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PROCEEDINGS

OF THE

COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR THE

Purpose of making Laws and Regulations.

Saturday, the 28th March 1874.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble V. H. Schalch,
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble C. E. Bernard,
The Hon'ble Moulvie Abdool Luteef, Khan Bahadoor,
and
The Hon'ble Baboo Doorga Churn Law.

NEW MEMBERS.

The Hon'ble Mr. Schalch, the Hon'ble Mr. Hogg, and the Hon'ble Baboo Doorga Churn Law, took their seats.

CALCUTTA MARKETS ACT AMENDMENT.

The Hon'ble Mr. Schalch moved for leave to introduce a Bill to amend Act VIII of 1871 (for the better regulation of markets in Calcutta, and to empower the Justices to establish Municipal Markets). He said, before proceeding to explain the provisions of this Bill, he would claim the attention of the Council while he gave a brief sketch of the circumstances which led to the introduction of that Act, and the proposed amendment of it now. When the present Municipality was created, more than eleven years ago, the attention of the executive was drawn almost immediately to the state of the markets scattered all over the town. The Health Officer of the town was requested to visit and report upon these, and after a time considerable improvements were made; the owners of the markets, as a general rule, being willing to co-operate with the Municipality. In one bazar, however, the Dhurrumtollah Bazar, which afforded supplies to nearly all the Europeans, and a great portion of the native population inhabiting the portion of the town south of Bow Bazar, the Municipality met with great obstruction. There was no desire shown on

the part of the proprietors at all to meet the wishes of the Municipality: only, so far as the law permitted, the most glaring defects of conservancy were removed. But even in carrying out those improvements, from the outset, great reluctance was shown on the part of the proprietors. Nothing would induce them to carry out measures for the comfort and convenience of the public beyond the point up to which they were obliged to do by law. In 1866 the Municipal Act was amended, and advantage was taken of it to introduce a clause by which the Municipality was empowered to widen and clear out the approaches to and roads in the bazars, and under the operation of that Act many improvements were carried out in the Dhurrumtollah Bazar, and it was to some extent rendered less crowded. However, that bazar still remained in a very unsatisfactory state, and it was still very crowded, ill-ventilated, and defective in its arrangements. The condition of the bazar was so considered by many of the rate-payers, and a meeting was at one time held to bring the matter to public notice. However, nothing came of that. But in the beginning of 1866, when MR. SCHALCH happened to be Chairman, there being a surplus of a lakh of rupees to the credit of the Municipality, he brought forward a resolution proposing that it should be allotted to the purchase of land for a site for the establishment of a Municipal Market. That proposal was accepted by the Justices, and subsequently the sanction of the Government was obtained for allotting one lakh for that purpose. He might mention, perhaps, that in making that proposition, his idea at the time was to purchase a piece of land that would suffice for the ordinary requirements of a Municipal Market; and if it should prove necessary to establish one, that at first the building should be on a more limited scale, in view that when the proprietors of the Dhurrumtollah Market saw there was a decided wish on the part of the Justices, if necessary, to establish a Municipal Market, they might be induced to make arrangements to ameliorate the condition of their own bazar; so that it was merely a desire on the part of the Justices to work in co-operation with the owners of the Dhurrumtollah Market for the general benefit of the public. However, shortly after that he left the Municipality, and his successor laid the matter before the Finance Committee. The Finance Committee was of opinion that the amount which had been allotted for the purchase of a site for a new market would not, under the circumstances, suffice; and it was proposed to the Justices by their Chairman, in accordance with the Resolution passed by the Finance Committee, that a site should be purchased and estimates should be made of the probable cost of establishing a Municipal Market. That Resolution came before the Justices at a meeting held on the 27th of April 1866; it was opposed by many of the Justices, and a Resolution was passed to the effect that the market project should be abandoned. The matter in question dropped, and nothing was done again until 1870, when the Chairman, in bringing forward matters connected with the Municipal Slaughter-house, suggested the expediency and advisability of establishing a Municipal Market. The project was then taken up and the Chairman suggested that, with a view to avoid the expense which would be incurred in purchasing a site, the

Wellington Square, which was then covered in as a reservoir for supplying water to the town, should be devoted to that purpose. That Resolution did not meet with acceptance, and a special market committee was then appointed, in view to consider the expediency and practicability of constructing a Municipal Market. That committee reported in January 1871. The report was in favor of establishing a Municipal Market by purchasing the Dhurrumtollah Market for the sum of six lakhs of rupees under the Land Acquistion Act so as to obtain a good and sufficient title; or in case the proprietors were not willing to part with it upon those terms, then the piece of land situated between a certain part of Jaun Bazar and Lindsay Street should be taken up as a suitable site. The Chairman of that time, he believed, supported the proposition to buy the Dhurrumtollah Market. However, on the matter coming before the Justices, they finally resolved that it was in their opinion advisable to establish a Municipal Market; that the Legislative authority should be moved to pass an Act empowering the Justices to establish one or more Municipal Markets, and to raise the necessary capital by the issue of municipal debentures or otherwise, on the security of the markets and of the land on which the markets might be constructed, as well as of the rents to be derived from the markets, and on the collateral security of the rates and taxes; and lastly, that in the event of the Government agreeing to authorize the Municipality by a legislative enactment to establish a market, and also to grant a loan to the Municipality for that purpose, the Chairman be authorized to do all acts necessary for acquiring the site, recommended by the special committee, lying between Jaun Bazar and Lindsay Street. On that Resolution being forwarded to Government Act VIII of 1871 was introduced, based very much upon the terms which were suggested by the Municipality. So far this was the history of the introduction of Act VIII of 1871. In accordance with that Act the sum of six lakhs of rupees was borrowed from the Government and appropriated to the purchase of land and the construction of the market. The present Chairman of the Municipality took a great interest in this undertaking, and through his exertions land had been purchased and a portion of the building which the Municipality designed to construct had been constructed, and the market was established and opened by the Chairman at the close of last year. Immediately upon the opening of the market it naturally entered into direct competition with the Dhurrumtollah Market, and there had been serious complications resulting thereupon. Suits had been brought against the Chairman personally by the proprietor of the market for alleged illegal acts and appropriation of the funds of the Municipality to purposes not contemplated by the Act. This led to the subject being again brought before the Justices, and on the 15th of last January the Justices appointed a special committee for the purposes of assisting and advising the Chairman on all matters connected with the Municipal Market. Subsequently, at a meeting held on the 20th January, they resolved that the question of arranging matters with the proprietors of the Dhurrumtollah Market, with a view to prevent future disputes, be referred to the special committee for consideration and report; and that it should be an instruction to the committee that the idea of giving up

the new market should not be discussed or in any way entertained. Guided by those instructions, the special committee held several meetings, and submitted their report. They suggested that the Justices should obtain legislative sanction for expending money for all purposes necessary to secure the establishment and maintenance of the Municipal Market in competition with the Dhurrumtollah Market, and they further suggested that, in preference to that, a compromise should be effected by buying up that bazar. The Justices in meeting on the 10th February considered this report. They resolved to purchase, on certain conditions, the Dhurrumtollah Market for a sum of seven lakhs, it being understood that the Lieutenant-Governor would propose to the Legislative Council any legislation necessary to enable the proposal to be carried out. On receipt of these proceedings from the Justices the present Bill was drafted and was now before the Council.

With regard to that Bill MR. SCHALCH would make a few observations. The establishment of a market, or rather the construction of it, had entailed considerable expense upon the Municipality; and it was, he thought, for the Justices to consider how that expenditure was to be met. It was not, he thought, for the Council to dictate to them the way they should follow, or that they should follow any particular course, but to place them in a position whereby, by removing any defects of the existing law, the Council could give them perfect freedom of conduct, so as to enable them to adopt any course they might think advisable. The Municipality was certainly not represented by election, but it certainly was represented by selection, and by the nominations made to the office of Justice of the Peace almost all classes of the community were represented in the Corporation. It was, he thought, for them to determine what course they would follow. By their last Resolution they proposed to purchase the Dhurrumtollah Market on receiving the necessary sanction from Government. But he should mention that since that Resolution was passed there had been a very strong remonstrance submitted by very many of the inhabitants of the town, and the matter was to be reconsidered in the coming week.

There now seemed to be three courses open to the Justices. One was to close the market altogether. That seemed to be certaintly not advisable, because a large sum of money had been expended upon the market. The object, if it could be carried out, was undoubtedly a good and a laudable one, and by closing the market, a certain burden would be thrown upon the rate-payers of the town, and as the Act at present stood, it was a question whether, having once opened a market, they could close it.

Secondly, it was open to the Justices to carry out the scheme—having constructed and established the market, to maintain it. Of course, for establishing and maintaining the market certain funds would be necessary, and hitherto it had been supposed that that expenditure could be met from the Municipal Fund. That question was raised, and an opinion had been given by eminent lawyers, which, of course, he would not attempt to controvert, that under the law the Justices could not expend the municipal funds for that purpose; and that, under Act VIII of 1871, the Justices were authorized to construct markets, but

The Hon'ble Mr. Schalch

not to expend any money for maintaining them. This certainly seemed to him to be rather a restrictive construction of the law; because if we looked to the debates which ensued when that Act was introduced, it certainly was the general opinion that not only were the funds to be applied towards the construction of a market, but that they would probably be necessary towards the maintenance of it: because it was even feared, not only that the Justices would have to maintain a bazar by means of the ordinary necessary expenses, but that it might be necessary for them to apply for powers to establish farms and incur other expenses altogether outside the usual establishment and expenses of a market; and that was very strongly objected to. However that might be, an opinion to that effect having been given, it was thought necessary that it should now be distinctly stated that the Justices would have the power, not only of constructing and building, but of maintaining and establishing a market. We all knew that in this place perhaps more than anywhere else it was not sufficient merely to open a building for the purposes of a market, but you must establish it, and make arrangements for the necessary supplies being forthcoming, and for that purpose a certain amount of expenditure would have to be incurred.

Well, then, there was a third course open to the Justices to adopt, which was to do away with all competition by purchasing the Dhurrumtollah Market; but even in that case, if they purchased the rival bazar, they must still have a certain power of expenditure for the purpose of maintaining their own market. He did not propose to ask the Council to decide which of these three courses it would be advisable to adopt. The Justices represented all classes of the community, and it was a matter entirely for them to determine what their course of action would be. All that he thought the Council could do would be to clear the way for them, so that they might not find that they were debarred by the law from following any one particular course.

With this view it was proposed to introduce a Bill to amend the existing Act. It was not the time now to enter into the details of the Bill, but he would state roughly what its chief provisions were. First, he would say, that the existing rights of all present bazar proprietors were to be maintained; that for the future the Justices would retain the right they now possessed of licensing bazars, but would be allowed to exercise their discretion as to whether or not they should grant such licenses. Secondly, the Bill proposed to give the Justices power to take up land for the construction of municipal markets by purchase, lease, or otherwise; to purchase or take on lease any lands now used as a market, and to appropriate lands now belonging to them, and to set out the whole or any part thereof for the purposes of such markets. The next chief provision in the Bill was that it should be left for the Justices, from the Municipal Fund, out of the money to be borrowed under the Act, and out of the money derived from the rents, to expend such sums as they might think necessary for the construction, maintenance, and keeping of such market in repair. The Bill further gave the Justices power to acquire any land for these purposes.

These were the main features of the Bill. When the Bill went into Committee its details would be carefully considered, and, no doubt, due

consideration would be given to any observations that might now be made by any Hon'ble Member. He would ask permission to move that the Bill be introduced.

The HON'BLE BABOO DOORGA CHURN LAW said he objected to the Bill. In the first place the financial aspect of the scheme seemed most unsatisfactory, and he thought it would be a burden to the town to allow the Municipality to enter into this new scheme. He had made calculations as to the prospective results of buying the old rival bazar, and the result seemed to him to show a very heavy loss to be yearly incurred by the Municipality, for how long it was impossible to say; and if the Bill was passed he thought it would be a great injustice to the rate-payers of the town. With these remarks he regretted he could not support the Bill.

HIS HONOR THE PRESIDENT said the Council would understand that, as his time was now very fully occupied, it had not been possible for him to give full attention to the details of the Bill. For the details, therefore, he could not hold himself responsible, but for the general principles of the Bill, he might say that he did hold himself responsible jointly with the Hon'ble Member who introduced it. He was very sorry indeed to learn that a gentleman so well qualified to judge as his hon'ble friend, Baboo Doorga Churn Law, held a contrary opinion, but he trusted that when the matter was threshed out in Committee, perhaps these differences might be in some degree reconciled.

He would state briefly the history of the Bill so far as he was concerned in it as the representative of the Government. The Hon'ble Member in charge of the Bill had very lucidly explained the whole matter from a period far previous to HIS HONOR'S administration. But as regards the immediate position of the matter he would say a few words. Now, the first occasion in respect of which he consented to take part in placing a Bill of this kind before the Bengal Council was in regard simply to the question whether the Justices of the Peace for the Town of Calcutta, the Municipal Corporation, had or had not power to expend their own moneys in the establishment and maintenance of a market. The Members of the Council were probably aware that at a meeting of the Justices there was, he might say, sprung upon them as a surprise a legal opinion, or rather a part of a legal opinion, the effect of which was to induce the Justices of the Peace to suppose that the proceedings of their Chairman had been illegal, inasmuch as money had been expended on the establishment of a new market. Now, he must say that that opinion took him entirely by surprise. HIS HONOR was a party to the last Market Act which was introduced into this Council, and certainly his impression was that the object and intention of the Act was that the Justices should have the power to build, establish, and maintain a market. It seemed to him to be an absurdity that power should be given to the Justices to build a market, and that no power should be given to them to expend money legitimately necessary for the establishing and maintaining of that market. It seemed to him that the opinion put before the Justices, if it was correct—and in regard to that he did not now say a word—altogether stultified the Act of this Council in passing a Bill for the establishment of municipal markets. Because, if the Justices should build

a market, and before any income was received, could not expend any money upon the establishment and maintenance of the market, the whole Act of necessity would fall to the ground. He therefore at once said that, in his opinion, if there was any reasonable doubt as to the construction of the law, it was right that the doubt should be cleared up, and power given to the Justices at their discretion to expend money for establishing the market in such ways as might seem to them to be right. He was very far from saying that it was desirable that the Justices should establish farms, and incur other expenditure outside the ordinary and simple duty of establishing and maintaining a market in the ordinary way. But so far he thought it was right that so much power should be given to the Justices, and he hoped the Council would consent to that power being given to the Justices. That power was given by Section 8 of the Bill now before the Council; but he thought it necessary to guard himself against the supposition that either he or the Government of Bengal was in any degree responsible for the exact wording of the Bill, because he observed that there were some words in Section 8 to which he was not altogether prepared to subscribe. His view was that it was fair that from borrowed capital the Justices should build the Municipal Market and do all that was necessary for its establishment, in the same manner as out of capital railways and other great works were constructed. But he thought that for its future establishment and maintenance, and for doing all those auxiliary things which were necessary to carry on the market, recourse should not be had to borrowed money, but this should be done from the municipal income. If he were a member of the Select Committee on this Bill he should be very much inclined to call in question the words in Section 8, "out of the moneys borrowed under the provisions of this Act." His view was that from the money borrowed the market should be built and completed, and that money borrowed should not be applicable to the establishment and maintenance of the market after it had once been given over to the Justices in a complete state. His view was that so much should be done from current income, from the rents and collections of the market, and the general revenues of the Municipality. With that proviso he thought it was proper that the Justices should be able to establish and maintain any municipal markets which they had built.

