house is a common gaming-house and every single individual found therein is a gambler. What I wish to specially point out is this, that the previous information upon which the Commissioner of Police, Magistrate of the district or the District Superintendent of Police has been acting would not be before the Court. That previous information is, no doubt, accepted and acted upon by the police. But it is *ex-parte* information. And not only so; but as section 5 provides, it need not be in writing nor on oath. It is information for which nobody may be held responsible or be called to account. It may be that people are actuated by their feelings of enmity with reference to certain individuals, and make statements behind the backs of the persons whom they wish to annoy, and such statements are *primâ facie* accepted as sufficient by the police officer to whom they are made. If the law provided that when the matter comes before the trying Magistrate, that information will have to be repeated subject to the right of cross-examination, the position of affairs would be very different.

But that is not the case. All that is necessary for the Crown case is for the police officer to state that he has proceeded on certain instruction, and that he found certain instruments of gaming—cards, dice, &c. Then what will happen is this—that will be evidence, until the contrary is made to appear, that the house or place so searched is used as a common gaming-house, and that the persons found in that house are all present there for the purpose of gaming. I regret I have not with me now an extract from the judgment of Mr. Tweedie, late a District Judge, published a few days ago in the papers, in which he pointed out how the matter stood, and how all that was necessary was, not to have the original information tested or even to give any information on that point, but that it was only necessary for the prosecution to prove the two facts I have mentioned, viz., the police searching the house under orders and finding a pack of cards. In such cases the law should not make it obligatory on the Magistrate to presume that it is a common gaming-house, and that the persons present there were present for the purpose of gaming, until the contrary is established by the accused. The law ought to leave unfettered the discretion of the Magistrate as to the amount of weight he would attach to any particular facts bearing on the case. For instance, if, as the result of a search under this Bill, a book is produced containing a record of the bets which are made in the matter of what is called rain-gambling, no doubt the Magistrate will attach the greatest possible weight to that circumstance, and if he is satisfied that the record of bets was so found, he might well hold that, unless that fact is explained away, he will act upon it. If on the other hand what is produced are a pack of cards or dice, or evidence of the existence of a clock or water-spout which are said to be instruments of gaming; if such evidence is given, it will be open to the Magistrate to hold that it does not raise a presumption that the house is a common gaming-house. In ordinary cases under the criminal law matters are left to the discretion of the trying officer who would have all the circumstances of the case before him, and I maintain that the same liberty should be left to the Magistrate in gaming cases also; or in other words, to use the language made familiar by the Evidence Act, instead of the law saying that the Magistrate shall presume guilt until the contrary is made to appear, it ought to be that the Magistrate shall act in every way in accordance with the ordinary law, without any special provision of that kind being needed. Then reference was made to the fact that this is the law in England, and no doubt Hon'ble

[*Mr. Bose.*]

Members will attach great importance to that fact. I trust they will attach the same importance to analogy from English Law when it makes in favour of the liberty of the subject. In the next place I will repeat what fell from my hon'ble friend, Babu Guru Prosbad Sen, that in this particular respect there is an important, a vital, difference in the circumstances of England and India, namely, in the controlling influence of the public press and public opinion and in the constitution of the police force in the two countries. I would also refer to another fact which has reference to the Bill itself, namely, that in addition to Bengal Acts IV of 1866 and II of 1867, there is also an Act of the Governor-General in Council, XXI of 1857, which relates to gaming-houses in the town of Howrah; and there is this important, I was going to say significant, fact, that although it contains all the other provisions of the gaming law, the provisions of section 47 of Act IV of 1866 and section 6 of Act II of 1867 do not find a place in that Act. In Act XXI of 1857 the gaming sections are from section 10 to section 15, and section 12 corresponds to what I have been reading out as section 5 of Act II of 1867; but section 6 of Act II of 1867 is conspicuous by its absence. The important point is that in the gaming law applicable to Howrah the presumption which is contained in section 6 of Act II of 1867 [The Hon'ble SIR CHARLES PAUL said:—"There is nothing said about presumption in the Act."] I submit that it is more than presumption. I am much obliged to the learned Advocate-General for mentioning this fact, because it enables me to refer to the matter at once. What section 6 provides is more than presumption. It enacts, as I have pointed out, that when any cards, dice, gaming-table, cloth, boards or other instruments of gaming are found in any house, tent, room, space or walled enclosure, &c., it shall be evidence, until the contrary is made to appear, that such house, &c., is used as a common gaming-house, and further that the persons found therein were those present for the purpose of gaming, although no play was actually seen by the Magistrate or police officer or by any person acting under the authority of either of them. I was using the word presumption in referring to the provisions of the Act of 1857 for the sake of shortness, but returning to section 6 of Act II of 1867, unless the contrary is proved by the accused, the mere fact of the finding of any of these things upon a search made under the previous section shall be evidence of his guilt. Surely no provision could be more in violation of the rule which requires the prosecution to prove the guilt of the accused, and not the accused to prove his innocence?"

[*The President; Mr. Bose.*]

The Hon'ble THE PRESIDENT said:—"How do you get over this section of the Act of 1857, which provides that 'any person found in any common gaming-house during any game or playing therein, shall be presumed, until the contrary be proved, to have been there for the purpose of gaming?' Is it not possible that the Act of 1867, being 10 years older, proceeds upon more advanced principles of legislation?"

The Hon'ble MR. A. M. BOSE replied:—"The section Your Honour is referring to, is a different section; it provides for the case of people found in a place where play is proved to be actually going on. That makes all the difference. It is a different section altogether which finds a separate place both in Acts IV of 1866 and XXI of 1857."

The Hon'ble THE PRESIDENT said:—"The same idea applies to both cases. People who put themselves into a false position have to take the consequences. I want to point out again that the law attaches a presumption against people found going to such places."

The Hon'ble MR. A. M. BOSE continued:—"The difference is this, that the provisions of section 45 of Act IV of 1866 apply to cases where play is going on, and that being so, the presence of persons there is a presumption, unless the fact is explained away, that they are there for the purpose of gaming. Then, after that comes section 46, which says that a search may be ordered by the Commissioner of Police or by a Magistrate, and then follows section 47, which is the section we are dealing with. I refer to this to show the difference between the provisions in the Howrah Act and the provisions in these two Acts, It strengthens my position in this way. If on the other side of the river it is found that the ordinary rules and practice of the criminal law are sufficient, there is no reason why in Calcutta and other parts of the Province to which those Acts refer, the provisions of the law should be different. These are the reasons why I think it desirable that these sections of Acts IV of 1866 and II of 1867 should not be extended to this Bill for the suppression of rain-gambling. I most cordially support the Bill which has been introduced in this Council; and it is because the existence of these particular provisions provokes, and I believe, justly provokes, the feeling that this law is of a very exceptional character, and also because I believe the ordinary procedure of the criminal law is sufficient for the purpose that I press my amendment

for the acceptance of the Council. Moreover, I have shown that in the case of the town of Howrah these exceptional provisions have not been found necessary, and therefore there can be no necessity for their inclusion in this Bill."

