separate estate having its own responsibility for a certain portion only of that revenue, the jumma should be proportioned according to this rule, viz. the portion of the jumma which was settled on each portion of the property into which the original estate was divided should bear the same proportion to the actual produce of the land as the entire joint jumma had borne to the actual produce of the entire lands which were originally contained in the whole estate. That rule was a perfectly sound one, and had existed in full force up to the present day.

The privilege of obtaining such separation of interests in the land as MR. DAMPIER had described was extended to those who became owners of portions of estates which were sold by the Government for realization of arrears of revenue; for in those days if an estate fell into arrear, the whole of it was not sold, but only such portion as was necessary to make good the arrear. The privilege was also extended to portions of estates transferred under decrees of the Civil Court by sale or other process; but this provision was subsequently, in 1846 he thought, repealed. Thirdly, the privilege was extended to all proprietors who, by private arrangement, bought shares of estates. Regulation VIII of 1793 again recognized the right of the sharer to apply for separation; Regulation XXV (all these Regulations were passed on the same date) laid down rules for carrying that out; Regulation XV of 1797 prescribed the rate of fee to be levied by the Collector in apportioning the jumma, to be a quarter per cent. on the annual revenue. Then came Regulation VI of 1807. He would ask hon'ble members to observe here that the security of the Government interest throughout was considered paramount. Before any other question was the question of the Government revenue. Here was the preamble of the Regulation:—

"Whereas under the provisions contained in Regulations I and XXV of 1793, persons holding shares of estates paying revenue to Government are entitled to a separation of such shares; and on the completion of the butwarrah by the officers of Government, and on the confirmation of it by the Governor-General in Council, to hold the same as distinct mehals, subject to the just proportion of the public assessment: and whereas considerable loss and inconvenience have been experienced in the collection of the public revenue from the too minute subdivision of landed property," it was enacted that estates might be divided down to a jumma of five hundred rupees.

The restriction did not long remain in force however. Regulation V of 1810 did away with it, and allowed partitions to be made of the very smallest estates. The preamble of that Regulation ran thus:—

"Experience having shown that the existing rules for the division of landed property paying revenue to Government are in many respects defective, inasmuch as they do not sufficiently provide against the artificial delays and impediments which are frequently thrown in the way of the process of the division by some one or more of the parties concerned, who may be interested in so doing, or (as often happens) by the officer employed in conducting the details of that process; nor effectually secure Government from the loss resulting from fraudulent and collusive allotments of the public revenue on the shares of estates when divided; and there being moreover reason to believe that the restriction which has been laid on the partition of small estates by Regulation VI of 1807 has been, and is, the cause of considerable injury to numbers of individual sharers in such estates, thereby inducing a sacrifice of private rights, which the degree of public inconvenience arising from the minute division of landed property does not appear to be of sufficient magnitude to justify

or require : with a view therefore to remedy these defects, to expedite the division of landed property paying revenue to Government, when duly authorized by the provisions of Regulations I and XXV of 1793, and their corresponding regulations for Benares, and for the ceded and conquered provinces ; with due regard to the permanent security of the public revenue, whatever be the amount thereof ; and to obviate the injury to which individual sharers are liable in the case of a joint estate being brought to sale for balances which may have arisen from the default of their coparceners during the interval while the process of division is pending, the following rules have been enacted."

So that by this Regulation there was no limit to the minuteness of the estate which might be subdivided into a number of other estates ; and this Regulation also provided certain provisions to protect the share of the applicant from sale in the case of other sharers falling into arrears during the course of the butwarrah.

Up to 1811 provision had been made to protect the Government revenue from the effects of fraud and error, the provision being that if within three years after the conclusion of the partition fraud or material error was discovered affecting the Government revenue, the Governor-General in Council might annul the proceedings and order the reallotment of the jumma on the two estates, apportioning the jumma for which each portion should be liable in accordance with the relative proportion borne by its produce. Subsequently it was found that the period of three years was not enough to bring to light these cases of fraud and error; and therefore, by Regulation XI of 1811, the period was extended to ten years, and that was the law still. The next Regulation was XIX of 1814, which it was now proposed to repeal. The preamble of that Regulation said :—

" Whereas difficulty has, in many instances, been experienced in providing fit persons to undertake the partition of estates paying revenue to Government, from the inadequacy of the remuneration prescribed in Regulation V. 1810, in some cases—particularly in instances when measurement of the land becomes necessary ; and whereas it has been deemed expedient to make provision for defraying the expense attendant on such measurement, and for augmenting the remuneration to the ameen appointed to make the partition, in cases where the Board of Revenue or Board of Commissioners may consider such augmentation equitable; and whereas it will tend to the public convenience to reduce to one Regulation certain Regulations at present in force respecting the partition of estates paying revenue to Government, the following rules have been enacted."