Well, then, we came to another part of the Bill, which was that part which gave the Justices power to borrow another seven lakhs with a view to apply it to the establishment of markets. The Hon'ble Member in charge of the Bill had explained that the object of that simply was to enable the Justices to buy up the market known as the Dhurrumtollah Market. His Honor had heard with great regret that his hon'ble friend, Baboo Doorga Churn Law, thought that the proposed speculation would be an unprofitable one. His Honor was himself inclined to suppose that the speculation would be a profitable one to the Justices; he was not inclined to take part in any action of that kind which would result in serious loss, but it seemed to him that it would be profitable to the Justices in two ways—first, that a very valuable property would be acquired by them, which property, if it were to be sold by auction, would bring in a large price, or if it were let out, would yield large rents, and a large income would thus be acquired; and

secondly, the Justices would thus buy off competition. As a rule, he was prepared to admit that individual competition was a very good thing; but on the other hand, when we had opened out a public market, which would be conducted in the interests of the community, he did not think it was undesirable that competition should be bought off. It seemed to him that it would be very injurious both to the Municipality and the proprietors of the old market if they entered into a protracted and active competition with each other, and he believed that the public would benefit both directly by a good investment and indirectly by the absence of competition and injurious rivalry. Well, then, that being so, he had only to say that the question whether the bargain was a good or a bad one was not for this Council but for the Justices to decide. He trusted that there was that amount of wisdom in the Corporation, comprising as it did many very competent persons, to enable them to decide whether the bargain was a good bargain or a bad one. In respect to that he must confess that he was not in a position to form a competent opinion. All that we proposed to do in respect of this Bill was that power should be given to the Justices to borrow a certain sum of money, and with that sum of money to make what they might consider a good and prudent bargain for the purchase of a large market in the town. If they considered that bargain to be an imprudent one, it would be for them to reject it, and he had no doubt that even if the Council should be pleased to accept this Bill, in his hon'ble friend Baboo Doorga Churn Law, in his capacity of a member of the Corporation, a safe guardian of the interests of the Justices and the public would be found, and that no bad or imprudent bargain would be completed. If the Council had sufficient confidence in the Justices, and if they believed that the Justices would not be likely to make a foolish or imprudent bargain, why then, His Honor believed this Bill might safely be passed. The Council would have full assurance that the Justices would act according to their best discretion, and if they made a foolish or a bad bargain, the Government would then do its best to control the action of the Justices.

The other part of the Bill was a sort of condonation for past acts. Now, His Honor wished to say at once that this Bill would in no degree interfere between the Justices and their Chairman. It was for the Justices to settle what the Chairman did with their authority, what they approved of and what they did not; but as between private individuals on one side and the Justices and their Chairman on the other, he thought that it was right that the Council should legalise the Acts which the Government and others had supposed to be legal, namely, that the Justices might expend money for the due establishment and maintenance of the markets which they might build. Beyond that we did not ask the Council to go. But so far he thought they should go. The opportunity was taken to enable the Justices to regulate the municipal markets by bye-laws, and he felt sure that the Council would think that was a reasonable and proper power to give the Justices. That was a power given in other Acts in regard to all such matters to public bodies, and there was nothing unreasonable about it.

His Honor the President.

Under all the circumstances he trusted that the Council would think that this Bill was not, *primâ facie*, an unreasonable Bill, and that the objection his hon'ble friend had made in regard to the imprudence of the bargain was not one which would be decided by this Bill, and could be reconsidered by the Justices, and HIS HONOR hoped therefore that the Council would not object to the introduction of the Bill and to its being referred to a Select Committee, as was about to be proposed.

The motion was then agreed to.

The HON'BLE MR. SCHALCH applied to the President to suspend the rules for the conduct of business in view to his proceeding with the Bill to its next stage. Publication had been given to the Bill, and the subsequent motions were merely of a formal nature.

HIS HONOR THE PRESIDENT said it was very undesirable that this Bill should be unduly hurried. But since it had been for some days in the hands of the Council, and as they knew what the Bill was, and, as had been suggested, the proposal to forward it one degree was a mere matter of form, he thought he was fully justified in suspending the rules, and he would therefore give permission to the Hon'ble Member in charge of the Bill to proceed with it.

The HON'BLE MR. SCHALCH moved that the Bill be read in Council.

The HON'BLE MOULVIE ABDOOL LUTEEF said that, if it were considered advisable to continue the new Municipal Market which had already been established, as he believed it was, he thought that the Justices should have the extended powers proposed to be given to them by this Bill. The only point to which he wished to draw the attention of the Council was the provision in Section 8, which would make it lawful for the Justices to expend such sums of money out of the municipal funds as they might think necessary for the purposes of the Municipal Market. He admitted that some such provision was required to strengthen the hands of the Justices whenever such a course seemed reasonable and proper. But at the same time he thought that some reasonable limit should be placed upon the amount to be expended for the purposes of the Municipal Market out of the general municipal funds. The attention of the Select Committee should therefore, in his opinion, be directed to that point.

The motion was then agreed to.

The HON'BLE MR. SCHALCH moved that the Bill be referred to a Select Committee. He was in hopes that they should have the assistance of the learned Advocate-General in the Committee, but the Advocate-General had assured Mr. Schalch that his time was at present fully occupied; and although he was most willing to advise the Committee upon any matters connected with the Bill, he regretted that he could not sit on the Committee. MR. SCHALCH would therefore move that the Committee be composed of the following members, namely, Mr. Hogg, Moulvie Abdool Luteef, Baboo Doorga Churn Law, and the Mover, with instructions to report in ten days.

The motion was agreed to.

ADJOURNMENT OF THE COUNCIL.

HIS HONOR THE PRESIDENT said he was not aware that there was any other pressing business before the Council, and unless the Council should be specially

summoned in the meantime, it would not be necessary that they should meet before the expiration of another fortnight, at the end of which time he hoped that the report of the Select Committee on the Market Bill would be laid before them; and therefore, for the present, the Council would be adjourned for a fortnight. In doing so, he might say that this was perhaps the last occasion on which he should have the honor and the dignity of presiding at the meetings of the Council. And he must take occasion, in taking leave of the Hon'ble Members of the Council, to thank them, which he did most heartily and sincerely, for the assistance which they had rendered him during his presidency. He would also say that he would retain to the last days that might be spared to him a pleasant recollection of what he might call the happy hours he had spent in this Council. He might say that, during the period in which he had the honor to preside, it had fortunately happened that the harmony of this Council had never been disturbed; that understanding and respecting one another, they had exercised their respective functions in a manner which, at all events, he hoped had not done harm, and which he might venture to say had done some good. He was sure that any good which had been done was due to the Hon'ble Members who now sat, and who had sat before them, in this Council. He could only, therefore, thank them very heartily indeed for their services, and he trusted that under his successors in future days they would continue their labors and follow the course which they had so honorably and so usefully followed for years past.

The Council was adjourned to Saturday, the 11th April.

Saturday, the 11th April 1874.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble H. L. Dampier,
The Hon'ble A. R. Thompson,
The Hon'ble S. S. Hogg,
The Hon'ble C. E. Bernard,
The Hon'ble Moulvie Abdool Luteef, Khan Bahadoor,
The Hon'ble Baboo Juggadanund Mookerjee,
The Hon'ble Baboo Doorga Churn Law,
and
The Hon'ble F. G. Eldridge.

NEW MEMBERS.

The Hon'ble Mr. Rivers Thompson, the Hon'ble Baboo Juggadanund Mookerjee, and the Hon'ble Mr. Eldridge took their seats.

CALCUTTA MARKETS ACT AMENDMENT BILL.

His Honor the President said he wished to explain to the Council that, owing to the unavoidable absence of their hon'ble colleague, Mr. Schalch, it was

His Honor the President

necessary that another hon'ble colleague, Mr. Stuart Hogg, should ta charge of this Bill, namely, the Bill to amend Act VIII of 1871, the Calcut Markets Act. He had therefore to ask that Mr. Hogg would be go enough to take charge of the Bill on this occasion, and to proceed with t business.

The Hon'ble Mr. Hogg moved that the report of the Select Committee the Bill to amend Act VIII of 1871 of the Bengal Council, "The Calcut Markets Act, 1871," be taken into consideration in order to the settlement the clauses of the Bill.

The motion was agreed to.

The Hon'ble Mr. Hogg also moved that the clauses of the Bill be taken into consideration in the form recommended by the Select Committee.

The motion was agreed to.

The Hon'ble Mr. Hogg moved that in Section 1, in the first clause, after the word "mean" the words "the Corporation of" be inserted. He said this was merely a verbal amendment, as he thought it would be wise, in defining the word "Justices," that we should adhere to the definition of the term as given in Act VI of 1863, which was the Act under which the Corporation of the Town of Calcutta was constituted.

The motion was agreed to.

The Hon'ble Mr. Hogg said he had to propose a slight alteration in the second clause of Section 1. As the Bill now stood, "market" meant a market carried on under the control of the Justices of the Peace for the Town of Calcutta. In the amendment he had given notice of, he had suggested that the words "carried on under the control" should be altered to "the rent of which is paid by, or which is the property." But he would now ask permission to alter that slightly as follows:—"vested in or the property of the Justices." The clause would then run—"'market' means a market vested in or the property of the Justices, &c." The reason for this slight alteration was that in Sections 5 and 6 it was proposed to give the Justices power to sell the markets within the meaning of the word "market" as defined in this Act. We could hardly give the Justices power to sell a market which was rented by the Justices, and not their property. Therefore we proposed to confine the meaning of the word "market" to markets vested in or the property of the Justices.

The motion was agreed to.

The Hon'ble Mr. Hogg said Section 2 of the Bill before the Council dealt with the proposal to repeal some sections of the previous Act, Act VIII of 1871. In accordance with the request of the Justices of the Peace, as submitted to the Council in their report, which was lately circulated among the members, he would suggest that the last three clauses of Section 2 be omitted, as the Justices were of opinion that it was not wise to repeal Sections 6, 7, 8, and 9 of Act VIII of 1871. The sections were really obsolete. However, as the Justices wished it, he did not think there could be any harm in conceding the point; he therefore proposed that the last three clauses of Section 2 of the Bill be omitted. He would also propose that after the words "are hereby repealed" be inserted the words "In the preamble the words 'for the sale of meat, fish, fruit and vegetables,'"

he reason for this amendment was that the Select Committee had deemed it visable not to define the word "market" at all, but merely to say it was a rket vested in or the property of the Justices. The Bill was to be ad as part of Act VIII of 1871. In the preamble of that Act it was stated at the object was to enable the Justices of the Peace to establish Municipal arkets for the sale of meat, fish, fruit, and vegetables, thereby assuming at a market was to be restricted to places for the sale of meat, fish, uit, and vegetables. It was true that the preamble was no part of an Act. ut if the point should arise, there might possibly be slight complications, owing to the preamble of Act VIII of 1871 being somewhat in opposition to the Bill now before the Council. He would, therefore, suggest that the words—"In the preamble the words 'for the sale of meat, fish, fruit, and vegetables'" be inserted after the words "are hereby repealed."

The HON'BLE THE ADVOCATE-GENERAL asked whether the Hon'ble Mover intended to give the Justices of the Peace power to erect, construct, and establish markets for the sale of other things besides meat, fish, fruit, and vegetables? The amendment was apparently a departure from the subject-matter of the remarks made on a former occasion. It seemed not only an unnecessary amendment of Act VIII of 1871, but would be giving very extensive powers without sufficient preliminary consideration.

The HON'BLE MR. HOGG said the Bill before the Council restricted the word "market" to property vested in, or the property of, the Justices. Act VIII of 1871 enabled the Justices to establish Municipal Markets for the sale of meat, fish, fruit, and vegetables. That was merely stated in the preamble. In the Act itself the powers of the Justices in regard to the establishment of markets were not restricted, except so far that they were not allowed to expend more than seven lakhs of rupees. The preamble being somewhat opposed to the body of the Act itself, it was proposed that those words be omitted. He need hardly say that, in this country especially, when markets were established for the sale of meat, fish, fruit, and vegetables, it was almost impossible to restrict them to the sale of that class of provisions only, as there would also be sold in them miscellaneous articles of all sorts, such as charcoal, wood, salt, fowls, game, &c.; in fact, articles of every description would gradually be exposed for sale. Therefore, although the Justices had no desire to extend their powers, they would not wish their powers so curtailed as to prevent persons from taking leases of shops for the purpose of exposing such other wares as they might deem necessary. MR. HOGG trusted, therefore, that the learned Advocate-General would not press his objection.

The HON'BLE THE ADVOCATE-GENERAL observed that the explanation was perfectly satisfactory.

The motion was agreed to.

The HON'BLE MR. HOGG moved that in Section 3, at the end, the following words be added:—"Provided that before any application for such license shall be considered by the Justices at a meeting, the Chairman of the Justices shall cause the place, in respect of which application has been made, to be inspected

by not less than three Justices, whose report shall be laid before the Justices at a meeting." He said this amendment was based entirely upon the suggestion sent up by the Justices, who appeared to be desirous that the executive authority, the Chairman of the Justices, should not pass orders in matters connected with the granting of licenses without the application for licenses being duly considered by the Justices in meeting. They were also desirous that three Justices, with the Chairman, should inspect the place, and submit a report in writing to the Justices in meeting; he therefore, in accordance with the recommendation of the Justices, proposed the amendment which he had read out in Section 3.

The motion was agreed to.

The HON'BLE MR. HOGG moved to omit clause (*d*) of Section 4, and to substitute for it the following:—"For the establishment and publication of a price-current, and for prescribing the mode of sale of articles, whether by measure, weight, tale, or piece." There seemed to be a want of lucidity in the wording of the clause as it now stood.

The motion was agreed to.

The HON'BLE MR. HOGG said at the suggestion of the Justices of the Peace, it was proposed that in Section 9 the words "Special General" be inserted after the words "for the Justices at a." The object of the amendment was that the Justices desired that all matters connected with the establishment of markets should be considered by the Justices at a full meeting. A Special General Meeting implied that not less than twenty-five Justices should be present, whereas, at an ordinary meeting only three Justices might be present. He therefore proposed the amendment.

The motion was agreed to.

The HON'BLE MR. HOGG said Section 11 of the amended Bill seemed rather ambiguous, in not defining distinctly the way prosecutions under this Act should be conducted. He, therefore, suggested to omit from the beginning of the Section to the word "thereof" in the fourth line, and to substitute the following words:—"Every prosecution in pursuance of this Act, or of any Act incorporated therewith, shall be instituted before a Justice of the Peace, and every fine or penalty imposed by any bye-laws made in pursuance of this Act, or of any Act incorporated therewith."

The motion was agreed to.

The HON'BLE MR. HOGG said Section 12 of the amended Bill enacted that this Act should be read with, and taken as part of, Bengal Acts VI of 1863 and VIII of 1871, and all the powers, privileges, and rights conferred on the Justices by virtue of, and for the purposes of, such last-mentioned Acts, should be deemed to be conferred on the Justices for the purposes of this Act, in so far as the same were applicable or necessary. In addition to those Acts there were a number of other Acts which dovetailed one into the other. He therefore suggested the following amendment:—In Section 12, in the second line, for "Acts" substitute "Act." In the third line, omit the word and figures "VIII of 1871" and substitute the words "all Bengal Acts incorporated therewith." In the sixth line, omit the words "last mentioned." By this

amendment the Bill would be read as part and parcel of all the Municipal Acts that governed the Municipality of the Town of Calcutta.

The motion was agreed to.

The last amendment, moved by the HON'BLE MR. HOGG, was to omit the word "municipal" in the second line of Section 13. He thought this was necessary as they had not referred to the market as a Municipal Market either in this Bill or in the previous Act.

The motion was agreed to.

The HON'BLE BABOO DOORGA CHURN LAW said he had the honor to move the following amendment: In Section 9, lines 11, 12, 13, and 14, omit the words "and for any other purpose or purposes which the Justices may deem necessary for establishing or carrying on the same or conducive thereto." The reason for his objection to this part of the section was fully explained in his note of dissent annexed to the report of the Select Committee, and all that he had to say was, that if this section were adopted by the Justices, and they shaped their course accordingly, the result would be most mischievous so far as the rate-payers were concerned; and, besides, in this section there was no limit to expenditure, so that if the Justices engaged in active competition, there might be no end of expense incurred. He did not mean to say that the Justices would spend money like water, but there was nothing in the Act to prevent them from doing so. For these reasons he objected to those words.