The Hon'ble SIR CHARLES PAUL said:—"I submit that this amendment is as indefensible as those which have been ruled by Your Honour to be out of order. I have often perceived a desire on the part of certain members of this Council to put the hands of the clock back. When we have reached a certain point in legislation, when a certain principle has been adopted in reference to legislation of a certain character as a sound principle to act upon, the legislature has then a standpoint to go upon in the case of future legislation of a similar description. But as I have said, I have noticed on several occassions that when the slightest opportunity is given an attempt is made to go back from that principle. I have heard nothing from the Hon'ble Mr. Bose to justify the omission of section 47 of Act IV (B.C.) of 1866 and of section 6 of Act II (B.C.) of 1867 from their application to this Bill. It is admitted that in every case the administrators who rule over this country have adopted these measures to put down gaming-houses, and every Government and every system of legislation have adopted the rule and have laid down the procedure that if any article of gaming is found in a house which has been searched under the immediately preceding sections of these Acts, the same shall be evidence. Yet without the slightest reason, except some carping reason which I shall refer to later on, the Hon'ble Member wants the legislature to go back; and he has referred to the Howrah Act, XXI of 1857, which, he says, ought to be the model for our legislation. This, I say, is a confession of weakness on his part. If he wanted to strengthen his argument, he might have done so by some thing more important than that legislation for Howrah. I have often heard it said that if you allow the police to interfere, false evidence will be brought forward. If that argument is to have any weight, then the Penal Code and the Criminal Procedure Code and all the laws by which people are brought to justice ought never to have been passed. In the particular instance before us, if false evidence is given, the person upon whose information the police acted is responsible. In one of these Acts the information upon which the police are authorised to act is sworn information; in the other Act it is credible information. I have not the slightest doubt that the Magistrates of this presidency town,

who are gentlemen of honour and independence, will never allow a respectable man's house to be entered falsely without bringing malicious persons to justice; and if you have confidence in them you will not require any other safe-guards than were provided in the law. The second point is this. The Hon'ble Mr. Bose says that as you proceed on information given to the police, you ought to allow the man upon whose information the search was made to be examined and cross-examined. It should be remembered that the result of the information which will be given will be to break up the system under which fortunes are being built up, and would you allow the life of such a man to be at the mercy of the people concerned? Certainly not. The information is for the benefit of the public and therefore is guarded by a certain amount of secrecy. This is a second instance of the desire to disturb one of the principles which has been accepted in all proper forms of legislation and in all civilised administrations. The Hon'ble Member's third argument proceeds upon a misconception. He says if an instrument of gaming is found in a house that has been searched on information which has been given, it shall be a presumption that the person occupying that house at the time are engaged in gaming. The word presumption does not occur in these sections, but the Hon'ble Member explains that away by saying that the section says it shall be evidence until the contrary is proved. That means that the Magistrate shall look upon it as a piece of evidence, but if he considers that the general circumstances of the case disprove that evidence, then it is disproved. I will give an instance. Upon information given under this Bill a house is searched and a clock is found. That is an instrument of gaming under this Bill and therefore is evidence. But that evidence may be rebutted by the person being able to show that the police did not find anything else which may be taken with the clock as an instrument of gaming; then the evidence will be rebutted. I consider that under this Bill people who come forward in the interests of philanthropy and humanity ought to be safeguarded. The liberty of men is guarded by their own conduct; an honest man does not stand in need of such protection as the Hon'ble Mr. Bose thinks he requires; the onus of proof being thrown upon him affects him but in a trivial way. Suppose a man enters the house of a gentleman upon false information and he finds a pack of cards. He can prove that he has no gambling in his house. He can prove that by his servants and by his friends. What grievance is there? The reason why this section has been introduced is this—after a particular

gaming-house has been spotted, the police go there, but the moment they enter everybody disappears. How are they to prove that it is a gaming-house; if the people who were there happen to leave behind them a pack of cards or dice or other instruments of gaming, they can be produced and will be accepted as evidence. I therefore say that section 6 of Act II of 1867 is the result of necessity. It is not an arbitrary power invented by the Government to harass the poor, and I therefore submit the Hon'ble Member is utterly wrong in respect to this particular matter. But I am glad to find one thing, namely, that the Hon'ble Member entirely approves of the Bill; and I may add my testimony that I am wholly in accord with the Hon'ble Mover of the Bill, and I was glad to hear from him a clear, logical and complete statement of the objects of the Bill. It is easy to find fault, if you will not read the speeches of those who bring forward a Bill. Let those who attack the views of the Hon'ble Mover of the Bill study his speeches carefully, and they will find their shafts of ridicule are pointless and their arrows of criticism discharged at the Mover blunted."

The Hon'ble MR. M. S. DAS said:—"At the last meeting of the Council I drew the attention of the Council to the difference between the two Acts with regard to the sections which provide for the initial proceedings under the Act. I did not give notice of any amendment simply because I believe that an amendment would have been out of order. At the same time I believe that if the Council is of opinion that this difference is one that ought not to exist, then, as has been done in previous instances, an amendment ought to be made, if not now, at some future time. With all possible respect to the learned Advocate-General, I must say I do not agree with the reasons he gave to show that there is no difference between the provisions on this point in the two Acts. Credible information is not so good as information on oath; because credible information is not reduced to writing, and a public officer who acts on such credible information cannot be held responsible. I repeat, with all possible respect to the learned Advocate-General, what I said at the last meeting, that if a man's house is to be searched some information should be recorded so that the informer may be held responsible should the search prove that the house is not a common gaming-house. A public servant who acts on credible information should first believe the information to be credible, but there will be nothing on record by means of which the person injured can reach the person who has started the initial proceedings. Credible information may mean information given to the District Superintendent

[*Mr. Das.*]

of Police by his bearer. In the Criminal Procedure Code there is no provision which enables a Magistrate to act upon credible information, but in all cases the information is to be recorded in writing. Here you are to trust to memory, and what can you get from the memory of any public servant after a few weeks as to what he had heard from a particular person? With regard to the amendment before the Council, I wish to add that until yesterday I had not read the Act carefully, and I thought that to allow the mere fact of finding certain things in a house to be used as evidence pointing to the house being a common gaming house and to certain other things is not a reasonable provision; but on looking at the Act carefully, I found that the provision giving power to institute a search is confined to the house having been shown at the outset to be a common gaming-house. So that the Magistrate or Superintendent of Police has first to be satisfied that a certain house is a common gaming-house, and then if a search is made and instruments of gaming are found, the things so found are to be evidence, until the contrary is proved, that the house is a common gaming-house. I think that under these circumstances it is not at all unnatural or unreasonable or contrary to known principles of law to admit what is found in the search as evidence of the facts that the house is a common gaming-house, and that the persons found there were there for the purpose of gaming. As pointed out by the learned Advocate-General, there is nothing said in the law about presumption, but is it not a fact that even under the law of evidence there is a presumption—not only evidence, but presumption—raised against a man in whose house a certain thing is found which had been stolen from another man's house. The law says he must be presumed to be the thief or the receiver of stolen property, and the onus is shifted to the accused. There the law is as strong as in this case. Suppose we see a man coming out of a liquor shop with a bottle under his arm, nobody would think it unfair to presume that he had been there to have a drink. Therefore there is nothing unreasonable in these sections. They simply say that these things shall be evidence, not conclusive evidence, but they shall be evidence only. They do not go the length of specifying what will be the weight of that evidence. It may not be worth the paper upon which it is recorded when other surrounding circumstances are taken into consideration. Admitting for the sake of argument that it is a section which lays down something which is opposed to the general principles of law, I do not understand