Mr. Dampier would, shortly as he could, lay before the Council the main provisions of that law, because it would be understood that it was not proposed to ask the Council to upset the general scheme upon which butwarrahs were effected under that law, but to make modifications and improvements in it, and therefore it was necessary that hon'ble members should have before them an account of the existing scheme. Regulation XIX of 1814 then provided that the Collector was to superintend the partition and to apportion the jumma, the parties to the partition paying the expense; that any proprietor was entitled to separation if no objection was made by the other proprietors to the effect that the interest of which the applicant declared himself to be possessed was greater than that to which he was entitled. But if any such objections were made, the partition could not proceed until the applicant had

made good in the Civil Courts his claim to the interest which he professed to possess. Under this Regulation two estates once separated might be united again into one. The lands assigned to the separated estates into which the parent estate was to be divided were to be as compact as was possible with reference to their circumstances and the general fairness of the division. The public revenue was to be assessed according to the principles of the Regulations of 1793. Every local circumstance affecting the value of the land was to be taken into consideration, such as the advantages derived from embankments, reservoirs, &c.

The dwelling-house of each sharer was to remain in his possession. If it fell within the estate of another shareholder, it was still to remain in the possession of the original occupant, who, with regard to it, would be in the position of a tenant to the zemindar within whose estate it might fall in the division. Rules were made as to the benefits to be enjoyed from water-courses, embankments, &c., by each of the newly-formed estates. The Collector was to appoint a creditable ameen to make the partition. Fees fixed at a certain percentage of the jumma were assigned to him by this law; but the remuneration was found to be insufficient, and subsequently the revenue authorities were allowed to fix the ameen's fees at their discretion.

The Collector was to impose a daily fine on any proprietor who tried to cause delay by throwing impediments in the way of the partition. The Collector was to give copies of the partition papers to each of the sharers in the estate. If all the sharers agreed to the partition, and no objection was made, he was to place the parties in possession and report his proceedings to the superior authorities. If any objection was made, the Collector was not to put the applicant in possession, but to send the papers to the Board of Revenue, whose decision was final. Division of estates and mehals might be made amicably or by means of arbitration; but the Collector was to satisfy himself that the allotment of the jumma was fair and safe as regards the Government revenue, just in the same way as he had to satisfy himself as to the proposals made by an ameen. Where an estate was divided into two equal shares, the division having taken place, lots were to be drawn by the parties to decide which share should belong to which proprietor. Then came the provision that within ten years after partition the Governor-General in Council, in case of the discovery of fraud or material error, might annul the allotment of jumma, but not the partition of lands. The Governor-General in Council could not interfere with the partition of the land, but only, in the interests of the Government, with the amount of jumma assessed on the respective portions into which the estate had been divided. The joint proprietors were to be held jointly answerable for the entire revenue of the parent estate until each was put in possession of his separate share; but with this modification, that as soon as an estate was declared by the Collector to be under butwarrah, a separate account was opened for the applicant's share, and payments of revenue made on account of that share were separately entered. In the event of the other sharers falling into arrear, the estate would be sold, saving the applicant's share. But one very important question regarding the construction

of the law had arisen here. The law did not say whether, in the event of the defaulting sharer's share not realizing the full amount of the revenue due, the applicant's share should then be liable to sale or not. That was a very important point.

After Regulation XIX of 1814 came Act XX of 1836. It was found that there was no provision of law authorizing the Collector under any circumstances, after once an estate had been declared under butwarrah, to strike the butwarrah case off his register, even if the parties agreed to this course. Therefore Act XX of 1836 enacted that while a butwarrah was in progress, the Board of Revenue might give six months' notice of their intention to quash a butwarrah. If no objections were made by any party during that time, the Board might direct the butwarrah to be quashed, and then all things would thereafter go back to the *status in quo ante*, to the joint liability of all the shares for the entire joint jumma of the estate.

Such was the present state of the law, and under it a large number of butwarrahs had been made, especially in Tirhoot and Cuttack. In Tirhoot MR. DAMPIER believed that not less than three thousand butwarrahs had been effected within the last eleven years. So long ago as 1848 the defects in the law and the difficulties experienced in carrying it out were prominently brought to notice by Mr. Alexander Forbes, the then Collector of Rajshahye. Inquiries were then made, and from that time to this it had been admitted that amendments in the law were much required both for the purpose of devising remedies and the determination of certain important points which the present law left in doubt. Since Mr. Forbes wrote, there had been great changes in the law. He wanted to do away with butwarrahs unless made by the proprietors themselves, and he wished to provide security to each proprietor against the default of his co-sharers by opening a separate account independently of the question of partition of land. Hon'ble members were aware that this proposal had been absolutely carried out by Act XI of 1859. Independently of any question of dividing the land, any proprietor might now ask the Collector to keep the account of his share separately from that of the other sharers in the estate; and after such separate accounts had been opened, if the revenue due from the estate was not paid up, that share only which was in arrear would be made primarily liable and sold. The shares not in arrear would not be sold unless the amount realized by the sale of the defaulting share was insufficient to clear off the arrear due. It was supposed that when Act XI of 1859 came into force, the number of partitions would fall off, as that Act would give shareholders the protection which they required against the default of their coparceners; but broadly speaking the expected result had not ensued, and it appeared that, especially in districts in which butwarrahs had been in vogue, the shareholders sought to have their lands distinctly told off to them and themselves freed from all connection with, and interference from, their more powerful coparceners. Thus it was found necessary to keep up the system of the butwarrah law, and it having been decided to keep it up, the Government had, after many years of discussion, resolved, if possible, to make such amendments in the law as experience

had shown to be necessary. In 1852 the Board of Revenue, after receiving reports from the Commissioners consulted upon Mr. Forbes' letter, submitted a draft of an Act. The legislation for Bengal was then in the hands of the Legislative Council of the Governor-General.