The HON'BLE MR. HOGG said he rose to oppose the proposal to omit the words "and for any other purpose or purposes which the Justices may deem necessary for establishing or carrying on the same or conducive thereto." He need hardly say that the Justices had in contemplation the purchase of the Dhurrumtollah Market. If that proposal was carried into effect, there would be no necessity whatsoever for the Justices to enter into active competition or to spend moneys in the way indicated by his hon'ble friend. However, the purchase of the market had not yet been completed, and he would submit that it was no part of the business of the Council to dictate to the Justices the way in which they should establish a Municipal Market, which they had erected with permission and under the authority of a legislative enactment. The Council was informed by the Mover of this Bill, the Hon'ble Mr. Schalch, that the idea was that this Bill should enable the Justices either to purchase the Dhurrumtollah Market, or to close the Municipal Market, or to carry on the market in any way they should think proper; and it was suggested that power should be given to enable the Justices to act as they, in their wisdom, might think best. He was therefore strongly opposed to the powers that were intended to be conferred on the Justices being restricted. At the same time he would state that there was no intention on the part of the Justices to spend money unnecessarily, or to waste the rate-payers' money in the manner in which his hon'ble friend seemed to fear. If the words were omitted, and if the Dhurrumtollah Market should not be purchased, the Justices would find themselves in a most embarrassing position, as they would be unable to sanction expenditure other than for the mere maintenance and repairs of the market,

and keeping up a necessary establishment. He need hardly say that to establish a market upon a firm footing with such a restriction would be absolutely impossible. On these grounds he opposed the amendment.

The motion was negatived.

HIS HONOR THE PRESIDENT said—"Although this Bill has not reached its final stage, I yet deem it my duty to take this opportunity of declaring my general concurrence in the main principles of a Bill which appears to have attracted some interest in the city of Calcutta. In order to satisfy myself as to the merits of the case, I have carefully inspected, in company with our hon'ble colleague, Mr. Hogg, and other municipal officers, both the new market and the old, or Dhurrumtollah Market. I have also read all, or nearly all, the objections which have been urged against the measure, including the papers which have just been printed, and one of which bears so recent a date as the 8th April.

"I will not trouble the Council by attempting to enter into the details of the discussion; but will merely suggest, for the consideration of the Council, the principal questions which present themselves to my mind, as affecting the root and substance of the measure which you are asked to sanction.

"The first question, then, in my opinion, is—

"Was the new market built by competent authority, and is it a good and suitable structure?

"I understand that it was constructed under the directions of those who, at the time, had competent authority, and I should be, *primâ facie*, disposed to sustain their action, unless there were strong reasons to the contrary. Then, I am quite sure that the structure is an excellent one, worthy of this great city and its Municipality, worthy also of any support or sanction which may be required from this legislature. If it fulfils its present promise, it will prove quite worth the outlay which has been expended upon it.

"The next question, to my mind, is—

"Does this market fulfil a real need?

"In reference to this, I have, among the papers relating to the Bill, read much about the usefulness of the private markets, and their sufficiency to meet all the requirements of the public. But, notwithstanding the fullest appreciation of all that private enterprise has accomplished, or may yet accomplish, in the matter, I fear that private enterprise will not do all that is needed. As an instance, take the Dhurrumtollah Market. That is a market belonging to a publicspirited and wealthy native gentleman. It has long existed. It has lately been improved in a very commendable manner. We may assume that on the whole it is as good a market-place as we are likely to obtain by private enterprise. And yet take it as it stands to-day. Can we examine it and say that it is all that a market-place ought to be at such a place as Calcutta? or that it at all approaches in excellence the market by which it is to be replaced, if the Council pass this Bill? Surely it is much too small, too low, too close, too confined, for the large purposes which it has to serve. And yet those purposes will probably become larger and larger as the business of the city grows and expands, and as the facilities of railway communication bring more and more the produce of distant places to our markets of Calcutta. I say,

therefore, that a new and a better market-place was, and is, among the urgent needs of this city.

"The third question would be—

"If the new market-place has been well made, and is really wanted, ought it to be maintained by the Municipality?

"In most parts of India, I believe, in nearly all the large cities of India, the maintenance of the central market-places is undertaken by some corporation or institution which represents the whole community. There the task is found to be beyond the power of any individual or number of individuals. It is at least as difficult in Calcutta as anywhere. The new market concerns an important section of the public. And whether the Municipality be technically a representative institution or not, it certainly does act on behalf of the public interest. Although the Municipality may have power in respect to the regulating of private markets, still the administration is one which demands the entire force of the Municipality as proprietor, as well as supervisor or inspector. And if the Municipality be able to do the work better than it can be done otherwise, then surely this Council may be asked to concede such authority by law as may be required for this arrangement.

"But then, if the new market be thus established by the Municipality, there arises this question,—Do justice and equity demand that compensation should be given to those pre-existing private rights, which would be injured or destroyed by the unavoidable action of the Municipality in the general interest?

"Surely to this there can be but one answer, namely, that, in some way or other, such compensation ought to be arranged. And this compensation is virtually afforded by those sections of the Bill which relate to the purchasing by the Municipality of the old market-place for a price within the limit of an amount which constitutes a fair, even a liberal, price, and which, as I understand, the proprietors are willing to accept.

"There still, however, remains the question whether the terms of this arrangement are entirely fair to the rate-payers; and whether it is right to add any amount, however small comparatively, to the municipal debt, on this account?

"The answer to these questions must mainly depend on the opinion we form as to the nature and value of the property which the Municipality would thus acquire. I should think that all who examine the situation of the old market-place, so convenient, so central, so accessible, will be convinced that such a property, by whomsoever held, whether by individuals or by a public body, cannot fail to be valuable, and worth such price as the Municipality may settle under the terms of the Bill if passed by this Council. In other words, I think the Council may be sure that the property proposed to be purchased is a good and sound one. I acknowledge that it is most desirable to avoid adding anything more than can possibly be helped to the already large debt of the Municipality. But I should hope that this particular property, if well managed (as it doubtless will be by the Justices and their Chairman), will yield income as a set-off against the interest on the purchase-money, and thus prevent any burden for interest being thrown on the general rate-payers. I will not exactly anticipate

His Honor the President

the uses to which the Justices may see fit to apply the old market-place, if it shall be purchased. One suggestion I will, however, venture to throw out for consideration, namely this, that if the new market-place be used for raw produce, the old market-place may be devoted to products of manufacture; to those varied and beautiful wares which are sent to Calcutta from so many parts of the East, which are so much admired by travellers and visitors from all nations, but which are, as yet, exposed for sale, not in open places of resort, but in narrow streets and inconvenient situations.

"For all these reasons I am prepared to support the Bill, and to recommend it for the approval of the legislature of Bengal. But, as I may be called away by duty to the northern parts of these provinces, I may be unable to be present at the passing of the Bill. If I should not be present, however, our hon'ble colleague, Mr. Schalch, will preside."

The Council was adjourned to Saturday, the 18th April.

Saturday, the 18th April 1874.

Present:

The Hon'ble V. H. Schalch, *presiding*,
The Hon'ble G. C. Paul, *Acting Advocate-General*,
The Hon'ble H. L. Dampier,
The Hon'ble A. R. Thompson,
The Hon'ble S. S. Hogg,
The Hon'ble Baboo Juggodanund Mookerjee,
The Hon'ble Baboo Doorga Churn Law,
and
The Hon'ble F. G. Eldridge.

CALCUTTA MARKETS ACT.

The Hon'ble Mr. Hogg said he rose merely to move a verbal amendment. The reason for it was this, that by Section 12 of the Bill as first drafted, the Act was to be called the "Calcutta Municipal Markets Amendment Act." The Council at the last meeting struck out the word "Municipal" in that section, leaving the designation of the Act the "Calcutta Markets Amendment Act." He proposed that the preamble should be made to fit in with the wording of what was now Section 13 of the Bill. He therefore took leave to move that the word "Municipal" in the 6th line of the preamble be left out.

The motion was agreed to.

The Hon'ble Mr. Hogg said, as this Bill had now been before the Council for several weeks, and had been fully discussed, he would not detain the Council with any remarks on the Bill. He therefore moved that the Bill be passed.

The Hon'ble Mr. Eldridge said, before recording his vote in favor of the passing of this Bill, he desired to give some of the reasons which induced him to reconcile himself to a measure which had interested the public to an unusual extent, and called forth from influential quarters considerable opposition. The

question was simply one of expediency, when viewed from the stage at which it had reached. It would be useless to discuss the question of the advisability of having a Municipal Market, or whether the one in possession of the Justices was the best that could have been devised. His Honor the Lieutenant-Governor had at the last meeting of the Council urgued those points fully, and MR. ELDRIDGE had nothing to add to them. The market existed. Whether it was good, bad, or indifferent as a market or as a building was another question: the fact remained that it was there, and the question was, what should be done with it in the interests of the tax-payers? It had on several occasions been called "a white elephant," but to his mind the simile was an extremely incorrect one. He believed there was a great demand for white elephants; and if the Justices had one they would be able to dispose of it on the most advantageous terms! But to sell the new market would involve a very serious loss. It was either a market, or it was nothing. Was it good policy, then, to allow it to go to decay and ruin; to sink the considerable amount of money already expended, leaving the interest as a perpetual legacy to the tax-payers of Calcutta? Would it not be more expedient to endeavour to make it pay a fair percentage on the investment by the judicious expenditure of more money?

The Act passed by this Council in 1871 gave permission for the construction of a Municipal market, and gave the Justices, as they then believed, power to maintain it after it was built. It appeared now that some doubts existed as to the legal right of the Justices to carry on a market after its construction, and this Council was asked to supply what was apparently inadvertently omitted in the Market Act of 1871. To that, he confessed, he saw no objection. On the contrary, it appeared to him that this was the best, and would prove in the end the least expensive, means of overcoming the difficulties which had threatened the new market ever since it was opened. The Bill before the Council did not state how the money should be expended, or what course the Justices should pursue; and to his mind it would be manifestly improper to attempt to exert any such control. The Bill simply gave the Justices power to act, and left them to apply those powers as they thought best. As that body was composed of representatives from nearly every section of the community, and amongst its members there were several of the largest property-holders and tax-payers in Calcutta, it seemed to MR. ELDRIDGE that it was a power that might be safely left in their hands, and he knew not any number of persons on whom such confidence might be more worthily bestowed. Under these circumstances he thought it right to vote in favor of this Bill.

The motion was agreed to.

The Council was adjourned to a day of which notice would be given.

The Hon'ble Mr. Eldridge

Saturday, the 19th December 1874.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*
The Hon'ble H. L. Dampier,
The Hon'ble Rivers Thompson,
The Hon'ble Stuart Hogg,
The Hon'ble T. W. Brookes,
The Hon'ble F. G. Eldridge,
The Hon'ble Baboo Doorga Churn Law,
The Hon'ble Baboo Juggadanund Mookerjee.

SUBJECTS UNDER CONSIDERATION.

His Honor the President, in opening the proceedings, spoke as follows:—

"As the Council has now met after an adjournment of several months, and inasmuch as the pressing avocations of the late famine in Bengal and Behar prevented the course of legislation from being proceeded with in the usual manner, and as this interruption has more or less extended over a whole year, and the Council is now met after this long interval, I desire briefly to submit, for the consideration of Honorable Members, a statement of the current business which is actually before the Council, and also of the business which depends altogether on proposals in the immediate future.

I would begin by briefly adverting to a statement of the Bills pending, handed to me by our learned Secretary, Mr. Millett. The first Bill on this list is the Bill to provide for the due appropriation of certain educational and charitable endowments

This was referred back to the Select Committee for further report in July 1872, and, after a reference to the Government of India, it was found that the Bill touched upon rather difficult and delicate matters, which related to other parts of India besides Bengal; and it was therefore determined to drop the measure. I may mention that, as the Bill still stands upon our list of current business, with the concurrence of Honorable Members, we propose to direct our Secretary to strike it off.

The next Bill on the list is the Bill to amend Act XI of 1849, Act XXI of 1856, and Act XXIII of 1860. These Acts, as Members of Council are aware, relate to Abkaree and Excise. The Bill was referred to a Select Committee, which presented its report on the 17th March 1873; but since that time some very important memorials have been addressed to Government, to the effect that the existing system does not apply a sufficient check to inordinate drinking among the native population of Bengal. These memorials have been referred to the Board of Revenue, which, in this instance, is represented by Mr. Alonzo Money, and we await his report. We are naturally anxious to have the opinion of so able and experienced an officer as Mr. Money; and I hope, as soon as his report shall have been received, to lay before the Council such a measure as may appear appropriate.

The next Bill on the list is the Bill to provide for the voluntary registration of Mahomedan marriages and divorces. This Bill was referred to a Select Committee in November of last year, and I understand that their report will be submitted to the Council as soon as our honorable colleague Moulvie Abdool Luteef shall have returned from the short leave which he is now enjoying. I am sure the Council will understand that, before submitting this report to Honorable Members, we are anxious to have the advice of so distinguished and experienced a member of the Mahomedan community as our honorable colleague Moulvie Abdool Luteef.

The next matter on the list is the proposed amendment of the Jute Warehouse Act No. II of 1872. This Bill, as the Council will recollect, refers to the suburbs of Calcutta, and it imposes a variety of restrictions upon new warehouses that may be constructed in the future, with a view to the prevention of fire and of the destructive effects which must arise from such conflagrations.

Considering the extreme importance to a city like this, in which the jute trade is assuming such large dimensions, of preventing such destructive conflagrations, we are naturally jealous of any relaxation of the restrictions imposed by law. Still various gentlemen and firms connected with the trade have represented that these restrictions, in several respects, hamper their operations unduly, and may fairly be relaxed without prejudice to the public interests. One particular application is this. The law provides that jute must be stored in a covered place. Now, the merchants are, I think, right in saying that when jute is brought here, as it generally is, during the rainy season, it often comes damp, and cannot be properly dried unless exposed to the air and the sun. Therefore they desire that the necessity of having a covered roof be remitted.

That, I think, is a fair point for the consideration of the Council and of the many experienced members whose advice we have. Provided that the enclosure is carefully walled in, and that the walls are sufficiently high to prevent the chances of fire spreading, it seems but reasonable that the enclosure should be opened to the air and the sun.

Another matter is this. The law provides that the beams and rafters of the roofs shall be of iron. The merchants represent that this iron material is very expensive, and seriously affects the increment of their capital account, and that wooden rafters and beams will be sufficient. I am not sure that this relaxation can be allowed, but still it is a matter for the consideration of Honorable Members as to whether the wooden material is sufficiently strong and fire-proof for the purpose.

Another matter which is perhaps of great importance is this. The law lays down that no artificial light shall be used in these warehouses. The reasons will, of course, be obvious. Now, the merchants say that to prohibit the use of artificial light is really to prevent any work being done at night; and inasmuch as their operations are often of urgent importance, they desire that they shall be allowed to have lights which may enable them to work at night. It appears to me that this might be conceded, subject to the better knowledge of the Council. If the lamps in use should be very securely fastened and

closed, so that the emission of any flame from them would be impossible; if such lamps, not being already in use in that branch of the trade, could be devised, and if they were open to official inspection from time to time, it appears to me that this concession might be admitted. Well then, with a view to consider these several questions of detail, an amendment of Act No. II of 1872 will be submitted to your consideration.

The next Bill on the list is the Bill to provide for the summary realization of loans made by Government during the year 1873-74, in the course of the operations for famine relief. As is generally known, we had occasion during the relief operations to make very extensive advances of grain in the distressed tracts all over the country. We had also to make some advances in money. Furthermore, we had to induce the zemindars and proprietors in many instances to stand security for their tenantry.

We had also to induce numbers of ryots to contract together upon joint personal security for the realization of those advances.

The total amount of such advances was very considerable,—probably it may be stated at 75 lakhs of rupees, or three-quarters of a million sterling in value,—and the prompt realization of this very important demand on behalf of the State during the coming agricultural or financial year is very important. Considering the immense sacrifices which Government, acting as trustees of the nation, has made in these distressed districts, it seems but just that, in the interest of the State treasury, the recovery of these demands should be as prompt as possible. It is therefore proposed that these advances should be recovered by the same process as that which is laid down in Act VII of 1868 for the recovery of rent and other dues due to Government on account of the land. The Council will recollect that, under Act VII of 1868, the Collector has to give certificates of the amount due, and then, after proper inquiry or objection, or the hearing of objections, to recover the amount summarily set forth in the certificate. It is proposed then to recover these advances under this same procedure. And inasmuch as the zemindars in many instances have, with a very laudable public spirit, undertaken to become security on behalf of their tenants for these advances, it seems but just to give them the same advantage of the simpler procedure as we propose to take for ourselves. I am sure that the Council, considering the just interest which the general treasury has in the matter, and the propriety of such a very important arrear being quickly realized, will approve of the measure which our honorable friend Mr. Dampier will immediately bring forward on behalf of the Government of Bengal, and the introduction of which has been sanctioned by the Government of India.