[*Mr. Das; Babu Guru Proshad Sen.*]

upon what ground an exception should be claimed in favor of rain-gambling only. If the principle is wrong, it ought not to apply to any sort of gambling; but, as has been pointed out by the learned Advocate-General, we have arrived at a certain stage of legislation, having gone a certain distance and laid down certain accepted principles of law, we ought not to go back; and if we ought not to go back absolutely and entirely, the Hon'ble Mover of the amendment has not made out a case why exemption should be claimed in favour of rain-gambling, unless it be on the ground that it is a new offence. If it is new to this Council it is old to this town, it having existed here for the last 60 years. Under these circumstances I do not think this amendment should be allowed. It has been said by the Hon'ble Mover of the amendment that it would have been a partial mitigation of the severity of the law if the person who gave the information were subjected to cross-examination at a subsequent stage of the proceedings, but I submit that in such a case it would be almost useless to expect information of this kind to be given. And after all what is found is only to be used as evidence; therefore, if any precautions should be taken, they should be taken before the initial proceedings are entered upon, and it is on this ground that I say that the Mufussal Act should be modified so as to put it in conformity with the Calcutta Act, which requires the information to be given on oath."

The Hon'ble BABU GURU PROSHAD SEN said:—"The hardship in the present case lies in the fact that after the search is made if anything is found there, cards and things of that kind, a clock or a register of bets, the case for the prosecution is complete against all-comers. It is true that the accused is allowed to prove the contrary, but the accused can only prove his innocence by bringing forward the persons who were present there, but those very persons are laid hold of as offenders as being present in a common gaming-house for the purpose of gaming. I think under the circumstances it is rather hard on the accused to be called upon to prove his innocence. I can well understand that there may be certain cases of emergency when a stringent law like this may be necessary. But I submit that it is not at all necessary in this case. The houses where rain-gambling is carried on are well known and probably will have to be shut up as soon as this Bill is passed. But the section no doubt will be applied to other houses. Moreover a conviction under this clause is not a very light affair. It makes a man a marked man in society for all his life to

come as a *juaree*, a gambler, and anything that is calculated, even in the smallest degree, to make our penal laws unworkable by the stringency of their provisions ought not to be enacted. But the further question is whether this particular provision while it remains in the general law of gambling ought to be excluded from the operation of this special law for the suppression of rain-gambling. I submit that because it exists in the general law it is no reason why it should apply to this law, which we are enacting for a special purpose, and with respect to which this is the opportunity when the people should be safe-guarded from the hands of the police."

The Hon'ble RAI ESHAN CHUNDRA MITTRA BAHADUR said:—"The question is whether this clause should be added to this Bill to safeguard, as it is said, the liberties of the people. If we admit that this rain-gambling is a nuisance, and a public nuisance, I do not see why this public nuisance should be exempted from the laws relating to other kinds of gambling. Has any special case been made out in favour of rain-gambling? We are legislating on a particular subject, and the question is why the provisions of section 6 of Act II of 1867, which has existed for about 30 years, should not be made applicable to this Bill. If it is not to be put into force, we should not legislate at all on the subject of rain-gambling. If the police are not to interfere, let us drop this Bill. But if it is an offence and a nuisance, as it no doubt is, I do not see why it should be exempted from the application of a portion of the general law on the subject. The finding of certain things will only be evidence. It will be for the Magistrate to decide what weight to give to that evidence. No Magistrate would convict simply on the finding by the Police of certain instruments of gaming. I shall certainly vote against the amendment."

The Hon'ble Mr. BOLTON said:—"The Government has introduced this Bill because rain-gambling comes within the spirit of the existing law, and should be treated like other forms of gambling, when carried on in a common gaming-house. Nevertheless, this motion is brought forward in order to make an exception in favour of rain-gambling by repealing, with reference to it, two sections of the existing law against public gaming. In other words, it is proposed to establish a difference between rain-gambling and other forms of gambling, when the very reason for this Bill is that no such difference exists. On this ground alone I submit that the motion should be rejected."

[*Mr. Bose.*]

The Hon'ble Mr. A. M. BOSE in reply said:—"I confess that I have now to meet the very heavy artillery of the learned Advocate-General. The first remark the learned Advocate-General made was this, that whenever a measure is introduced with reference to some previous Act of the legislature, an attempt is made to upset it. [The Hon'ble SIR CHARLES PAUL said:—"I said I have observed it on many occasions; I did not say whenever."] With regard to that I say that if the occasion be such that the experience which has been gained since the time of the previous legislation seems to justify an alteration in the law, such alteration should be made. But curiously enough it so happens in the present case that instead of trying to upset early legislation on the subject, I am really asking the Council to go back to it. If my amendment is opposed to the provisions of the Bengal Council Acts of 1866 and 1867, it is in conformity, as I have pointed out, with the previous legislation of 1857, which rests on the authority of the Government of India itself. Therefore I claim that I stand in regard to this matter, so far as this Province is concerned, on ancient ways, and am further supported by high authority. Then it has been said that my amendment implies want of confidence in the Magistrates. On the contrary, my amendment is based on confidence on the trying officers; all I ask is that the Magistrates should be trusted to exercise the discretion which is vested in them unfettered by any arbitrary rule. What I seek is that it should be left to the discretion of the Magistrate to decide in each case what weight should be attached to the things found, having regard to all the features and circumstances of the case and the value of the thing found, whether it is used exclusively for purposes of gambling or for other purposes. I ask the legislature to trust the Magistrate to decide upon that question. That is the very point of my amendment. It was then said that this provision is, as it were, really the result of necessity. I submit that that has not been shown, nor has there been made even any attempt to do so. If there had been a representation from Howrah that in working their law, which has stood for the last forty years on this footing, some difficulty has been experienced owing to the absence of such a provision, that would have been some proof of the necessity for such legislation; and I submit it is incumbent upon the Government to produce such evidence before the Council is asked to apply the special provisions of section 6 of Act II of 1867 to this Bill. No doubt it may make a conviction easier. It may be said with regard to the operation of the excise

[*Mr. Bose; the President.*]

laws that there are often difficulties in the way of conviction. But that cannot be helped. The liberty of the subject ought not to be imperilled because of the existence of difficulties, and some precautions ought to be taken to secure proper evidence. In this connection it is necessary again to refer to the language of the Act of 1867. I say that the insertion in that Act of the words 'until the contrary is made to appear' is not simply for the purpose of making the thing admissible in evidence, but these words at once indicate the meaning of the section to be that there shall be a presumption which is to be rebutted by the accused. Then the last objection which was urged by some Hon'ble Member, it has been said, is this, that my amendment would introduce a bit of special legislation. Has any reason been shown, why the offence of rain-gambling should be taken out of the general provisions of the law, or that it should meet with exceptional treatment? I thought that in my opening remarks I had met that objection. The reason why this amendment confines itself to rain-gambling is, as we have been told, that the question of the amendment of the gaming law is not before us; and therefore we cannot introduce an amendment which would alter any portion of the general gaming laws. This objection ought not to apply to my amendment, the form of which is due to the way in which this Bill has been framed. If a complete measure in regard to rain-gambling had been introduced, it would not have been necessary for me to move that that section of the general law should not apply. It would have been enough for me to confine myself to the provisions of the Bill itself; but owing to the way in which the Bill has been prepared I cannot touch the provisions of the general gaming law, but can only move as an amendment to this Bill that this particular section shall have no application to offences created under it. With regard to the observations which have fallen from the Hon'ble Mr. Das, I agree with what he said that as the credible information depends only upon the belief of the Magistrate or Superintendent of Police, much weight cannot under the circumstances attach to such evidence."

The Hon'ble THE PRESIDENT said:—"Before putting this amendment I will say one word. The Hon'ble Mr. Bose has made a great deal out of the provisions of the Howrah Act which was passed in 1857, but he ignores the fact that there has not been a single Legislature that has followed the line taken in that Act, and the experience of all countries and all Legislatures shows that

a provision of the kind contained in this Bill is absolutely necessary to effectually put down these gambling hells. I have not the least doubt that if this Bill was sent up to the Government of India with this amendment in it, the whole Bill would be vetoed."

The Motion was put and negatived.

The Hon'ble MR. A. M. BOSE moved that the following section be added to the Bill:—

"The accused shall have the right of appeal against any conviction for an offence created by the operation of this Act."

He said:—"I submit that this amendment is not out of order. In enacting a special law or creating a special offence, as we are doing by this Bill, it is I submit on grounds of common sense open to the Legislature creating that offence to lay down any special procedure in regard to its trial or sentence or appeal, should any such provision be deemed desirable by it. Otherwise the whole proceeding might be a mockery or involve grave injustice. And as we should expect, this power is expressly recognised by sections 5 and 404 of the Criminal Procedure Code. On every ground therefore I submit my amendment which is an important one, which seeks to provide a right of appeal in cases of conviction under this Bill, and which, I may observe in passing, is in exact accordance with the provisions of the English law on the subject, is in order and ought to be allowed to be discussed."

The Hon'ble THE PRESIDENT said:—"We are a subordinate Legislature, and the Members of this Council are not entitled to deal with matters which do not come before them in the regular course. I have no authority to restrict the jurisdiction of the Presidency Magistrates or to deal with the law of appeal. We have only received sanction to amend the law in a specific way, and I am not going to take the risk of allowing a provision like this to be introduced. I therefore rule this amendment to be out of order."

The Motion was therefore ruled out of order.

The Hon'ble THE PRESIDENT said:—"I have an amendment to propose myself in the preamble and title of the Bill. I want to propose that the words 'in common gaming-houses' be inserted after the words 'rain gambling'

[*The President.*]

both in the title and preamble. There has been an extraordinary amount of misapprehension about the scope and object of this Bill. It has been said that we are going to put down rain-gambling altogether, but the Hon'ble Member in charge of the Bill distinctly said in his opening speech that we are not entitled to interfere with rain-gambling except so far as it is carried on in a common gaming-house. It is open to all the Marwaris in the place to remain in their own courtyards and have as many of their European friends as they please, and to sit there with all the appurtenances for gambling and bet away till midnight if they like, provided it is not a common gaming-house that is kept for the profit or gain of the persons owning or keeping the house. We do not object to this, we do not interfere with private gambling in any shape or form, nor is it intended that we should do so. It is a great mistake to suppose that the Gambling Acts are Acts passed for the purpose of enforcing morality. It is true that indirectly they are in favour of morality because they put down vice by discouraging people whose profession it is to encourage gambling. But it should be clearly understood that this Bill does not attempt to regulate people's conduct by any moral considerations whatever. It aims simply and solely at a matter of Police, and there is one strong reason why there should be prompt action because of the extent to which the evil has recently been growing. Less than a year ago there was only one such house which was almost entirely frequented by Marwaris, but now there were three of these establishments, to which great additions have been made, and if this Bill is not passed, their numbers will no doubt multiply. It pays the owners or keepers of these houses not only to employ female touts to enter zananas and induce *purdah nishin* ladies to bet, but it pays them also to keep men to go to merchants and bankers' offices and induce the assistants there to gamble upon the rainfall. As I happen to know the practice is extending to great dimensions and the profits are enormous. What this Bill will do is to put a stop to the profession of rain-gambling as it is carried on for the purposes of lucre, and to make such practices illegal is the object of this Bill. I move that the words 'in common gaming-houses' be inserted after the words 'rain gambling' in the title and preamble to the Bill, so that there shall be no misconception as to the object and scope of this Bill."

The Motion was put and agreed to.

[*Mr. Bolton; Mr. Wallis; the President*; *Mr. Risley.*]

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

The Hon'ble MR. WALLIS said:—"Hon'ble Members will have concluded from the note of dissent which I appended to the Report of the Select Committee that I intended to vote against the Bill in its present form. My chief reason for objecting to the Bill is the form in which it has been brought forward. I have on no occasion stated that I was opposed to the ends which are sought to be gained by the Bill, but to the way in which the legislation was being carried out. In Bombay they worked differently. When they found that rain-gambling was growing so as to become a public nuisance, they considered it desirable to consolidate and amend the law for the prevention of gambling in the Presidency of Bombay, and Bombay Act IV of 1887 was amended by Bombay Act I of 1890, as follows:—"Section 2.—In this Act the word 'gaming,' whenever it occurs, shall include wagering. In this Act the expression 'instruments of gaming' includes any article used as a subject or means of gaming." This I submit, Sir, would have been the correct way to have proceeded, instead of introducing an incomplete Act, referring to, and making certain amendments in, other Acts in order to gain the desired end. As, therefore, I have heard nothing to lead me to change my mind, I must record my vote against the Bill."

The Hon'ble THE PRESIDENT said:—"We adopted the form which this Bill has taken for the very simple reason that we considered the term 'wagering' to be open to many of the objections which in ignorance have been taken to this Bill. Wagering is an indefinite term, and it was thought wiser and better, when we want to suppress common gaming-houses where rain-gambling is carried on, to say so."

The Motion was put and agreed to.

BENGAL FINANCIAL STATEMENT FOR 1897-98.

The Hon'ble MR. RISLEY moved for the discussion of the Bengal Financial Statement for 1897-98.