Those then are the measures which are on the current list of business.

I desire now to state to the Council the various measures which are in contemplation in the immediate future. In reference to that, I should like to call to your recollection the latest remarks which my distinguished predecessor, Sir George Campbell, left on record regarding the future requirements of

legislation in Bengal. In one passage in the last Bengal Administration Report, Sir George Campbell remarked as follows :—

"He (the Lieutenant-Governor) believes that the time has come when some parts of the revenue law may be reviewed with advantage. Many improvements in regard to the sale law, the law of partition, the law of registration, mutations, &c, and other laws, might be effected" * * * * * * * *

"A general consolidation of the land revenue and rent laws should not be attempted, but some particular laws, or group of laws, such as sale laws, should be carefully reviewed on the first convenient opportunity."

Further, with reference to the repealed enactment of 1793, regarding the prohibition of transit and market dues, Sir George Campbell writes as follows :—

"The Lieutenant-Governor has submitted to the Government of India the necessity for such a law, and the subject is still under consideration."

Having regard to what I may call the legacy of legislation bequeathed to us by the late Lieutenant-Governor, I have carefully examined all the correspondence relating to these various subjects. The first subject which may be evolved from the general dicta, which I have just read to you, may be stated to be the appointment of managers in joint undivided estates. As regards the appointment of managers in joint undivided estates, the position of the matter is in this wise. In 1873 complaints were made from the Hidgellee district, which partly related to salt affairs, which I need not now refer to, but which, among other things, stated that the ryots were subjected to grievous vexations from several collections being made by the various sharers in joint undivided estates.

In reference to that question, the Government of India pronounced as follows :—

"The Governor-General in Council fully approves of the view taken by His Honor the Lieutenant-Governor, that legislation should be resorted to for the appointment of officers to collect rents, so as to provide against a number of joint proprietors in an estate separately and individually harassing the tenants for their dues."

After considerable correspondence, a despatch was submitted by the Government of Bengal, under my own direction, stating the course which, in our opinion, legislation might take. To that despatch we have received a reply, which, with your permission, I will read.

The proposition of the Bengal Government was stated in the despatch in this way :—

"In the opinion of His Honor the Lieutenant-Governor, the best course for remedying the grievance at present felt by ryots who have to pay their rents separately to a number of joint proprietors on the same estate, is to pass a law modifying the Rent Act, 'declaring that no under-tenureholder or ryot is liable to payment to more than one person in respect of the same land; that when there is more than one owner, the agent appointed by the owners, or by two-thirds of them, shall be the person to whom the tenant is liable to pay rent; that such agent, and no one else, shall be the plaintiff in any suit brought to recover arrears of rent; and that any suit brought in contravention of these provisions shall be dismissed with costs.'"

The President.

Then the Government of India went on to say:—

"Without committing itself to the principle involved, the Government of India would be glad if His Honor would cause a Bill to be prepared in accordance with his views, and obtain thereon the criticisms of the more experienced officers, and of the leaders of the zemindari interests in Bengal, and also the opinion of some of the more intelligent ryots and talookdars, as to how far the proposed measure will protect their interests."

I dare say some Honorable Members of Council will recollect that we have already consulted the principal zemindars of Bengal; we hope to have the pleasure of consulting them again, and that before long, with the sanction of the Government of India, we shall be in a position to present a measure for your consideration.

The next matter relates to the registration of possessory titles to land. It will probably be known to the Members of Council that there is an old law, dated so far back as 1793, which compels the proprietors of land all over the country to register their names and the shares belonging to them; but that Regulation has never been strictly enforced, and its terms are considered to be somewhat obsolete and not exactly suited to the requirements of the present day. Consequently it is believed that if the registration is now to be rendered compulsory, it will be desirable to pass a new law for that purpose. Well, the subject was very much discussed for many years subsequently to 1837, and at last the Board of Revenue, then represented by our present colleague, the Hon'ble Mr. Schalch, recommended that a new law should be passed for rendering this registration compulsory.

I will trouble the Council for a moment by reading some passages from the despatch of the Board of Revenue on the subject. They run thus:—

"Previously the Government had, in 1854, forwarded to the Board a letter, together with a draft Bill upon the same subject received from Mr. Sconce, the Judge of Dakha, but both Bills seemed to have dropped after the receipt of Sir Barnes Peacock's Minute.

"Since that period the Legislature of Bengal has imposed many new duties of importance on zemindars, and obedience to the law is, in most intances, to be enforced * * * * * * is dependent on a knowledge of the persons in actual possession of the estates in question, and responsible for the discharge of the duties imposed upon them.

"Under former laws similar penalties being recoverable by the sale of the estates themselves, it was a matter of comparatively little importance to know the person in possession; but since the passing of Act VII (B.C.) of 1868, such penalties, even when recoverable as arrears of revenue, can be levied only by the process of certificates having the force of decrees of the civil court for money; and consequently when the person in possession of the estate to which the discharge of the duties imposed by law attaches is not known, the recovery of the penalty becomes certainly a matter of great difficulty.

"Under these circumstances, it appears to the Member in charge" (that is, to Mr. Schalch) "that it has now become absolutely necessary to enforce a registration of the names of the parties in *possession* of estates, in view to their being held the parties responsible for the discharge of the various duties which the law imposes on them as proprietors, and the Member in charge is of opinion that an endeavour should be made to devise a practical scheme for the purpose, notwithstanding the various serious difficulties suggested by Sir Barnes Peacock in his Minute above referred to."

* * * * * * * * *

"But such objections could not, the Member in charge thinks, be urged against a law the object of which would be solely to determine summarily the question of possession, in-

view to fix the responsibility of persons holding actual possession of estates, for the discharge of certain duties imposed upon them by the existing law, which would leave such decisions open to the final determination of the civil courts, and would in no way interfere with the existing law in regard to the prosecution and decision of all questions of right and title in the civil courts."

Well, the view contained in these extracts is, I understand, entirely adopted by our honorable colleague Mr. Dampier, who is also an authority in revenue matters in Bengal, and he desires soon to prepare a measure for your consideration upon the subject. I have had the advantage of consulting some of the most eminent zemindars in Bengal as to whether such a registration could be effected without any undue vexation to the parties concerned, or without any way affecting the various rights and interests which have grown up under the Permanent Settlement, which rights and interests, I need not say, it is the duty of Government entirely to maintain. I understand that such a registration could be effected without any serious difficulty. Some difficulties in detail may indeed present themselves, which, doubtless, would be removed upon consideration by such competent gentlemen as our honorable colleagues Mr. Schalch and Mr. Dampier; and I should be sanguine that the public spirit which the zemindars so largely evince—the best proof of which has recently been seen in their praiseworthy conduct during the late famine,—I should hope, I say, that the zemindars would not object to register their names and stand forward in their proper capacity as landlords and eminent citizens, charged with a variety of public obligations, some of which they have voluntarily accepted and others of which are imposed upon them by law.

The next measure on my list relates to the possible improvement of certain portions of the sale law, Act XI of 1859. Here again it is said by some authorities that some notice should be given to the native gentlemen from whom arrears are due before their estates are advertised for sale in the *Gazette;* also that sometimes estates are advertised for sale for arrears which bear a very small proportion to the amount due. I understand that it might be possible to insert one or two conditions to this effect in the existing law, provided always that any failure to fulfil such conditions on the part of the revenue authorities should not affect the validity of the sale which might have to be carried out. I will mention a matter in this connection because it illustrates the value of registration of possessory titles (to which I have just been adverting). If, for instance, you ask a Collector why he does not serve a notice upon the zemindar who is in arrear before advertising the estate for sale in the *Gazette*, he will tell you that, in the absence of registration, it is difficult to know who is the particular person from whom the arrear is due, and in default of obtaining such information he proceeds against the estate. I am bound to say, however, that, after inquiry from zemindars in various parts of the country, I do not find that the present sale law operates with any excessive harshness; on the contrary, I believe it is admitted that the existing sale law is administered in a most judicious and careful manner by the Board of Revenue, which Board is represented on this Council.

The next subject relates to the realization of rent due from Government ryots, and also other dues pertaining to Government and relating to the land.

The President.

There is found to be a particular difficulty here, which has crept into the interpretation clause of the Act No. VII of 1868. As the Council will recollect, the object of this Act was to summarily realize the amounts set forth in certificates signed by the Collector. Well, the question arose as to what tenures these dues should be realized on. The said tenures were described in the interpretation clause, but that clause said that the tenures in question were transferable tenures. Now, the insertion of the word 'transferable' raises a question regarding non-transferable tenures; and inasmuch as transferable tenures only were mentioned, the consequence is that non-transferable tenures are altogether out of the Act. The result is that, according to the strict interpretation of law, this realization cannot be had in tenures not transferable, and, as the Council is aware, that includes all persons who are commonly called 'tenants-at-will;' and inasmuch as a number of estates in different parts of the country have fallen under the hands of Government, on which rents are collected through Government officials, it would become, without an amendment in the law, extremely difficult to collect from tenants-at-will at all. The consequence is that it becomes immediately necessary to amend this defect, and so to word the interpretation clause that it shall refer to non-transferable as well as to transferable tenures.

The next subject relates to partitions, known by the now famous name of *Butwaras*.

The Council is well aware that not unfrequently these cases go on not only for years and years, but I may say for many decades of years. It is consequently desired to slightly amend the old law upon the subject, with a view to render its procedure more simple and expeditious, and to remove the obstructions and obstacles which now exist. There is no desire to make any change of principle; the matter is simply one of, what I may call, executive procedure.

The next subject relates to the laws regarding irrigation. Doubtless you are all aware that irrigation is happily becoming a matter of great importance. Canals are spreading in some parts of Orissa, Southern Bengal, and Behar. As regards the Orissa districts, we have a law providing for the realization of the dues to Government on account of the water-rate; but this Act does not apply to Midnapore, for instance, and other districts in Bengal to which irrigation is being, or may yet be, extended. Then, again, there is no law regarding the same subject which can be applied to Behar.

We therefore propose to re-examine the Orissa irrigation law and then to extend it, after the necessary revision, to Midnapore and other districts in Bengal. Possibly we may ask you to legislate for the extension of the same law to Behar; but the Behar system, as regards tenures and the system of irrigation, differs considerably from that of Orissa, and is probably more likely to assimilate itself to the law and practice of the North-Western Provinces. So it may be found that the Orissa and Bengal Bill will not be entirely applicable to Behar. In that case we shall have to trouble the Council with a second enactment relating to Behar.

The next subject relates to the Bengal Municipalities Bill, which, in 1872, was passed after great labour in this Council, and was not assented to, as you will recollect, by His Excellency the Governor-General.

But while refusing assent to the measure, the Governor-General communicated to the Government of Bengal the following remarks, which I will trouble you by reading:—

"While, however, His Excellency has felt it to be his duty, for the abbve reasons, to withhold his assent from the Bill, he fully recognizes the fact that it contains many useful amendments of the existing law with respect to municipalities in Bengal; and the discussions which have taken place in the Legislative Council of Bengal have satisfied him that some changes in that law might be made with advantage.

"His Excellency cordially concurs with the opinion expressed by the Lieutenant-Governor that 'he had rather see a little done voluntarily by the people themselves through their representatives than a great deal done under pressure from above,' and that 'his view is to prefer a little done voluntarily to a great deal done unwillingly and in a discontented spirit.' His Excellency believes that under Act VI of 1868, and the District Road Cess Act of 1870, sufficient powers now exist for the introduction into Bengal of a system under which municipal and local affairs may gradually come to be administered by bodies in which the people are represented, and any proposal which the Legislative Council of Bengal may make to amend Act III of 1864 in the same direction would command His Excellency's favorable consideration.

"It might also, in His Excellency's opinion, be desirable to amend the present law so as to enable municipalities under Acts III of 1864 and VI of 1868 voluntarily to contribute in aid of education within their districts."

In view to what I may call these general instructions, we propose to take up the lost Bill, and to reconsider those portions which do not come under His Excellency the Governor-General's objections, or which have, as you have already seen, commended themselves to His Excellency's approval. In connection with this subject, we propose to reconsider the law relating to the status and the remuneration of village police, which was passed by this Council in the time of my predecessor, Sir William Grey. That law has as yet been extended to only a few districts, with perhaps a partial success, but some law is still required for the remaining districts of the country

We propose to consider how far Sir William Grey's law, as I may call it, would be suitable for this purpose, and then embody it in the Bill to be laid before you regarding municipal affairs generally; the said Bill to be nothing more than a portion of that which this Council has already passed in 1872.

Regarding a cognate matter, our attention has been drawn to a letter addressed to the Government of Bengal by Mr. MacEwen, of the Small Cause Court in this city, in which he brings to notice the great number of Municipal Acts relating to this capital, which Acts number no less than fifteen, and have been passed at various times during a period of nine years. He represents, from his practical experience, the great trouble caused both to officials and non-officials from this multiplicity of laws relating to municipal affairs, and recommends that they be consolidated into one enactment. I hope that our honorable colleague, the Municipal Commissioner, will be induced to undertake the consolidation, and to aid in the codification of those several enactments which he now administers with so much vigor and efficiency.

The next point relates to an addition to the existing law relating to the official inspection of steam boilers and prime movers in this city. It has been represented by the inspecting officers that they occasionally find not only

defective boilers, but good boilers and good machinery placed in the hands of very untrained and incompetent persons, and that there is as much danger to the public from the latter state of things as there is from the former.

We shall therefore probably have to ask the Council to include the character of the establishments in the subjects which are to be open to official inspection.

The next subject refers to the erection of boundary pillars, which are being, not which have been, surveyed. It was some time ago considered that the erection of such pillars should be at the expense of the proprietors of the land which is being surveyed. I have just received a definite despatch from the Government of India, which I desire to read:—

"Extract from letter No. 757, dated 18th December 1874, from the Secretary to the Government of India, Department of Revenue, Agriculture, and Commerce, to the Secretary to the Government of Bengal.

* * * * * * *

The Governor-General in Council, on a full consideration of the papers on the subject, desires that legislation may now be resorted to in order to enforce an obligation which is imposed on all landholders elsewhere in India, and I am to request that a Bill may be introduced to this effect into the Legislative Council of His Honor the Lieutenant-Governor as soon as convenient."

It will therefore be my duty to cause a Bill, in accordance with these instructions, to be presented to this Council. At present our honorable colleagues are aware that the only portions of Bengal now under survey are a very small corner of the Midnapore district, and also certain "Dearah" lands, as they are called, bordering the great rivers, and certain portions of the temporarily settled districts of Orissa, so that the application of the principle will apparently be of a limited character.

The next subject is that of the Orissa ports. The Council will readily understand that the shipping resorting to the port at False Point ought to pay port-dues, just as is the case with regard to other Bengal ports. That port is at present free for this reason, among other reasons, that in the list of ports contained in the Act empowering Government to levy port-dues, False Point is not included, and consequently port-dues cannot be levied there. The fact is that that port has risen into importance subsequently to the passing of this Act.

The Council is aware that an Act relating to ports and port-dues generally throughout India is at present before the Legislative Council of the Governor-General. It is possible that this Act will practically enable us to levy port dues at False Point; but if we find that such power is not given us by the general enactment, all that will be necessary will be to ask this Council to pass a short Act, including the port of False Point in the list contained in the schedule to the former Act.

The next subject—I am getting very near the end of my subjects now—is that of Police. I will just read the last dictum of the Government of Bengal upon that point in 1873:—

"The Lieutenant-Governor thinks that Act V of 1861 requires amendment in this and one or two other points. It is in the power of the Legislature of Bengal to amend this Act, and it has already done so with the full concurrence of the Government of India, as will be seen from the correspondence noted on the margin, on the subject of

modifying that important condition of the Act by which the entire area of the territory under this Government had been formed into one general police district * *

* * * * * * *

the Lieutenant-Governor is of opinion that the law had better be dealt with in Bengal for Bengal. In case, however, the Government of India should have any objection to that course, His Honor reports the circumstances which seem to him to necessitate an amendment of the law, and he would be glad to be favoured with the instructions of His Excellency in Council as to the course which should be taken, *i.e.*, whether he may propose in the Bengal Council the necessary amendment, or whether the matter will be taken up in the Governor-General's Council."