[*Babu Surendranath Banerjee.*]

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I desire to make a few observations with reference to the Budget which the Members of this Council have had only one week's time to study. I regret I am not in a position to renew my felicitations to the Hon'ble Member in charge of the Financial Department in regard to this Budget. It is a difficult matter to frame a good and hopeful Budget at a time of pestilence and famine, and unfortunately the position has been somewhat complicated by the adjustments in connection with the recent Provincial Contract. The last Provincial Contract came to an end on the 31st March, 1896, and the new contract began to run from the 1st April, 1897. Under the terms of this contract, which is referred to in the Financial Statement, the Government of Bengal loses yearly a revenue to the extent of 12½ lakhs, the details of which are given in the lucid statement of the Financial Member. A most improveable source of revenue has been taken away from us. Under the last contract, the Bengal Government used to keep one-half of the net earnings of the Eastern Bengal Railway. Our share was 44 lakhs, and the whole of this revenue has been taken away from us, and we get instead one quarter of the Excise revenues. We lose 44 lakhs, we get in return 33 lakhs; therefore we lose about 11 lakhs. But we lose something more. As we get the income derived from a quarter of the Excise revenue, we have to meet the charges incidental to the administration of that quarter share, which amount to Rs. 1,78,000; therefore we lose to the extent of about 12½ lakhs a year, and prospectively more. This is a result which is doubly disastrous to the province at a time like this. We stand face to face with the terrible prospect of a great plague. I hope it may never break out here, but should it break out, I am afraid the resources of the municipalities will not suffice to cope with that calamity. If you look at the finances of the Calcutta Municipality you will find that its revenues come up to about 44 or 45 lakhs a year; the revenues of all the other municipalities in Bengal amount to 41 lakhs a year. The revenues of all the municipalities put together thus come up to about 100 lakhs, and they are burdened with multifarious charges, and it will be impossible to set free portions of the municipal reserve to meet a great plague. Therefore a subsidy will have to be made from the revenues of the Provincial Government, and that at a time when the resources of that Government are strained to the utmost.

"With regard to the Famine, I congratulate the Government upon the earnest and sympathetic efforts made to cope with it. The estimated expenses in Bengal under the head of famine are large, a little more than 100 lakhs, of which, roughly speaking, 70 lakhs are to be provided by the Imperial Government, because it has provided itself with a Famine Insurance Fund. Of the rest, 22 lakhs are to be provided by the Provincial Government, 8 lakhs by local funds, and to this must be added 25 lakhs provided by the Famine Relief Committee which are to be devoted to lessening the sufferings of those who do not come within the operations of the Government relief works.

"These are temporary visitations. But we have permanent wants which have to be met, and the most pressing of these is undoubtedly the supply of water for the rural tracts in Bengal. The Government have introduced into this Council a Bill to provide Bengal with an adequate supply of water; it has been referred to a Select Committee, but nothing has been done since. It is a measure of permissive taxation; but in order that it should prove a success, it must be supported by a powerful body of public sentiment. We have before us an instance of the failure of permissive legislation. The Drainage Bill was passed through this Council amid the unanimous protest of the non-official members. It has proved a dead letter, because public sentiment is opposed to it, and I have no hesitation in saying that public sentiment would be opposed to any scheme of permissive taxation for the supply of water, unless the people are convinced that the Imperial Government has done adequate justice to the Provincial revenues.

"It cannot be said that we have been completely taken by surprise by the new Provincial Contract. The history of the Provincial Contract in Bengal is one long story of public disappointment. It will be in the recollection of Hon'ble Members of this Council who have taken an interest in the matter that under the Provincial Contract of 1877 three most improveable sources of revenue were made over to us subject to the payment of certain specified sums, viz., Stamps, Excise, and Registration. These revenues increased from 1877 to 1882 from 185 lakhs to 213 lakhs. They improved to the extent of some thing like 48 lakhs. But these favourable conditions were associated with certain burdens. The province was made responsible for certain public works committed to its care by the Government of India. The Public Works Cess

[*Babu Surendranath Banerjee.*]

was now levied to meet the charges incidental to this arrangement. The Public Works Cess now produces about 41 lakhs a year. When the contract of 1877 expired and a fresh contract was entered into in 1882, the Public Works Cess was continued, but a change for the worse was made in the terms of the contract. The three sources of revenue to which I have referred were taken away to the extent of one-half share of their proceeds. Under the contract of 1877 the proceeds of these revenues were made over to us subject to the payment of certain definite sums to the Government of India. Under the contract of 1882 a half share of these revenues was only given to the Provincial Government, the Government of India appropriating the other half. And the result of this was the contraction of administrative resources to an extent such as crippled administrative reform. Sir Rivers Thompson found himself in this situation. Schemes of improvement which he had planned had to be abandoned, one of these upon which he had set his mind being the extension of education. He wanted to give effect to the recommendations of the Education Commission, and he told the Government of India that it was his intention to devote to education an additional sum of Rs. 1,50,000 a year. But, in consequence of the narrowness of his resources, he was prevented from carrying out his policy in this respect. Then he appointed a Salaries Commission. The Resolution appointing that Commission distinctly laid down the proposition that the salaries of the ministerial servants of the Government were inadequate, and doubly inadequate, having regard to the rise on the prices of food-grains. That Commission consisted among others of the Hon'ble Mr. Grimley as President and the Hon'ble Rai Durga Gati Banerjea—two distinguished members of this Council; and they recommended that the salaries of the ministerial servants of the Government should be increased by at least 75 per cent. I am quite sure that if, instead of the contract of 1882, we had the contract of 1877, the recommendations of the Salaries Commission would have been given effect to. I desire once again to make an appeal on behalf of the ministerial servants of the Government which I have so often made from my place in Council. I cordially acknowledge that concessions have been made involving an expenditure to the extent of more than Rs. 50,000 a year, but I do not think that this is sufficient. It is hardly fair that the highly-paid officers of the Government should be given compensation allowance in consequence

of a fall in the rate of exchange, but that these poor ministerial servants of the Government should be placed in positions of trust, exposed to temptations to abuse that trust and at the same time draw a miserable pay. It is not fair to them that they should be given salaries which are far below what they have a right to expect.

"Coming to the estimates in the Financial Statment, I find that the expenditure under the head of Courts of Justice has decreased by nearly Rs. 40,000. The Government—I will not say the Bengal Government—make a handsome profit out of what has been described as the sale of public justices and I think it is a matter of the highest importance that a portion of the proceeds should be devoted to the improvement and strengthening of the institution, which administer justice and which secure the gratitude and the loyalty of the people. My hon'ble friend Mr. Finucane has eloquently referred to the feeling of reverence which surrounds the Courts of this Province. I think it is a matter of the first importance that that feeling should be strengthened by strengthening the subordinate judiciary and adding to the number of Munsifs. The number of Munsifs is inadequate to cope with the work. We have been furnished with statistics by the Government and explanations have been given with regard to those statistics. They may satisfy my hon'ble friends who have given us those statistics, but I am bound to say that they do not satisfy the public. Organs of public opinion holding diametrically opposite views are at one in holding that the subordinate judiciary is undermanned. A friend of mine instituted a case before the Munsif at Sealdah about the middle of February last; to-day is the 3rd of April, and the case has not come on yet for the first hearing, and he has no idea when it will come on. There are hundreds and thousands of people who have similar grievances. I earnestly hope something will be done to strengthen the subordinate judicial staff.