To this we received an answer from the Government of India in this wise:—

"In reply, I am desired to say that the cases which the Act is shown not to reach are of a kind that may occur in other provinces, and His Excellency the Governor-General in Council therefore proposes to consider the question of giving general extension to an amendment of the kind proposed. Moreover, it is advisable to avoid local emendations of so important a law as Act V of 1861 as far as possible, when the defect to be remedied may be of general prevalence. I am therefore to request that you will be good enough to move the Lieutenant-Governor to suggest to the Government of India the terms of the proposed amendment, and also to state whether His Honor wishes any further amendments in the law."

We have taken steps, by consulting the various authorities concerned, to comply with that condition. I mention the matter now in order that the Council may be aware of the precise state of the proposed legislation on the subject, and to explain why it is not in my power to lay a Bill at present on the table of this Council. In connection with this subject, there are two points which Honorable Members are aware have very much attracted attention of late. Act V of 1861, though it did recognize the position of Magistrates in respect to police in very general and broad terms, yet it did not state with sufficiently legal precision the nature of those relations. The Act also omitted, or rather deliberately did not make any mention of the Divisional Commissioners. The Council knows that in such provinces as those of Bengal, the Commissioners form an important link between Government and the District Officers, and therefore it is desirable that their power and influence should be brought into play regarding the management of police.

The last subject I have to mention is the prohibition of the levy of illegal cesses on navigable rivers, high roads, and in public markets. This matter formed the subject of some correspondence between the Government of Bengal, as administered by my predecessor, and the Government of India; and we have recently received an important despatch from the Government of India upon the subject, regarding which further local inquiries are being made. There are one or two passages in that despatch which I should like to read to the Council. As regards hâts or markets, the Government of India state as follows:—

"So far, therefore, as the Government of India can judge this question from a review of the evidence laid before them, the inference is that the present system of hâts has grown up in a natural and healthy way; that under it trade flourishes and a brisk competition exists. It may or may not have originated in abuse; but the question now is, whether it causes actual evils which are felt and can be remedied by active interference, remembering

The President.

that we may thus be interfering with the spontaneous outgrowth of the wants of the people, and raising some very embarrassing questions of private right."

Then another passage is in this wise:—

"Another distinction is to be made between hâts or markets which are private property and those in which the public have some right * * * Clearly when the public have a right, it would be desirable to assert it in some effectual way. But setting aside those cases in which compensation is received by the zemindar under the Regulation of 1793, it seems very doubtful whether any right exists for the public to use for the purpose of markets ground of which the legal ownership is vested in private persons."

Another passage runs thus:—

"Another point which might usefully be dealt with by legislation is the acquisition by prescription of exclusive privileges to hold fairs, or of rights to levy dues when compensation for their stoppage has been given.

"The sum of what has been said is that the Government of India are not, upon the evidence now before them, disposed to interfere with the present system of hâts, but rather to place the law in such a state as to leave the action of individuals practically free, but to provide expressly that no length of usage shall give the owner of land any prescriptive right to hold a hât. Probably, as above intimated, there is good ground for applying a different principle to town markets and some other places, but that must be the subject of further inquiry. The law might also expressly preserve the public rights in all cases when compensation is given, and should make the illegal levy of duties an offence punishable with fines."

Then further passages of the despatch set forth certain principles regarding the levy of tolls on roads, at the entrances of towns, and on navigable rivers. They run as follows:—

"The next point to be considered is the levy of tolls by zemindars on roads and at the entrances of towns. This species of exaction, as well as that abovementioned, is illustrated by the case of Dinagepore. It is also illustrated by the case of Phulwari. With respect to such cases as these, the Government of India have only to express approval of the orders of the Bengal Government, and to say that the law proposed above, respecting the illegal levy of duties, would apply to these cases also.

"It is, however, always to be remembered that even in public places, the zemindars may be accustomed to render services for which they may justly make a charge, such as cleansing, weighing goods, and so forth; and that, if the payment is stopped, the public may suffer. The proper course in such cases would seem to be to take a regulative power, such as has been above intimated, as proper for town bazars.

"The next subject is that of tolls levied from the traffic on navigable rivers.

"As regards the orders given on this subject, it has been not unnaturally mixed up with the remaining subject, viz. that of the title of the crown to the soil of and adjoining navigable rivers. In paragraph 10 of the resolution under consideration, the principle is apparently enunciated that the whole channel of a navigable river up to high-water mark, *i.e.* up to the height of ordinary floods in the rainy seasons, belongs to the Crown. The Government of India do not think that such a principle can be maintained. Not only do the great rivers of India change their course frequently, but they regularly cover in the height of the rainy season a great tract of country which is dry land at other times. The land thus flooded is extremely valuable; the best crops are grown on it, the highest rents are paid for it, and the revenue charged on it in proportion. It would be very alarming to those who have always considered themselves and been treated as the owners of such land to be suddenly told that the Crown was the owner, and that they had only the use of it.

"Neither does it seem necessary for the present purpose to assert the title of the Crown to any portion of the soil of or adjoining to rivers; that they may be left to be dealt with either by judicial decision or by legislation when the question arises. At present all that is wanted is to ensure the just use of navigable rivers by the public. This would be amply secured

by such legislation as is suggested. The general principle which the Government of India are prepared to affirm is, that the public have not only a right to use the stream of navigable rivers, but the right to use their banks (wherever those banks may happen for the time to be) for mooring, towing, punting, and other purposes incident to the right of navigation; that they may have also the right of free communication between the existing margin of the water and the former landing-place of the nearest thoroughfare wherever the river has ebbed or shifted its course. If the riparian owners furnish camping-ground, grass, or fuel, it is just they should be paid; but it may be a question whether such matters are better left to private bargain, or whether they are so likely to resemble and to grow into the objectionable traffic dues that the executive should have power to regulate them."

It may therefore, the Council will see, with reference to these general principles as laid down by the Government of India, be necessary to lay some measure before you, the object of which would be the re-enactment, with suitable amendments, of the old Regulation of 1793. Of course, if we should prepare such a measure, the Council will understand that great care must be taken not to interfere with the private rights in property in these markets; and which rights, I know, from what I have seen during my travels, are existing in markets scattered all over Bengal.

I am afraid that I have troubled you at great length in laying these subjects before you, but I desired to state as briefly as possible the matters which you are likely to have brought before you in the immediate future. I am not desirous of placing before you any ambitious programme of legislation. These various subjects are strictly matters of business which have been long pending; they are not at all new; on the contrary, they have been discussed by all the best informed local authorities, and I hope that useful practical enactments may be passed upon them, which shall command the assent of all concerned.

Neither is there any hurry regarding the preparation, introduction, or passing of those measures. I hope that, with the assistance of our honorable colleague, Mr. Dampier—whose services the Government of India have allowed to be placed at our disposal—we may be able to prepare those measures within the next two or three months; that then some of them may be in a state for submission to this Council, perhaps for reference to Select Committees; that subsequently they may be considered leisurely during next summer and autumn, and that, finally, we may be in a position to proceed, say next November, with the passing into law of at least some of them.

Lastly, I must ask you to bear in mind that all our proceedings in these matters are entirely subject to the approval of the Government of India, and specially to the assent of His Excellency the Governor-General, which of course I am unable to guarantee in any way, excepting in so far as such approval may be indicated in the despatches of the Government of India, from which I have just been reading extracts.

With these remarks I think I may call on our honorable colleague Mr. Dampier to speak on the motion which is set down to his name."

RECOVERY OF ADVANCES MADE BY GOVERNMENT.

The Hon'ble Mr. Dampier said:—"Sir, the motion which stands in my name is happily one that does not require me to say much, for the objects of the measure have been laid before the Council by Your Honor in a full and

complete manner. I think, therefore, that I shall be consulting the wishes of the Council best by releasing them to attend to other important claims upon their time. I shall therefore merely put, in a formal shape, the motion for the introduction of the Bill, the object of which Your Honor has been explaining to the Council.

I beg to ask leave to introduce a Bill for the recovery, by summary process, of advances of money and grain made by the Government in the course of the relief operations."

The question was then put, and leave was given to introduce the Bill.

The Council then adjourned till Saturday, the 2nd January 1875.

Saturday, the 2nd January 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble Rivers Thompson,
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble Moulvie Abdool Luteef, Khan Bahadoor,
The Hon'ble Baboo Juggadanund Mookerjee,
The Hon'ble Baboo Digumber Mitter,
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Doorga Churn Law,
and
The Hon'ble F. G. Eldridge.

REGISTRATION OF MAHOMEDAN MARRIAGES AND DIVORCES.

The Hon'ble Mr. Dampier presented the Report of the Select Committee on the Bill to provide for the voluntary registration of Mahomedan marriages and divorces. He said, as it was so long since this Bill had been in any way before the Council, and as some of the members present were not in the Council when the Bill was introduced, perhaps he would do well to read over to the Council the Statement of Objects and Reasons relating to the Bill:—

"The attention of the Government has for some time past been drawn to the increasing number of offences against marriage shown in the criminal returns, especially in the Eastern and Mahomedan districts. The remarkably small number of convictions obtained in such cases, taken together with their increasing numbers, seemed to indicate the existence of a grievance which the criminal courts are at present unable to redress. Inquiry has proved that this is in fact the case. The loose notions regarding the marriage tie prevalent among the lower orders of Mahomedans lead to the frequent institution of criminal charges; while the absence of any authorized system of registration of marriage and divorce (since the office of kazi ceased to be recognized by law) makes it difficult to furnish the amount of proof which the criminal courts require to warrant their taking action.

"It appears to the Government that the legal recognition of an authorized system of registering Mahomedan marriages and divorces will go far to supply the existing want, and this Bill provides such a system. The Registrar will, as regards such registration, take the place which was filled by the old kazis, and certified copies of extracts from his register are made *primâ facie* proof of the facts recited therein. But the registration of marriages and divorces is left optional with the parties concerned, and all questions of remuneration are left to be settled between the Registrar and the parties who avail themselves of his services."

On those lines the Bill was laid before this Council and referred to a Select Committee in November 1873. Since then the famine had caused all legislative work to be suspended, and it was only lately that the Select Committee had been sitting and considering this Bill. To-day he had the honor to present their report. He should not move to-day that the Report of the Committee be taken into consideration, because it had not yet been placed in the hands of the members; but at the next meeting of the Council he proposed to make that motion. The Report had not yet been printed, and he would only now mention the principal points as to which the Committee proposed to make alterations in the original Bill. The Council would see that the Committee proposed to adhere to the name of "kazi." There was some little discussion upon this point, but upon the whole the Committee agreed that it would be better to keep a name which was familiar to the Mahomedan population; the great object of the proposed measure being that it should be a popular one. The Committee had empowered the Lieutenant-Governor to grant a license to any person to perform the functions of a "kazi" under the Act, and in the interpretation clause had defined a "kazi" to be any person who was duly authorized under this Act to register Mahomedan marriages and divorces. None of the other functions of the old kazis were to be vested in them by this Bill, although he (MR. DAMPIER) had little doubt that a custom would grow up under which the people would resort to them amicably for other social purposes. Still the Act would not vest in them any authority, except for the registration of marriages and divorces when application was voluntarily made to them for such registration. The Committee had provided that not more than two kazis might be appointed for one tract of country; and that, where two kazis were appointed, one of them should be a member of the Sunni, and the other of the Shiah sect. That, MR. DAMPIER believed, would be a popular arrangement.

The Committee had particularized the parties by whom applications for the registration of marriages and divorces might be made, and the persons who should sign the entries in the register. A good deal of care had been necessary in the framing of this part of the Bill, because, for instance, a marriage might be made by minors, in which case their guardians might appear for the parties, or the bride might be a *purda nasheen* woman who could not appear before the kazi, and then she would have to be represented by a vakíl. The Committee had therefore had to specify in some detail who were the persons authorized to apply for registration, and who should be the signatories under each of those cases. In these matters the Committee had to rely mainly on the knowledge of Moulvie Abdool Luteef.

As to divorces, there was one class in which the husband divorced the wife, at the same time paying to her so much of the dower as was termed "deferred" in the English translations of the Mahomedan law books; that was to say, the portion of the dower which was not claimable until the marriage was dissolved by death or divorce. In these cases it was unnecessary for the wife to appear before the kazi. The husband had only to appear and say he had divorced his wife, and to bring forward the witnesses to the divorce. Then there was the other class of divorces called "khula," in which the husband and wife agreed to separate, the wife giving up all right to the marriage portion and all other claims on the husband. In these cases the application must be made by both husband and wife jointly, as the wife voluntarily gave up certain rights. Perhaps the subject might be a new one to some of the members of the Council. Their colleague, Moulvie Abdool Luteef, had printed a lecture on the subject, and before MR. DAMPIER asked the Council to proceed further with the Bill, he would cause the lecture to be circulated. He thought it would be found both interesting and useful.

The Select Committee had provided that copies of entries in the registers should be given without charge at the time of registering the marriage ordinance. They had empowered the Lieutenant-Governor to make such rules as might be required for the working of the measure. One point to be provided for by the rules was important, namely, the attendance of kazis at marriages. It was sufficient under the Act to register a marriage after the ceremony was over; but it was understood that the more respectable members of the Mahomedan community would like to have the kazi personally in attendance at the ceremony as well. This would afford a double security as to the proof of the marriage; and to meet such cases the Committee had empowered the Lieutenant-Governor to make rules as to the remuneration of kazis for their attendance at marriage ceremonies and for regulating such attendance. They had fixed the fee for registration at one rupee. As mentioned in the Statement of Objects and Reasons, it was intended originally to leave it absolutely to the kazi and the parties to arrange between them what fee should be paid. But since then the Committee had received from the Bengal Secretariat papers containing a mass of opinions of the leading Mahomedan gentlemen in the mofussil. A great preponderance of opinion was in favor of some fee being fixed, on payment of which it should be compulsory on the kazi to register. They had, therefore, fixed one rupee as the fee, but had added a section providing that nothing in the Act should render it illegal for the kazi to accept a gratuity in addition to the fee if voluntarily offered. The more respectable Mahomedans would probably consider it a point of honor to make the kazi a suitable present on these occasions. Another important innovation made in the Bill was, that the Committee had considered it necessary to place kazis and their offices under some control, and on this point there was some discussion in Committee. But they had come to the conclusion that the District Registrars of Assurances would be the proper controlling authority, *i.e.* practically the Magistrate and Collector in mofussil districts. The Committee had provided that, when a

kazi refused to register a marriage or divorce, he should record the reason of his refusal. The only reason for such refusal would be a question of identity,—a question whether a person who appeared (whether as a principal or witness) was not the person whom he or she represented himself or herself to be. The kazi would have no right to refuse registration on any other ground; and the Committee had provided that in case of such refusal there should be one appeal to the Registrar of the district, whose decision should be final. They had provided forms for three registers to be kept by the kazi—one was the register of marriages, the second a register of divorces not being *khula*, and the third a register of *khula* divorces. As to the forms of the registers, the Committee had not been able to arrive at unanimity. At the request of their colleague, Moulvie Abdool Luteef, the majority of the Committee had put in the forms in the schedule annexed to the Act certain columns requiring specification of details of the dower for the sake of bringing the point before the Council. The majority of the Committee (Mr. Schalch and Mr. Dampier, for they had not the advantage of the learned Advocate-General's assistance) thought it would be better to omit these columns from the registers, because they would be touching on difficult questions which were beyond the scope of the Act. In this Act the Council were not attempting to deal with the difficult question of titles to Mahomedan property, but merely to provide trustworthy evidence as to the fact of the marriage or divorce having been effected; and therefore it seemed to the majority of the Committee that any specification of the particulars of the dower in the registers would be going entirely beyond the scope which the Council had desired to give to the Bill. With these remarks MR. DAMPIER laid on the table the report of the Select Committee which would be printed and circulated to the members with the Bill as revised, and at the next meeting he would move that the report of the Committee be taken into consideration.

RECOVERY OF ADVANCES MADE BY GOVERNMENT.