"I find that the Hon'ble Member has provided Rs. 40,000 for the residences of Munsifs. I should like to know how many buildings have been taken in hand, how many have been completed, and in what parts of the country. I find at page 6 that Rs. 20,000 has been provided for building a house for the District Superintendent of Police at Noakhali. Is it customary to provide buildings for District Superintendents of Police? If not, why was this special concession made.

[*Babu Surendranath Banerjee.*]

"I desire to point out that the grant for education has not been what it might have been. In 1896-97 the revised estimate showed that the Government were not able to spend the amount which was provided, and I find further that the estimates for 1897-98 provide less for expenditure on education than did the estimates for 1896-97; and I find the following explanation given at page 5:— 'The reduction in the revised estimate is owing to the grant for electric apparatus for the Civil Engineering College at Sibpur not having been fully utilised, and partly to savings from the grant for the Normal Training School.' May I enquire why the grant was not utilized, and why savings were made?

"I wish to refer to the circular issued by Your Honour's Government to various District Boards, enjoining upon them the propriety of devoting the whole of the proceeds of the Road Cess to the improvement of roads and communications. This is a circular which is likely to prove disastrous to the educational interests of this Province. Up to this time the proceeds of the Road Cess used to be devoted to the maintenance of roads and a portion to education; but as the Road Cess is now being exclusively spent on roads and communications, the educational grant is derived from pounds and ferries and certain Government grants which are made. I hold in my hand a Resolution of the Government on the report of the working of the District Boards in Bengal. I find from the figures in this report that for the last six or seven years the revenues from pounds and ferries have practically been inelastic and unexpansive so far as the Presidency Division is concerned, and further the grants which the Government has made to the District Boards for the purposes of education have been practically stationary. Therefore the result has been that in the Khulna district one or two schools have had to be abolished, and in Krishnagar they were saved from this situation by the timely resignation of a Sub-Inspector of Schools. I desire to refer to the reports of two Divisional Commissioners, Mr. Bourdillon and Mr. R. C. Dutt, both of whom have been Members of this Council. They are of opinion that the circular to which I have referred will prove highly injurious to the cause of education. Having regard to the sympathetic attitude of the Government in connection with the question of education, I hope and trust Your Honour will place the District Boards in such a position that they will find themselves able to foster and promote the cause of education in the rural tracts within their jurisdiction."

[*Mr. Bose.*]

The Hon'ble MR. A. M. BOSE said:—"I have one observation to add to what has fallen from my hon'ble friend with regard to the Provincial Contract. Not only is it that in the place of the larger and more improvable sources of revenue have been substituted smaller and less improveable amounts; but, Sir, I cannot congratulate Your Honour's Government upon the fact that its financial prosperity and well-being, its capacity to carry out the many and much-needed works of improvement are now more intimately connected than hitherto has been the case with the growth and expansion of the excise revenue of the Province. I recognise that we meet under the shadow of a great calamity, and it is only natural to assign in the financial arrangements of the year a foremost position to the question of famine relief. I recognise also that this is not a very proper moment to press upon the attention of the Government questions of policy which will involve a large addition to the expenditure. I shall not, therefore, go over the ground that my hon'ble friend who has just spoken went over both on this and upon a previous occasion, or take up certain other matters which might otherwise have well claimed our attention in this debate. I will only join him in one expression of regret that it has been found necessary to place the grant for education at a smaller figure this year than in the last, and that it should have been found necessary, I will not say to force, but to enjoin upon District Boards a policy which will interfere with the needs of education. I rise chiefly to press upon the attention of the Government a matter, not of financial policy, but I was almost going to say of financial honesty, in regard to which some questions were asked in the course of the last session, the subject, namely, of the unfair and excessive charges which are thrown upon District Boards on account of the collection of the road-cess; and that is almost the only matter which I intend to refer to. The history of the matter, as it has been given in the replies of the Financial Secretary, is shortly this. The question was fully considered in 1878-79, when a certain principle of division as regards collection charges was adopted by the Government. The District Boards, having regard to the fact that the collections for public works cess which went to Government were rather greater than those for road-cess, wanted that half the collection charges should be met by the Government, the same agency being employed for both. But the Board of Revenue pointed out that, in addition to the collecting agency, a portion of the time of a Deputy Collector and of the Collector had to be devoted to the work; and, having regard to this

fact, they recommended that one-third of the total collection charges should be borne by the Government and two-thirds by the District Boards. The Government was pleased to accept that principle, and accordingly a certain amount was then fixed as due from the Government to the District Boards for the collection of these provincial rates. In 1879, speaking in round numbers, the total amount of charges for collecting both the cesses was about Rs. 1,61,000, and instead of one-third, or about Rs. 54,000, the amount actually paid, Rs. 44,000, was short by Rs. 10,000. But the strangest part of the matter is that although since then the collection charges have been steadily increasing until in 1894-95—they were Rs. 2,87,186,—yet the contribution from the Government has all along stood at the same figure of Rs. 44,000, the net result being that, whereas the Government ought to have contributed something like Rs. 96,000, it was contributing only Rs. 44,500, or less by about Rs. 51,500 than the amount which ought to have been contributed by it to the funds of the District Boards. I wish in this connection to draw the attention of the Council referring to this matter—the passage in the statement (page 5, paragraph 21) where, it is said that, "in view of the diminished resources of the Government, it is uncertain whether the change contemplated will not have to be deferred, at any rate for the present," namely, to give to the District Boards really what is due to them. I would make a strong appeal to the Government not to defer the commencement of this equitable policy. I shall not now raise any question of restitution on account of overcharge in the past—probably at some more favourable moment the Government might be pleased to make over some of the payment which is really due to the District Boards; but at any rate, as regards the commencement of a fair adjustment of charges in accordance with the admitted principle laid down by the Government itself so far back as 1878, I ask that it may not be delayed. I am sure the Members of the Council will agree with me that the present state of things ought not to be allowed to continue for a single moment. The District Boards have large demands upon their resources for water-supply, sanitation, and various other demands are constantly springing up; and if the argument derived from the present financial difficulties of the Provincial Government be urged, I venture to say that the District Boards also are in the same position. The scarcity which has injuriously affected the revenues of the Government will also affect the income of the District Boards and throw extra burden on that income; therefore I hope that an additional

annual payment of about Rs. 50,000 to the District Boards, demanded a like by considerations of justice and generosity, will be made without delay. In the matter of agriculture, I beg to observe that last year reference was made in the budget to a certain allotment (Rs. 10,000) to promote the establishment of an agricultural class at Sibpur. I shall be glad now to learn what progress has been made in that direction and what is the present position of the matter. I trust we shall have a statement of a reassuring character, such as will enable the Council to see that the matter has not been slept over. The present scarcity brings into prominence the question of the establishment of agricultural classes, not only with the object of giving the people the benefit of an agricultural education, but also that they may be able by the raising of additional crops to tide over times of difficulty. I would also appeal to the Government to see what steps may be taken for the establishment of agricultural banks. I will read to the Council a passage from a letter which I have received from a gentleman occupying a high and responsible position in Chota Nagpur, earnestly advocating the establishment of such banks to save the ignorant and helpless people there from the grinding exactions of the village grain and money-lenders. (Passage read).