The HON'BLE MR. DAMPIER said that the next motion in his name was to move that the Bill for the recovery, by summary process, of advances of money and grain in the course of the relief operations be read in Council. This Bill was circulated, and had been, he believed, in the hands of members for three days, as was required by the rules of the Council. At the last meeting His Honor the President had said almost all that should be said at this stage of the Bill, and MR. DAMPIER had now only to remind members of what they knew very well already, that the Government had advanced something like three quarters of a million sterling to ryots during the famine; that sometimes money was advanced on no security whatever, sometimes on the security of zemindars, and sometimes on the joint security of villagers. He supposed that no one would deny that after what the Government had done, it was in a position to ask that this Council should give it all the assistance it could in recovering the advances made. Of course the Collector, in making these advances, entered them in his book; and in the simple case in which the Collector was to recover from the person to whom the advance was made, no one could be in a better

position than himself to know that the money was due. He had only got to look at his own accounts and so satisfy himself. It had therefore been provided in the Bill which MR. DAMPIER had the honor to lay before the Council, that arrears due on account of advances should be "demands" under the provisions of Act VII of 1868 of this Council; the consequence of which would be that the Collector, being satisfied that the amount was due, could make a certificate declaring the amount to be due, which should be filed in his office according to the certificate procedure. After the certificate was made, it was open to the person affected to come forward and make any objection he might wish to offer, and the Collector would then give him time, or amend his order if he should consider it necessary to do so. The certificate, as confirmed or modified by the Collector on such objection, would have the force of a decree passed in the civil court against this particular debtor. This Council had once formally accepted the principle of these certificates by passing Act VII of 1868. It was considered better for all parties that in cases in which the Collector was in a position to judge that an arrear was due, he should be trusted to pronounce the amount to be due without carrying the ryot to the civil court, which in the end would double and treble the debt, as Hon'ble Members well knew: therefore Mr. Dampier had no doubt that the Council would see the propriety of extending that principle to the arrears now in question which were within the knowledge of the Collector.

Next, as to the cases in which zemindars and communities of villagers had stood security for advances. When they had to pay any money for the repayment of which they had stood security, it was only fair that the Government and the legislature should give them the same assistance in recovering their dues from the real debtor that they gave the Government in recovering directly debts due to them. Here again the amount of the debt was absolutely in the knowledge of the Collector. No one knew that the money had been advanced to the ryot better than the Government officer who advanced it, and the Collector also had the best means of knowing that the money had been repaid, not by the person who received the money, but by his security for him. It was nothing but fair that after the sureties had paid money for the ryot under such exceptional circumstances, they should be given exceptional facilities for the recovery of their dues.

The Bill provided that the zemindar should give in an application to the Collector specifying the amount due and requesting him to issue a certificate. The Collector would then issue a certificate. The ryot might come forward to make his objections; and when the Collector was satisfied, he would confirm or modify his certificate, which would then have the effect of a decree. Here again the object was to save the worry and expense of a civil suit as much as could possibly be done.

The HON'BLE MR. RIVERS THOMPSON said he wished to submit to the hon'ble member in charge of the Bill whether it was not desirable that these balances should be recovered as arrears of revenue instead of as demands under Act VII of 1868. It would be in the knowledge of the Council that claims adjudged to be due as a Government demand under the Collector's certificate could after-

wards be contested in a regular suit in the civil courts; whereas in cases decreed as arrears of revenue no civil suit would lie. The procedure under Act VII of 1868 was much the same in both cases; and if the object of the present legislation was to prevent the harassment and expense of civil actions, it seemed clear that the process of recovery as arrears of revenue would at once secure the object aimed at without opening the door to subsequent litigation after the Collector had issued his certificate..

The Hon'ble Mr. Dampier said he particularly omitted the consideration of that point, because he hoped to have the advantage of the opinion of their colleagues in committee.. He had, however, in the Bill made the debt an arrear of demand only. What his hon'ble friend had said was very true, that it would be better to make the certificate of the Collector final, and not contestable in the civil court; and it would be very desirable to do so if the committee who were appointed to consider the Bill saw fit.

The Hon'ble Baboo Digumber Mitter said—"I must confess that I do not see how the provisions of Act VII of 1868 can be made applicable towards the recovery of loans in money and grain which the Government had advanced to the ryots during the late scarcity, if, as I presume, it is the intention of the Hon'ble Mover that the ryots' tenures should be held primarily liable for these loans. That Act contemplates the recovery of the revenue demand by the sale of tenures held directly under Government, and which, by the customs of the country, are transferable. I am afraid that the majority of the ryots who had taken such advances, even if they held any land at all at the time, are either tenants-at-will, or at best have only a right of occupancy in the land they cultivate. The holding of the first, I need not say, is not saleable, and that of the latter, even where saleable, is not likely, in many instances, to fetch a price at all sufficient to cover the advance made: indeed, I feel doubtful if any ryotee tenure held under the zemindar without a registered *mowrosee* lease will obtain purchasers when offered for sale to the highest bidder at a public sale, inasmuch as the purchaser has no likelihood of obtaining possession of what he purchased without much litigation, and without the active co-operation of the zemindar under whom the tenure is held. In fact it will be difficult, if not in many instances altogether impossible, to obtain the necessary information, without which the tenure intended to be sold cannot even be notified for sale. I mean the boundaries of the tenure, the quantity of land comprised in it, the rent payable in respect thereof, and the terms and conditions under which it is held of the zemindar. The proposed measure does not make any provision to that effect, and I do not see what means can be devised towards obtaining correct information on the points in question, except through the intermediation of the zemindar under whom the tenure is held, and I cannot guarantee that many zemindars will volunteer such information, especially when there are no means of testing their correctness. The same objection will apply to the recovery of these loans by the sale of the tenures of the sureties, where the sureties are a collection of villagers. The difficulties alluded to are not likely to be met with in the sale of tenures held directly under Government, and hence it is that

the Act in question has worked smoothly in the recovery of the Government demand from its own tenants; but I am afraid it cannot, by any possibility, be made applicable to the purposes of the proposed measure.

I am fully alive to the sacred character of the debt, and to the necessity of enforcing its speedy repayment in justice to the general tax-payer. The sum covered by these grain loans, though large in itself, represents but a small proportion of the vast outlay which the Government has incurred in affording relief during the late scarcity. Nothing will therefore afford me greater satisfaction than to render such assistance as lies in my power in devising some project of law for the recovery of these loans; and if I am permitted to offer a suggestion towards that end, I would respectfully submit that, instead of proceeding against the holding of the ryot, it would be much more safe and effectual to proceed against his crop. I do not deny that my proposal is open to many objections, but they do not appear to me to be of such a nature as might not be overcome by fair and equitable means. The great objection which might be taken to it is, that such a proceeding would deprive the zemindar of the best security which by law he now possesses for the punctual recovery of his rent, inasmuch as both by prior and the existing laws the produce of the land is held to be hypothecated for the rent payable in respect thereof. But this difficulty, I respectfully submit, might be very equitably met if the repayment of these loans were spread over a number of years, say from three to five, according to the condition and means of each debtor, as in that case the debtor's crop would, I think, be quite sufficient to meet each instalment as it fell due, after fully satisfying the zemindar's claim. It must not be lost sight of that to pay the Government claim the ryot will have to sell two and a half times as much rice as he had received in advance; for there is little doubt that rice will sell for thirty seers the rupee this year, whereas the ryot had to purchase it at twelve seers the rupee from the Government stock. Their case is a hard one, and is well deserving of the kind and indulgent consideration of Government. The measure which I have taken the liberty to propose, while affording greater facility and certainty in the recovery of the Government dues, might, I humbly think, be the means of saving the ryots from certain ruin, as I am afraid such would be the case if the Government demand were enforced in one payment."

THE HON'BLE BABOO JUGGADANUND MOOKERJEE said the summary power proposed by the Bill to be given to the Collector seemed to him to be a reasonable mode of procedure, because he thought the Collector was the person who ought to know what was the condition of the ryot, and what were the means by which the debt which was incurred should be paid. The Collector, no doubt, would do his best to save the ryot, and at the same time he would also take care that the Government money should not be lost. For these reasons, BABOO JUGGADANUND MOOKERJEE thought that the summary power proposed to be given to the Collector was proper and good. But there were certain difficulties in dealing with these matters. The Act which was to be made applicable was Act VII of 1868, and the principal of those difficulties appeared to him to be that in that Act no discretion had been left to enable the Collector to

deal with leniency if, in his judgment, he thought leniency was required. And therefore BABOO JUGGADANUND MOOKERJEE proposed that some sort of discretion should be left in the hands of the Collector by which, if he thought that certain difficulties would arise, or that the ruin of the ryot was imminent, he might, in such cases, exercise that discretion. If that were done, BABOO JUGGADANUND MOOKERJEE thought the objections raised by the hon'ble member who last spoke would be met entirely; because the whole of his objections referred, not to the summary procedure, but to the proceedings which would be taken after the certificate was made, and after the Collector had declared that such and such money was due. Therefore his hon'ble friend's objections referred to the proceedings *after* the making of the certificate The difficulties which had been brought to notice by the hon'ble member would be met if a discretion was vested in the Collector; and because that discretion was wanting in the Act of 1868, he thought some discretion should be given to that officer to deal with cases under this Bill.

The HON'BLE MR. DAMPIER said, as he understood the objection of the hon'ble member on the right (Baboo Digumber Mitter), it appeared to him to be founded to a certain degree on misapprehension. He understood the hon'ble member to speak as if the realization under the Act could be made by the sale of the tenure of the debtor, and by no other means. But that was not the case. The certificate of the Collector simply had the force of a decree; and amongst the things that might be sold in execution, tenures were included. It gave the power of selling them, but it also conferred the power of proceeding against the personal property of the debtor. By Section 24 it was enacted that every certificate made by the Collector might be enforced by all or any of the ways and means mentioned and provided in and by Act VIII of 1859 for the enforcement of decrees for money. The certificate being nothing more than a decree for so much money due to the Government, the Collector, as agent of the Government, would of course be able to exercise the discretion which another hon'ble member (Baboo Juggadanund Mookerjee had suggested should be given to him. The Act said that the certificate "may" be enforced; not that it "must" be enforced at once. From what hon'ble members had seen to be the action of the Government during the famine, they might fairly assume that the Collector would treat the debtor with all possible leniency. When the Government had helped the tenure-holder with a loan of food or money, it was hardly to be supposed that the Government officers would sell their tenures and reduce them to pauperism immediately. Speaking personally (for he had not had the advantage of His Honor the Lieutenant-Governor's views upon the subject), MR. DAMPIER felt that the Government officers might be relied on to treat the ryot with all forbearance, especially as regards the sale of his tenure. No doubt, however, this was a point for the consideration of the Select Committee, on which he should ask the hon'ble member on his right (Baboo Digumber Mitter) to sit, and very likely some provision of this sort might be introduced, that a tenure should not be proceeded against until less ruinous measures had first been tried.

The Hon'ble Baboo Juggadanund Mookerjee.

The HON'BLE MR. HOGG said he agreed with the hon'ble member opposite (Baboo Juggadanund Mookerjee) that the power of the Collector should be well considered and carefully defined, for it would be hard to proceed summarily against tenures. In the absence of information as to the conditions under which loans had been made, it was impossible to consider the merits of the Bill before the Council. The loans had, he presumed, been made to the poorest classes of the people,—to those who had been absolutely destitute, having no means whatever to support life or cultivate their land. Accepting that to have been the principle on which the loans had been made, it seemed to him somewhat questionable whether summary powers ought to be given to the Collector to levy from those ryots, who being destitute at the time they availed themselves of the Government advances, must necessarily be in straitened circumstances a few months hence. It must be conceded by the Council that all those to whom advances were made should, as soon as their circumstances admitted, be called upon to pay. But, on the other hand, the Government should not press their claims too rapidly. He thought, therefore, there should be some provision in the Bill, to the effect that when these men were not in a position to pay the whole at once, they should be allowed to pay by instalments, and their property should not be sold up in the summary way which appeared by the Bill to be contemplated.

The HON'BLE MR. DAMPIER believed that it was out of order for the hon'ble member to speak after the member in charge of the Bill had made his final reply, but MR. DAMPIER had nothing to add to the remarks which he had already made.

The motion was then carried, and the Bill referred to a Select Committee, consisting of the Hon'ble the Advocate-General, the Hon'ble Mr. Schalch, the Hon'ble Baboo Digumber Mitter, and the Mover.

REGISTRATION OF JUTE WAREHOUSES.

The HON'BLE MR. HOGG said that this Bill dealt with the law for the registration of jute warehouses, and also made provision for the establishment of an efficient fire-brigade. The attention of Government had been called to the necessity of some slight amendment in the law, owing to very strong representations received from the owners of jute warehouses, especially those residing in the suburbs, which were supported by the Suburban Municipal authorities and the Chamber of Commerce. Act II of 1872 of this Council imposed many very stringent provisions for bringing under efficient control jute warehouses. The provision of the law which was chiefly objected to was that found in Clause 1 of Section 7, which provided, amongst other things, that no jute should be combed or dried save within a building, the walls of which should be of burnt bricks, and so on. The memorialists represented that jute was often received in the warehouse in a damp, wet state, and to dry it, it was absolutely necessary that it should be exposed to the sun and air; that in jute warehouses, especially in the suburbs, there would be no danger if a relaxation of the restrictions in the existing law were granted by the Council. He was quite prepared to admit that there was much force in the arguments brought forward by jute warehouse proprietors and the Chamber of Commerce. However, in

dealing with a question of relaxation of the existing restrictions, the peculiar circumstances which called the Act into existence should be borne in mind. In 1871, in the very heart of Calcutta, there had been some disastrous fires, which caused great loss of property, and which also endangered all property in the neighbourhood. This caused universal alarm throughout Calcutta, and all the influential public bodies—the Chamber of Commerce, the British Indian Association, the Trades Association, and the Municipality—came forward and urged on the Government the absolute necessity of taking stringent measures for bringing under strict control the jute trade, which was then growing fast into importance. Urged by these authorities Act II of 1872 was passed, and the Council availed itself of the opportunity of providing for the establishment of an efficient fire-brigade. Fortunately, since the passing of that Act there had been no serious fires; but because we had been relieved for a time from the fear of fires, the cause which called the Act into existence should not be lost sight of; and the Council should bear in mind the very great risk which must necessarily follow the storage of jute within the town and suburbs. He thought the request made by the Chamber of Commerce and the jute warehouse proprietors might, in a measure, be conceded by relaxing the restrictions in regard to those jute warehouses which were situated away from crowded localities, but the law should not be relaxed in regard to warehouses which were situated in crowded localities in Calcutta or the suburbs. He proposed also, if permission were given to bring in a Bill, that we should deal with a few other points which seemed to require amendment. Recently certain decisions had been arrived at by some of the Magistrates in connection with Section 14 of the Act. That section provided that—

"Whoever, in contravention of the license, shall introduce or use in any jute warehouse, in which jute or cotton is kept or deposited, any fire or lucifer matches, or shall smoke therein, and whoever shall violate any of the conditions or restrictions under which the said license is granted, shall be liable, on conviction before a Magistrate, to a penalty not exceeding fifty Rupees for any one such offence."

Nearly all the Magistrates held that the penalty could be inflicted on the person or persons who were in responsible charge of the jute warehouse. Some Magistrates, however, and notably one who decided a case only a few weeks ago, held that the actual offender, that was to say, the coolie who deposited the fire, could alone be brought under the section. That seemed to him to be a narrow view of the law; but it was well to remove the possibility of a recurrence of such a decision by an amendment of the law. Again, there was another point which related specially to Calcutta, which demanded attention, and that was the prevalence of the practice of loading and unloading jute carts on the public roads. When licenses were granted for the establishment of jute warehouses, the proprietors should, he considered, be compelled to have arrangements within their own premises for loading and unloading. The Council were aware that the streets in the native portion of the town were very narrow; and when a string of forty or fifty carts were brought to a warehouse situated in that part of the town, the thoroughfare was completely blocked. This point, he thought, was worthy of consideration

The Hon'ble Mr. Hogg.

when the Bill was brought before the Council. With these few remarks he begged to move for leave to bring in a Bill to amend Act II of 1872 of the Lieutenant-Governor of Bengal in Council (an Act to amend the law for the registration of jute warehouses and to provide for the establishment of an efficient fire-brigade).

The motion was agreed to.

IRRIGATION WATER-RATES.

THE HON'BLE MR. DAMPIER said the Council were aware that a project for canals in Orissa was undertaken first by a Company under a contract with the Secretary of State. A law was passed, Act VIII of 1867 of this Council, for the general working of irrigation and facilitating the recovery of water-rates, and the mechanism of the arrangement was that the Secretary of State was supposed to purchase from the Company all the water used for irrigation, and that the money due by those who used the water was due to the Secretary of State. The law made provisions such as these, making it legal to stop the supply of water if the persons who took the water failed to pay the rate due, prescribing penalties for the waste or theft of water, giving permission to the officers of the Company to enter upon any land in order to detect surreptitious irrigation, and so on. When the Company sold the irrigation works to Government, Act VI of 1869 of this Council was passed, which re-enacted the provisions of the former law and adapted them to the new state of things. It empowered the officers of Government to do the things which the officers of the Company were empowered to do under the former law. But from the preamble of the two Acts, it would be seen that they applied only to the supply of water in the districts and deltas of the rivers Mahanuddy, Byturny, and Brahmany, and their affluents, the rivers in Orissa. Irrigation works had, however, been opened with very great success in the district of Midnapore, and would be extended no doubt to other districts gradually. The existing law did not extend to Midnapore or other districts, nor was there given to the Government power to extend it. The object of the Bill he asked to introduce was simply to make the Orissa Irrigation Law applicable to other districts of Bengal to which the Lieutenant-Governor might think proper to extend it. Of the existing Acts, the second repealed certain sections of the first. He should propose to repeal both of those Acts, and to re-enact the whole law in one Act of a few sections, and such amendments as experience had shown to be necessary could be made at the same time. He had, therefore, now the honor to ask leave to bring in a Bill to provide for the recovery of rates for water supplied for purposes of irrigation in Midnapore and elsewhere.

The motion was agreed to.

REALIZATION OF ARREARS IN GOVERNMENT ESTATES.

THE HON'BLE MR. DAMPIER said that to explain the object of the next motion on the List of Business, he must review the history of the law on this subject. Regulation VII of 1799 was, as the Council were aware, passed as the result of much tentative legislation. Several Regulations had been passed,

and were successively modified, and at last the law settled down into Regulation VII of 1799. The provisions of that Regulation, with which the Council were now concerned, remained in force for more than sixty years, until Act VII of 1868 of this Council made a change, which rendered this Bill necessary. Section 25 of Regulation VII of 1799 contained the law as it then stood:—

"When lands are attached by a Collector, or other officer of Government, under the present Regulation, or become subject to a khas collection on the part of Government under any Regulation authorizing the same, or by any means come under the immediate management of the officers of Government, so that the rents are collected by them from the ryots, jotedars, dependent talookdars, under-farmers, or other descriptions of under-tenants, the Collector, in addition to the power vested in him, and in the officers employed under him, by Section 19 and the preceding sections of this Regulation, is authorized, without any previous application to the Dewanny Adawlut, to proceed against defaulting under-renters, of whatever denomination, from whom arrears of rent may be due, and their sureties, in the same manner as he is authorized by Section 23 of this Regulation to proceed against sudder farmers paying revenue immediately to Government, and their sureties, if he shall consider this mode of procedure more likely to be effectual in causing payment of the arrear due from them: and in such cases he is authorized to issue the process directed in Section 5 of Regulation XIV, 1793, on the report of the tehsildar, or other officer employed to make the collections, as in cases of arrears due from proprietors or sudder farmers whose revenue may be made payable to a tehsildar, or the tehsildar or other collecting officer may, in particular cases, where he may have reason to apprehend the elopement of the defaulter or his surety, himself arrest and convey him to the Collector."

The effect of this section was that the Collector might proceed against ryots in the same way as he might proceed against farmers of revenue. Briefly, it meant that the Collector might attach his holding, arrest him, place him in the custody of peons if he showed any inclination to settle, then send him to the civil jail to be kept there until he paid the amount due; even a tehsildar might arrest a defaulter and send him in to the Collector. The point to which he wished to draw the attention of the Council was that ever since 1799 the law had given the Government the power of levying arrears from its tenants without previous application to the Civil Court. That law having been in force for upwards of sixty years, Act VII of 1868 was passed by this Council, and Section 29 of that Act repealed Section 25 of the old Regulation. It was evidently the object of the Act to substitute the certificate procedure for the old procedure of arrest and keeping under *pyadahs*, and so on. But in re-enacting the provisions of the law, Act VII of 1868 was so framed that ryots who did not possess transferable tenures slipped out of it; the old law was repealed as regards all tenants, whether holding tenures of a transferable nature or not, and powers of realization were only re-conferred as regards those tenants whose tenures were transferable. Under the interpretation clause, arrears due from "tenures" only were "demands" within the meaning of the Act, and the definition of "tenure" under the Act included only all interests in land other than estates which, by the terms of the grants creating the same, or by the custom of the country, were transferable; so that the Act in no way applied to arrears due from tenants who had not a transferable right in their tenures. It was obviously inconsistent that the lower degree of tenants should be more protected in respect of the realization of the demands of Government than

those tenants who held the right of transfer. Therefore, in proposing this Bill, MR. DAMPIER only asked that the Government be restored to the possession of the power, exercised by it for nearly seventy years, of recovering arrears due to it from tenants who had no right of transfer, without going through the forms of a civil suit. The want of this power was much felt, because of late the policy of the Government had been to keep large estates under the management of the Government officers, instead of farming them out in blocks, and he thought that policy had met with success.

He had already that day described the certificate procedure, and would say no more than to ask leave to bring in a Bill for the realization of arrears of rent due from ryots other than tenure-holders in Government estates, by declaring such arrears to be demands within the meaning of Act VII of 1868 of the Lieutenant-Governor of Bengal in Council.

The motion was agreed to.

CALCUTTA MUNICIPALITY.

THE HONBLE MR. HOGG said the present municipal law of Calcutta was created under the provisions of Act VI of 1863 of this Council. This Act had been in work for over nine years, and on the whole it had worked satisfactorily. By it the Chairman of the Justices had the executive control of the municipal affairs of the town, and he had associated with him an influential body of European and Native gentlemen to assist him in the discharge of his duties. In the working of the Act during the last nine years many defects had from time to time been found to exist in the law, which had been amended by special legislation. Consequently we had now fourteen Acts by which the municipal government of the town was regulated. The Acts referred to were now in some instances difficult to interpret, and the provisions of all the Acts were not quite consistent; and it was thus difficult for the public to understand the rules and laws by which the Municipality were guided. It was now proposed to consolidate the Municipal Acts into one, and to take this opportunity to make some slight amendments which the practical working of the law had proved to be necessary.

The most important amendment required was one in connection with the water-supply, as the law now imposed obligations on the Justices which, under existing circumstances, they could not carry out. The water-supply works were designed for the supply of six million gallons daily, but unfortunately that quantity was not found to be nearly sufficient; the consequence was that, as the demand for water was in excess of the supply, the Justices were unable to keep up the pressure on their mains required by the Act, viz. a pressure sufficient to deliver water throughout the town at a height of fifty feet from 5 A.M. to 8 P.M. daily.

As the consumption of water was greatly increased, owing to defective fittings and careless waste, a great saving in water would be effected by relieving the Justices of the obligation of maintaining high pressure on their mains during the whole day, and he thought that this might be done without causing much inconvenience to the public.

However, he merely threw this out as a suggestion, as some other remedy might be found.

Besides the water-supply question, other amendments of a trivial character would be proposed, with the details of which he need not now trouble the Council. With these remarks he asked leave to bring in a Bill to consolidate and amend all the Calcutta Municipal Acts.

The motion was agreed to.

POSSESSORY TITLES IN LANDED ESTATES.

THE HON'BLE MR. DAMPIER moved for leave to bring in a Bill to provide for the compulsory registration of possessory titles in landed estates. In doing so, he said that the obligation on zemindars and proprietors of estates to register their names in the Revenue Office was nearly as old as the Regulations themselves. Regulation XLVIII of 1793 and the other Regulations quoted in Regulation VIII of 1800, as well as Regulation VIII of 1800 itself, prescribed that the Collector should keep up registers of landed proprietors. Section 21 of the last-named Regulation more distinctly imposed the obligation on the zemindars of reporting their succession. The section ran as follows:—

"The Collectors may be regularly informed of all future changes in the property of malguzary estates or lakheraj tenures within their respective zillahs for the purpose of entering the same in the prescribed registers. All persons succeeding to the property of any malguzary estate or lakheraj tenure, whether by inheritance, purchase, gift, or otherwise, are required to notify such succession, immediately after the same may have taken place, to the Collector of the zillah in which the estate or tenure succeeded to may be situated, and to furnish such information as may be necessary to enable the Collector to make the prescribed entries in the public registers."

The obligation to report to the Collector was to be enforced by such fine as might be imposed by order of the Governor-General in Council on a report of all the circumstances of the case being submitted to him.

It would be seen that this was a cumbrous procedure even in those days, when the chain of authorities between the Collector and the Governor-General in Council did not consist of so many links as now existed. Before the Collector could enforce registration or inflict any penalty, the whole of the details of the case had to be sent up to the Governor-General in Council. In 1837 the Board of Revenue represented that the provisions of the law were very laxly acted upon by the Collectors on the one hand and the zemindars on the other. The Collectors allowed *dakhil-kharij* cases to hang on their files, and such zemindars only as chose to do so reported their succession to the Collector. The Board recommended that this cumbrous mode of enforcing the penalty should be done away with; that the application should be enforced first by a summary fine to be imposed by the Collector, and, secondly, by imposing upon proprietors who had not registered their names the disability to recover rents by any legal process. The Government of India did not altogether agree in the appropriateness of the second of these measures, the imposition of the disability he had mentioned, and there the subject rested till 1852. The question was then again raised, and officers were consulted throughout the country. The opinions they gave contained almost every possible variety of view as to the necessity of

enforcing registration, the best mode of doing it, the amount of vexation and harassment which such a measure would entail, and as to the penalty by which it should be enforced. The Board were unanimous as to the benefits that would ensue from registration. But one member of the Board, Mr. Gordon, held that good as the result might be, they were not worth the vexation, trouble, and discontent which any such measure would cause. Mr. Ricketts and Mr. Currie, on the other hand, considered that the harassment and vexation were overrated, and that the advantages would very far outweigh the disadvantages of the proposed measures, and they submitted a draft Bill to provide for compulsory registration. But that was a very ambitious draft, one of its objects being to give greater security to titles. It went up to the Legislative Council of the Government of India, and there the measure was shelved, owing mainly to objections recorded by Sir Barnes Peacock. MR. DAMPIER would read to the Council a portion of that gentleman's Minute, and he begged them particularly to observe that the objections did not apply to the measure he was now asking leave to introduce. Sir Barnes Peacock wrote:—

"I do not thoroughly understand upon what grounds the majority of the Board of Revenue, Mr. Ricketts and Mr. Edward Currie, recommend the passing of the proposed Act for the registration of mutations, but I collect that they intend it to be a registration of rights, and not merely of the persons in lawful possession."

Here MR. DAMPIER begged to point out this radical difference between that measure and the one he was about to introduce. The Minute went on:—

"It is stated in the letter from the Secretary to the Board of Revenue of the 20th April 1852, that the Board are unanimously of opinion that the introduction of a correct system of registry would be attended with the best and most satisfactory results; and the Board observed 'that by rendering land a surer investment for money, it could not fail to give rise to an immediate increase in the value of landed property; it would for the same reason decrease the usurious interest at present demanded for money advanced upon land; it would facilitate, and in consequence diminish, the cost of obtaining sureties; it would tend to decrease litigation; and whilst for all these reasons it would not prove otherwise than acceptable to every honest, well-intentioned landed proprietor if unattended with undue inconvenience and expense, it would also be of assistance to Government in the administration of all matters connected with the fiscal, judicial, and police arrrangements of the country.' If it is intended that the registration shall be a registration of rights, it appears to me that the system proposed will entirely fail in its objects.

"If it is intended that any reliance shall be placed in the register by persons about to purchase land or to lend money upon the security thereof (and unless the register is to be so used I do not see how it can render land a surer investment for money), I think it will be worse than useless, as it will frequently record persons to be the owners of rights which do not belong to them, and may thus be made an instrument of fraud."

MR. DAMPIER would again repeat that he had read this portion of the Minute for the purpose of showing the Council that the objections which led to the project of 1852 being set aside did not apply to the measure which he was asking leave to introduce.

Then, in 1854, Mr. Sconce, Judge of Chittagong, irrespective of anything which had gone before, came up of his own motion, and asked the Government to pass an Act for the registration of the names of landed proprietors, and it seemed to MR. DAMPIER that this draft should form the best model for the one

which he proposed to introduce. Again, the subject was dropped until 1872, when the Board of Revenue, now represented by Mr. Schalch, again strongly pressed the necessity of passing such a Bill. His Honor the President read extracts from this letter at the last meeting of the Council, but Mr. Dampier would run over them again :—

"The Member in charge called on the several Commissioners to report whether or not the requirements of that section, as well as of Section 21 of the same Regulation (regarding notices of succession to estates), were generally observed; and from the replies to this call it would appear that the practice enjoined by both sections has in the case of the first altogether ceased, and in that of the latter is only observed whenever it may suit the parties to obey the law, and that the penalty for disobedience prescribed by the law is never inflicted."

Mr. Dampier had omitted to say that on Mr. Sconce's draft the Board, on being consulted, held a different opinion. They said that no doubt strong reasons had existed for such a measure, while the law required that revenue due to Government from landed proprietors should be levied by process against the person, but that the reasons had lost much of their weight since the law had been altered so as to provide that such arrears should be realized by sale of the estate, without reference to the proprietors as individuals. Mr. Schalch, however, had now written as follows :—

"Since that period the legislature of Bengal has imposed many new duties of importance on zemindars, and obedience to the law is, in most instances, to be enforced by pecuniary penalties, the levy of which is dependent on a knowledge of the persons in actual possession of the estates in question and responsible for the discharge of the duties imposed upon them. Under former laws similar penalties being recoverable by the sale of the estates themselves, it was a matter of comparatively little importance to know the person in possession; but since the passing of Act VII (B.C.) of 1868, such penalties, even when recoverable as arrears of revenue, can be levied only by the process of certificates having the force of decrees of the civil court for money, and consequently when the person in possession of the estate to which the discharge of the duties imposed by law attaches is not known, the recovery of the penalty becomes certainly a matter of great difficulty, and in most instances practically an impossibility.

"Under these circumstances, it appears to the Member in charge that it has now become absolutely necessary to enforce a registration of the names of the parties in *possession* of estates, in view to their being held the parties responsible for the discharge of the various duties which the law imposes on them as proprietors; and the Member in charge is of opinion that an endeavour should be made to devise a practical scheme for the purpose."

As to Sir Barnes Peacock's objection, Mr. Schalch said—

"But such objections could not, the Member in charge thinks, be urged against a law the object of which would be solely to determine summarily the question of possession, in view to fix the responsibility of persons holding actual possession of estates for the discharge of certain duties imposed upon them by the existing law, which would leave such decisions open to the final determination of the civil courts, and would in no way interfere with the existing law in regard to the prosecution and decision of all questions of right and title in the civil courts."

The Government had now very carefully considered this subject, and had come to the determination that a law of this kind was required, and that the Council should be asked to pass the measure. The Council were aware of the difficulties and vexations to which the ryots were exposed where they had to

pay rent to a number of joint shareholders in estates. The Government had very carefully considered whether it would be desirable to enact that every proprietor should not only register his succession to possession, but also the share to which he had succeeded. On mature deliberation, the Lieutenant-Governor had come to the conclusion that this could not be done. It was hoped that another measure, to be presented to the Council hereafter, would provide that relief to the ryots which would have been afforded by the registration of shares. In some cases it would be very difficult, even if it would be possible, to register succession with specification of shares; for instance, some places in which the *Mitakshara* law was in force.