"It is not necessary for me to say anything with regard to the condition of the people of Chota Nagpur in the presence of the Hon'ble Mr. Grimley. I will only add that the state of things depicted in this letter is not confined to that division, but may be met with elsewhere also. I trust it will be possible for the Government to establish these banks, or at any rate to institute inquiries with the object of encouraging their establishment, so as to enable these unfortunate people to free themselves from the hands of rapacious and unscrupulous usurers. I hope the Government will earn their gratitude by helping to make lighter the burdens they have to bear and add a little brightness to their hard existence, because it is on the contentment and well-being of the people rests the surest foundation of the prosperity of the Government."

The Hon'ble MR. WALLIS said:—"Sir,—With your permission I would like to make a few remarks on the Financial Statement now under consideration. I am aware that the Members of this Council, when speaking on the Financial Statement, will have to use the greatest caution to avoid criticising the principles of the Provincial Contract on which we have just entered; but, Sir, we have been compelled to accept a revision of the Contract of 1892—97 on lines so disastrous

to the financial prospects of the province over which your Honour rules, that you will perhaps treat the Members of your Council leniently should they at any point overstep the bounds of reference, and tread on the forbidden ground of criticism. The year which the Financial Statement reviews opened with the brightest prospects, the closing balance being estimated at Rs. 34,40,000, the revised estimate raising it to Rs. 41,07,000. This vast improvement, we are told, is mainly due to an increase in the provincial share of the net earnings of the Eastern Bengal State Railway, an ever-increasing source of income, now unfortunately lost to the Bengal Government; but, Sir, the Financial Secretary is also to be congratulated on being able to show an increase of nearly Rs. 16,00,000 under various other headings, all of which assisted in making up the closing balance to the amount named, Rs. 41,07,000. There are, however, two heads of receipts under which I would like to make a few remarks, and they are the excess revenue obtained from Forests and Jails. These show a net improvement during 1896-97 over the actuals of 1895-96 of Rs. 1,62,000 for the former and Rs. 50,000 for the latter. We are told that the improvement under the head of Forests is due to contracts undertaken by the Department for the supply of railway sleepers to the Rai Bareilly-Benares Railway. This is, I fear, one of those cases in which the Government step in and compete with private enterprise to the undoubted loss of the latter, for it is hopeless for the private individual, however great his resources may be, to work on the same terms as the Government, who in this particular case stands very much in the position of the producer retailing his goods, instead of working through the wholesale buyer. It may be that the contract under reference is the only one in existence at the present time, but does that justify its existence? I think not; for what the private contractor has to fear is the extent to which such transactions might be carried on by the Government. The private contractor finds a new competitor has entered the field against him, an opponent possessed of unlimited capital, who can perfectly well carry on his business, regardless of the laws which must govern his action, for the private individual has to see that each particular venture he embarks on is worked to a profit. It has been shown that the existing contract with the Rai Bareilly-Benares Railway has proved a profitable speculation to Government. I respectfully submit that the timber should be sold to the contractor direct from the forests, and he, in turn, should retail it to the Railway. This is a question which might be enlarged upon to any extent, but it is not

my intention to take up the time of Hon'ble Members. I would only desire to mention that it is the principle to which I respectfully invite the attention of the Bengal Government. I now come to the question of the extra revenue obtained from jails. This is shown to be about Rs. 50,000, and is due to the supply of police clothing by the Jail Department. Here we have an excellent means for the employment of jail labour, and I would venture to suggest that the energies of those in control should be directed towards this legitimate means of increasing the revenue of jails, and in doing this I would desire to make a few remarks on the more general question of jail manufactures. In bringing this question before this Council, I am compelled to refer back to an exhaustive Resolution of the Government of India on this subject, dated 22nd September 1882. This Resolution clearly and fully restricts the production of jail manufactures to avoid their proving a hindrance to the growth of indigenous industries, or be brought into unfair competition with the products of private capital and of free labour. The history of the whole case is a very long one, and the Association to which I belong has considered it expedient on several occasions to address Government on the subject; but I trust Hon'ble Members will excuse my taking up a little of their time by making a passing reference to the question. Those who are interested in trade in India do not, for one moment, wish to deprecate the desirability of utilising convict labour, but they do respectfully protest against the production of the jails being offered retail to the public and at prices which cannot be touched by the private producer; but I will come to that point later on. I would now quote portions of the Resolution to which I have referred and which might be made to apply equally to the question of contracts for sleepers as to jail administration. [The speaker then read several quotations from the Government Resolution of the 22nd September, 1882.] This, Sir, is all that can be expected. That sales of jail produce to consumers among the outside public ought to be discouraged, the jails dealing direct, as a rule, only with traders, wholesale or retail; and I may venture to add that on no account should depôts be continued for the retail sale to private individuals of articles of jail manufactures, varying from a table serviette to a rocking chair, from a foot-rug to a drawing-room carpet, at rates which defy private competition. This question I feel the greatest confidence in leaving in Your Honour's hands.

"So much for my remarks on the past year's accounts; it now remains for me to refer to the estimated accounts for the year 1897-98. This period, but

for the demand on our resources for Famine Relief and the immediate loss which will accrue from the new Bengal Contract of 12½ lakhs, would have closed with a credit of about 44½ lakhs. This brings me to the question of Provincial Reserve Funds, and the undesirability of accumulating large balances. I have seen a Resolution of the Government of India, No. 318, of the 17th January, 1882, which refers to this question very pointedly. It reads as follows:—

'Moreover, as a consequence of the new principles laid down in the Resolution of 30th September last, and of the separate provision in the Imperial Budget of a permanent annual allotment of one crore and-a-half of rupees for Famine Relief and Insurance, the Local Governments, while always needing a moderate reserve over and above the mere 'working balance' of sufficient amount to meet scarcity and distress not indisputably amounting to severe famine, or other temporary exigencies, will no longer find it necessary to accumulate a great Provincial Reserve Fund, out of which the demands of severe famine could, in future, be largely met. His Excellency in Council is of opinion that, subject to the moderate reserve just referred to, the provincial resources can be best utilised by being invested to the full, from year to year, in works of a productive or protective character.'