The existing law already provided the procedure which would fit into the measure which was now proposed. Act XIX of 1841 provided that whenever a person might leave "property, movable or immovable, it shall be lawful for any person claiming a right by succession thereto, or any portion thereof, to make application to the Judge of the court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended."

The Judge was then to determine summarily the question of possession subject to a regular suit. The Act gave the Judge power to make arrangements for preventing waste of the property pending the decision of the suit, either by taking security from the party in possession, or by appointing a Curator, who might be the Collector. Section 18 of the same Act provided that the decision of the Judge upon the summary suit under the Act should have no other effect than that of settling the actual possession, but that for this purpose it should be final, and not subject to any appeal or order for review. If the measure MR. DAMPIER proposed were to vest the Collector with jurisdiction to decide summarily the question of *right to succeed* to an estate under any circumstances, as some of the draft Bills which had been proposed were intended to provide, it would be necessary to bar the jurisdiction of the Judge under Act XIX of 1841; for it would never do to have the Moonsif trying summarily a question of right which the Collector had just decided summarily; the Moonsif's decision again being followed by a regular suit to reverse his decision. MR. DAMPIER proposed to follow the model of Mr. Sconce's draft of 1854. That draft was in this wise.—Application was to be made to the Collector by any person claiming to have succeeded. If there was no opposition, the Collector, after giving due notice, would admit the applicant to registration. If his succession was contested, the Collector would try whether either party was actually in lawful possession on a colour of right, and, if so, the Collector would register accordingly. If he should find that neither party was in such possession, he would not make any registration, but (instead of simply throwing out the application for registration, as was now the practice,) he would certify to the Civil Court that such a case of disputed or uncertain succession had come to light, and would call upon that Court to try the case under Act XIX of 1841; whereupon the Judge would be bound to proceed exactly as if an application had been made to him by one of the parties under Section 1 of Act XIX of 1841. To provide against waste during the pendency of the suit, MR. DAMPIER would

authorize the Collector to exercise all the powers with which the Act vested the Judge in that behalf. To put it briefly, the Collector would decide the question of possession if no opposition was made good. If it were otherwise, he would still carry out the law for keeping his register correct as far as lay in his power. Instead of merely refusing to comply with the application for registry and leaving it to the parties to settle the matter as they might think best, he would say:—"I cannot decide this case on possession, and I call on the Civil Court to decide it by the summary procedure which the law has provided for the summary trial of questions of right." That was the scheme of the measure as far as it had already been sketched out, and he hoped that the Council would allow him to introduce the Bill.

The motion was agreed to.

INSPECTION OF STEAM-BOILERS AND PRIME-MOVERS.

The HON'BLE MR. HOGG said that steam-boilers and prime-movers, working in Calcutta and the suburbs of the town, were now brought under inspection by Act VI of 1864 of this Council. It was found from experience that the use of steam machinery was greatly on the increase, and that native proprietors employed coolies unacquainted with the working of machinery to take charge of them. This matter had been brought to the attention of Government some time back, and they consulted the leading bodies and individual proprietors of steam machinery as to the expedience of amending the law so as to empower the Lieutenant-Governor to pass such rules as it might think fit for testing the qualification of the persons to be placed in charge of steam-boilers. The preponderance of opinion was very much in favour of amending the Act. In fact all the European firms and persons, and also the public bodies consulted, were of opinion that some such measure as was proposed was urgently required. The Native gentlemen consulted, however, did not seem to admit the necessity of the proposed legislation; they urged that now that the use of steam machinery was so much on the increase, it was inexpedient to restrict the use of it by calling upon the proprietors of such machinery to put qualified Engineers in charge; they urged that immediately an examination was required there would be a considerable rise in the wages of the managers of engines. MR. HOGG concurred with the Native gentlemen in question, that it was not at all expedient that we should impose an unnecessarily stringent examination. But he could not admit that because the use of steam machinery was greatly on the increase, therefore legislation should not be resorted to in order to protect life and property in the town and suburbs of Calcutta. It was not intended, he was sure, that the test should be high, but that the Inspector of steam-boilers should be bound to ascertain that the person to be placed in charge should have practical experience of the management of steam machinery. Such a test was not only desirable, but absolutely necessary, when the use of steam was resorted to in so large and important a city as Calcutta. He should therefore ask for leave to bring in a Bill to amend Act VI of 1864 of the Lieutenant-Governor of Bengal in Council (an Act to provide for the periodical inspection of steam-boilers and prime-movers attached thereto

in the town and suburbs of Calcutta), with the view of enabling the Lieutenant-Governor to pass such rules as he thought fit for testing the qualification of persons to be placed in charge of steam-boilers, and to prevent unqualified persons being so placed in charge.

The motion was agreed to.

SURVEYS AND BOUNDARY MARKS.

The HON'BLE MR. DAMPIER said that before touching upon the next motion which stood in his name, he might be allowed to give a little relief to the strain which he had put on the patience of the Council by saying that he would not proceed on that day with the last of the measures on the list regarding the law of Butwarrah, and therefore the present was the last Bill with regard to which he should have to ask their attention. He asked leave to bring in a Bill to provide for the execution of surveys and for the erection of boundary marks. The Council were aware that the revenue survey of the districts of Lower Bengal had been completed; but the survey of the districts of Hooghly and Midnapore had been condemned. Hooghly had since been resurveyed; of Midnapore about half had been surveyed and half remained to be done. By the revenue survey of Bengal, in all save a few exceptional districts every acre of land had been assigned to the revenue-paying estate or lakhiraj tenure to which it appertained; every village boundary had been demarcated, some being settled after elaborate inquiries. The results had been carefully and scientifically recorded in registers and maps. Unfortunately there had been one omission, which went very far to detract from the benefits of the survey. The boundary lines, after having been demarcated, after having been settled judicially, had not been marked on the ground by any permanent pillars, and the result was that the boundaries could not afterwards be identified with any certainty. The officers of the professional branch of the survey had persistently and consistently urged on the Government what advantages were being lost by not securing the boundaries by permanent marks as soon as they were surveyed. Colonel Thuillier had said:—

"It is most difficult, if not altogether impossible, for any one, either professional or civil, to identify and trace out boundaries on the ground from the old maps, or to settle disputes, with any degree of certainty where there are no natural boundaries."

The Council would understand that the difficulty consisted in re-laying on the field from the map any given boundary line or point which had once been laid on the field, and then represented on the map. If no marks for identification were left on the ground, it was most difficult to recover the exact boundary with the help of the map only at a future time. Sir William Grey had written in 1868:—

"The Lieutenant-Governor was aware that many cases had occurred in which Revenue officers had found considerable difficulty in identifying on the ground the tri-junction points shown on the map, and that occasionally this was the subject of obstinate dispute. While considering it unnecessary to go to the expense of erecting pillars or platforms as a matter of course at every bend of a boundary, or at every tri-junction point, he thinks that a certain

number of such marks would be advantageous. Colonel Thuillier advocated even a few pillars in each district to serve as leading points of departure in any investigation."

The Council were aware that where one point even was precisely identified, the professional surveyor would be able without difficulty to lay down the boundary from that starting point. The letter of the Government of Bengal went on to say:—

"And this view was also held by Colonel Dickens in paragraph 27 of his report on the reorganization of the Survey Department, where he wrote:—'It is not necessary to have the points of tri-section of boundaries marked by permanent pillars or platforms; but a sufficient number should be constructed in all cases in which these cannot be easily fixed by reference to existing permanent buildings.'

"With advertence to these views the Lieutenant-Governor recommends that in future surveys permanent boundary marks be constructed at selected tri-junction points of villages, and that the selection of these points should be left entirely to the discretion of the professional revenue surveyor."

The Government of India at once accepted this view, and not only accepted it, but had very urgently pressed it on the Government of Bengal.

It was obvious that the landed interest was the one which benefited directly by the survey and demarcation. Accordingly in every other part of India the cost of erecting and maintaining boundary marks was thrown upon the land. In 1869 the Government of India wrote:—

"The reports furnished by the Local Governments and Administrations shew that Lower Bengal is the only province in which no measures have been taken for securing the permanent marking of village boundaries; everywhere else masonry platforms or pillars are built to mark triple junctions or disputed boundaries, and the work both of erecting and maintaining them is carried out at the expense of the landholder."

Thus more than six years ago the Governor-General in Council, in concurrence with Sir William Grey, urged the introduction of such a Bill as was now proposed. Different circumstances led to its postponement from time to time, but the soundness of the principle had not during that time been called in question. Sir George Campbell held a strong opinion on the waste of power and expense which had occurred through not securing boundary marks. The last postponement of the measure was on account of the famine; and now a letter, as His Honor told the Council at the last meeting, had been received from the Government of India declaring that the Governor-General in Council had most decidedly made up his mind to the adoption, in future operations in Bengal, of the same system which prevailed in all the other provinces, and that the interest which benefited by the measure, and not the general tax-payer, should pay for it.

Sir William Grey wrote in the same letter—

"But if the boundary marks be erected on the principle now proposed, it is evident that they would be for the general benefit of all landholders in the neighbourhood; it would not be equitable to charge the cost of erecting each platform entirely to the zemindar or zemindars between whose villages it might chance to be erected. The fairest arrangement would probably be to pass a law authorizing the Collector to erect such marks as may be considered necessary, and to call on the landholders to erect them if necessary, or to assist in erecting them, in the first instance at the cost of Government; the aggregate cost incurred in constructing all the marks of one season being made recoverable as an arrear of revenue from

all the landholders whose lands are included within the operations of the season, in proportion, perhaps, to area. Some similar arrangement may be made for the preservation of the marks after their first construction. The details will be best considered when the Bill is introduced."

The Government now proposed to spread the incidence of the cost over more interests even than Sir William Grey did; it proposed that the owners of land, and those having beneficial interests in land, the holders of all tenures (exclusive of the ryots who had only rights of occupancy), should contribute to the cost of those works from which they would derive benefit. MR. DAMPIER would read to the Council two sections of the Madras law which he proposed to follow. Much must be left to the Select Committee to decide; but roughly speaking he thought the Council might go on the lines he had described. Section 2 of the Madras law provided—

"It shall be lawful, within the said Presidency, for a Collector of land revenue, or person exercising the powers of Collector, or for any Revenue Settlement Officer, and also for any other officer appointed by the Government for the purpose, whenever he may be of opinion that such demarcation is necessary for the prevention or adjustment of disputes (or for conducting and perpetuating a survey or a settlement of land revenue), to fix the boundaries of fields, holdings, estates, or villages, and to require the owner or occupant of the field, holding, or estate, or the headman (by whatever name designated) of the village, to clear the boundary line where overgrown with jungle, and also to set up, form, and maintain boundary marks of such materials, and in such number and manner as may be determined by such officer under the direction of the Board of Revenue, or of the Director of the Revenue Settlement, as the case may be, to be sufficient to distinguish the limits of the field. holding, estate, or village."

Section 6 of the same law was as follows:—

"In default of the owners or occupants of the fields, holdings, estates, or villages complying with such requisition, the officer may give directions for the erection and repair of the necessary boundary marks, the cost of which shall be equitably apportioned on the fields, holdings, estates, or villages which they serve to distinguish, and shall be charged to the persons possessing a right of ownership or occupancy in such fields, holdings, estates, or villages, in such manner as such officer aforesaid may consider just, and shall be levied in the same manner as arrears of land revenue."

That was the scheme of the Bill which MR. DAMPIER proposed to introduce into this Council.

He would remind the Council that although the Bill would enact principles of general application, its operation would be extremely limited in Bengal

The Government had scouted the idea of going over the old ground which had been already surveyed. It was to be regretted that boundary marks had not been put at the time, but it would be altogether out of the question to go over the districts again for the purpose of erecting them.

In all future surveys, however, advantage would be taken of the provisions which it was now proposed to enact; but these surveys, as far as was now contemplated, would be very local, and for special purposes only; certainly so in the permanently settled tracts. For instance, about half of Midnapore remained to be done. The Government of India had agreed to advance the money for the erection of pillars there, to be recovered after the Bill had been passed. Then the survey of the Dearahs or alluvial lands of the Ganges below Kooshtea was going on, in the course of which boundary marks should certainly

be permanently fixed on the edge of the mainland which was safe from the action of the rivers; and these would serve in future as starting points for re-laying the boundaries on the Dearahs which were liable to be washed over.

Then, it was proposed to undertake the survey of the large Government estate of Khoorda, in the temporarily settled district of Pooree, in anticipation of the resettlement, which would be due four or five years hence; and pillars would be put up there. Where the Government was landlord, it should have its share of the expense, as well as the tenure-holders.

The opportunity of this Bill would be taken to declare the rights of Government to order a survey to be made. The law was somewhat hazy on that subject, and surveys had hitherto been made under the authority conveyed by the settlement law, as if the survey operations were part and parcel of a settlement; but in permanently settled estates, at any rate, that law could not be applicable. It was therefore proposed to enact specifically that the Government should have the power to order a survey wherever it thought necessary. With these remarks, he moved for leave to bring in a Bill to provide for the execution of surveys and for the erection of boundary marks.

The motion was put and agreed to.

PARTITION OF ESTATES.

The Hon'ble Mr. Dampier postponed the motion for leave to bring in a Bill for the repeal of Regulation XIX of 1814 (a Regulation for reducing to one Regulation, with alterations and additions, certain Regulations respecting the partition of estates paying revenue to Government), and to make better provision for the partition of estates paying revenue to Government.

The Council was adjourned to Saturday, the 9th January 1875.

Saturday, the 9th January 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble V. H. Schalch,
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble Rivers Thompson,
The Hon'ble H. L. Dampier,
The Hon'ble Moulvie Abdool Luteef, Khan Bahadoor,
The Hon'ble Baboo Juggadanund Mookerjee,
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Doorga Churn Law,
The Hon'ble F. G. Eldridge,
and
The Hon'ble Kristo Das Pal.

REALIZATION OF ARREARS IN GOVERNMENT ESTATES.

The Hon'ble Mr. Dampier moved that the Bill for the realization of arrears in Government estates be read in Council. He said that at the last meeting of

the Council he had the honor to ask permission to introduce this Bill. The Bill had since been prepared, and had been the proper number of days in the hands of hon'ble members. He therefore now moved that the Bill be read in Council.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Mr. Schalch, the Hon'ble Baboo Kristo Das Pal, and the Mover.

PARTITION OF ESTATES.

The Hon'ble Mr. Dampier moved for leave to bring in a Bill for the repeal of Regulation XIX of 1814 (a Regulation for reducing to one Regulation, with alterations and additions, certain Regulations respecting the partition of estates paying revenue to Government). In doing so, he said he was obliged to take the Council back to the legislation of 1793. Hon'ble members were aware that the permanent settlement was concluded for very large estates or tracts of land. Whole pergunnahs, consisting of what were then called several mehals, were included under one engagement for the payment of a certain amount of revenue, and all the lands so included were jointly liable for the due payment of that item of revenue. In order to give the greatest possible value to the property which had been so arranged, the legislators of the day provided every possible facility for those who were jointly responsible, and whose property was jointly responsible with that of others, to separate their interests and their liability. That might be called the first butwarrah legislation. The joint interests which were liable for the same item of Government revenue might be roughly divided as of two classes. In the first class were coparceners in an entire estate, who held the whole on joint tenancy with others; who had a certain interest in every field and in every clod of earth throughout that estate. They were known as ijmali shareholders. The second class consisted of persons who were in possession of certain specific villages or mehals which represented their interest in the common estate. As regards coparceners whose interests were represented by specific lands, the Regulations of 1793 provided that they might apply to have their interests and liabilities separated by the apportionment on the specific land belonging to them of a specific amount of the common jumma. With regard to the ijmali shareholder, who was a common tenant of the whole area of the estate, the Regulations provided something more. He might insist on a certain quantity of land being separated from the rest as representing his interest in the estate, and then on a proportionate amount of the common jumma being settled upon the lands which were in future to constitute his sole estate. The Regulations contemplated and encouraged this separation of interests being made by the parties themselves. But whereas the Government revenue was at stake, it was provided from the first that they should do nothing which jeopardized that revenue in any way; and every partition which they proposed to make had to be considered and approved by the revenue authorities. *The* one great principle then laid down, and in full force up to this day, was this, that whenever any land which had up to that time been jointly responsible with other land for one item of the land revenue was separated and formed into a