"Towards the middle of last year your Honour recognised that the Provincial Funds had a credit balance of 21 lakhs, and possibly with above Resolution in view, you immediately took in hand one of the most noble schemes which you could have devised to inaugurate your rule over this Province, namely, the structural needs of the European General Hospital. The Resolution No. 314T.M., of the 13th June 1896, appointing a most influential Committee, with the Honble Mr. Risley as President and Mr. W. Banks Gwyther as Secretary, to consider and report on the whole question, was hailed with the utmost satisfaction by the general public, and it is a great misfortune that the financial horizon suddenly became overcast, the Province was threatened with famine, and the Government of India enjoined the observance of the strictest economy, and the Provincial balance of 21 lakhs had to be held in reserve to meet other expenditure of an urgent character.

"Thus, Sir, the funds which, I take it, you had intended to devote to the benevolent object named, have been diverted to other channels, but we learn that you will continue to press upon the Government of India the gradual reconstruction of the Presidency General Hospital on the lines suggested by the Committee, and also that other necessary medical reforms in Calcutta will

be undertaken as soon as money can be found. You also expressed a hope that the Provincial Contract, then under consideration, might possibly provide funds for the completion of a large portion of the work within the next five years. Your Honour has already commented on the disappointment which has been occasioned by the terms of the new contract; and as the conditions entail an immediate loss in the first year of some 12½ lakhs, it is to be feared that the Provincial Funds will not, for some time to come, be able to bear the strain which would be put upon them for the completion of the scheme. I am sure, Sir, every Member of this Council joins with you in the hope that the Government of India may, when more settled times come, see their way to restore to Bengal some portion of the contribution which we are now called upon to meet. We have an excellent example of this having been done in the past under a Resolution, No. 3353, of the 30th September 1881, of the Government of India, Department of Finance and Commerce, paragraph 9. This Resolution, after discussing at great length the responsibilities of Provincial Governments in times of severe famine, &c., decided that it was desirable to restore to Provincial Governments certain contributions amounting to some 67 lakhs which they had made to the Imperial Government. This was actually done under a subsequent Resolution, No. 318, of 17th January 1882, so that we may hope with some degree of confidence that at no distant date the Supreme Government may take the question into consideration and decide on making the refund."

The Hon'ble MAHARAJA BAHADUR OF GIDHAUR said:—"I do not wish to detain the Council by any lengthy remarks. I wish with your Honour's permission to make certain observations in as few words as I possibly can. Before I proceed with my observations, I have to congratulate the Hon'ble Member the Financial Secretary to the Government for the very successful budget he has been able to produce in this year of exceptional difficulties. It is indeed a matter of great satisfaction to find that notwithstanding the heavy expenses required for the prevailing famine in Bihar, there has not been such curtailment of allotments on the education and other improvements as would retard the progress of the country. I observe with special satisfaction that an allotment of Rs. 12,000 has been made for the Bihar School of Engineering. The Government were pleased last year to announce its intention of opening an agricultural class at Sibpur. The people of Bihar would be especially thankful to the generous enlightened ruler of Bengal if he could see his way

to establish an agricultural school in Bihar next year, which, I hope, would be a year of prosperity. I wish the Government could see its way not to reduce the allotment for grants-in-aid to schools. This may work to the prejudice of primary schools and schools in general. I find that out of 27 lakhs and odd budgeted for education, Rs. 3,39,000 are for inspection and Rs. 66,000 for direction, *i.e.*, one-eighth of the entire amount to be spent on education is to be spent on inspection. The proportion seems to me a little too high. I am aware of the difficulties of making any savings here. But I cannot help wishing that the grant-in-aid of Rs. 5,93,000 could be raised at least to the figure spent last year by making saving somewhere else. It is worthy of notice that the reduction of Rs. 30,000 made in the budget under education this year, as compared with the budget of last year, a reduction of Rs. 27,000 has been made only in allotments under grant-in-aid. I find that a sum of Rs. 20,000 has been allotted for the construction of a residence for the District Superintendent of Police at Noakhally. I am not aware whether the Government provides District Superintendents with residences in other districts. There must have been some special reason for making this allotment, but I cannot help observing that in my district a very good and comfortable bungalow may be made for Rs. 10,000, and I do not know why the same amount would not be sufficient at Noakhally. I also find a sum of Rs. 25,000 allotted for the construction of a parsonage. I don't find any other item of expenditure for ecclesiastical purposes in our provincial budget, and this has made me doubtful whether the item is properly there. The Subordinate Judicial Service has special reasons to be thankful to His Honour for the allotment of Rs. 40,000 for the residences of munsifs. The present Government is not one that is slow to remove a grievance when it is brought to its notice. By making the residence for munsifs, it would remove a long-standing grievance for a most deserving and hard-working class of officers and would earn their gratitude."

The Hon'ble MR. M. S. DAS said:—"During the discussions on the Budget last year, I suggested the importance and the necessity of appropriating a portion at least of the educational grant to schools where agriculture would be taught in a primary form. My suggestions had some support from His Honour the present Lieutenant-Governor, who remarked that he had seen the experiment tried satisfactorily in the Central Provinces; I therefore expected that in the

present Budget some provision would be made for giving an agricultural training in primary schools, but I regret to say that I do not find any provision made for this purpose. No doubt this is a year in which the Financial Secretary must have found it very difficult to make allotments for educational purposes; in fact he ought to be congratulated for the successful manner in which he has adjusted the revenues of the Province, and provided for the monstrous calamity of famine without trenching upon the grant for education to such an extent as to be detrimental to the department. But I maintain that in a year of famine any outlay for the promotion of agriculture would not be out of place. Prevention is better than cure, and therefore by educating the people in the art of agricultural, though we shall not be able to avert famines by commanding rainfall in proper season, it will enable the people to know what crops they can grow in a season when the rainfall is scanty. This is very desirable because the peculiarity of agriculture in this country is that the people move about in the old groove and have the same crops from year to year irrespective of the vicissitudes of season. I do not wish to take up any further time; I shall therefore only express the hope that the Hon'ble the Financial Secretary will be able to find something out of the resources at his command for this most important item of expenditure."

The Hon'ble BABU GURU PROSHAD SEN said:—"In spite of the persuasive and eloquent speech of the Hon'ble Financial Secretary of the Government of Bengal to the contrary, I still maintain that the discussion on the budget in the Bengal Council is of the most academic character and perfectly useless for any practical purpose whatsoever, and I am confirmed in this opinion by what was said the other day in reply to a question of my hon'ble friend Babu Surendranath Banerjee. It was this, that 'under the orders of the Government of India, the Financial Statement of a Local Government cannot be presented to, or discussed by, the Local Legislative Council, until it has received the sanction of the Government of India.' Holding the opinion I do, I shall be very sorry indeed to criticise a budget for which the Bengal Government is not at all responsible, and the exceptional character of which, perhaps for the present, has been partly forced by circumstances, over which man has no control. But, Sir, on the present occasion, in connection with the Provincial Budget, we, the non-official members of this Council, have a duty to perform. It is to offer His Honour the Lieutenant-Governor our humble but