Not only in Lower Bengal had the necessity for amending Regulation XIX of 1814 been felt. In 1863 Mr. Harington introduced into the Governor-General's Council a Bill for the North-Western Provinces, repealing Regulation XIX of 1814, and making the necessary reforms. He then stated that he had originally meant his measure to apply to the whole of the Presidency of Bengal. But as a local Council was about to be established for the Lower Provinces of Bengal, he thought it would be preferable that legislation for the provinces under the Lieutenant-Governor should be left to that Council. The subject had since continued to receive attention. In 1864 a very elaborate note was recorded by Mr. Bruce Lane, then Junior Secretary to the Board of Revenue, bringing together the whole of the discussions on different points which had taken place at various times. Mr. Lane was peculiarly well qualified to deal with the question, having then just held the post of Collector of Tirhoot, which district might be termed the mother of butwarrahs.

Two years ago Mr. Alonzo Money, as Member of the Board of Revenue, had caused the draft of an Act to be prepared, and this had been under the consideration of the late Lieutenant-Governor, when the famine came in and stopped all such proceedings.

In order to show the strong views which some officers held as to the mischief done by the existing law, MR. DAMPIER might read to the Council some passages out of Mr. Forbes' letter. Hon'ble members would better appreciate the full force of those passages when they remembered that five and twenty years ago officers were not in the habit of expressing themselves on official matters in strong language of this sort:—

"As at present conducted, I can only characterize butwarrahs as the most disgraceful system of gambling that the world perhaps has ever witnessed. The applicant for butwarrah, however small his share in the estate may be, challenges his coparceners to the game, and Government immediately obliges them all to take a hand, and enforces the payment of the stakes by dispossessing the losers and giving possession to the winner. During the game, however, Government only interferes for the purpose of punishing delay or interruption in playing, by imposing daily fines, which are awarded to the dealer, to whose cheating there is no check but an oath at the commencement."

The Ameen, of course, was the person referred to as the dealer. The Board of Revenue were a good deal scandalized by the language of that letter, but it was considered to be an admirable letter, and action was taken upon it. MR. DAMPIER had said that the alteration of the law was required for two purposes. The first was an interpretation of several important points which the present law left doubtful and open to discussion; the second was the introduction of such improvements in the procedure as experience had shown to be necessary, especially in order to expedite the proceedings.

The following were a few of the main points which had been the subject of much discussion, because the law was open to two interpretations.

The Hon'ble Mr. Dampier.

Were proprietors, whose names were not recorded as such, entitled to apply for butwarrah and to bring forward objections to applications made by others?

Another question was very familiar to officers who had served in Tirhoot under the name of the "mushtavah" lands difficulty. Estate A was liable for one item of revenue; estate B for another item; they were perfectly distinct estates, but unfortunately a tract of land, C, which belonged jointly and in common tenancy to both the estates, was held "mushtavah" between them. There had been much discussion as to whether, under such circumstances, a butwarrah of either estate A or estate B could be made on the application of one of its coparceners; and it had been ruled that the law did not allow the proprietor of one estate to force the proprietors of another estate to take any part, however small, in partition proceedings, and that therefore no butwarrah could take place in the existing state of the law. In fact there was no practical difficulty in the way of making the butwarrah of one estate under such circumstances. If a few fields were held jointly in two estates, one of which was brought under butwarrah, there would be no great hardship on the owners of the other estate not under butwarrah, to oblige them to divide that joint land between themselves and the owners of the estate under butwarrah. It was the form of the law which prevented that being done.

Then as the law stood, there was doubt whether the Collector had the power to levy from all the proprietors of an estate their quota of the butwarrah expenses as the money was required. Some thought that the Collector could not legally levy anything under the law, except from the applicant, until after the butwarrah was completed; others were of opinion that he could call upon each proprietor to pay his quota of the butwarrah expenses as they were required.

The most difficult of all the points of law arose out of under-tenures created in estates. Suppose the case of a sharer in common tenancy, who had a four-annas interest throughout every blade of grass and every clod of the soil in an estate, letting his share in putnee. As far as the other proprietors were concerned, this would have the effect of substituting the putneedar for the putneedar's lessor, *i.e.*, the putneedar would have a right to collect four annas out of every rupee payable by each ryot on the estate. Things being so, the lessor applied for a butwarrah of his share; he asked to have specific lands, yielding a quarter of the assets of the whole estate, separated from the rest, and assigned to him alone, as representing his interest in the estate. In such a case, was the putneedar to follow his lessor? Was he to be deprived of the right, which he acquired by contract from his lessor, of collecting four annas out of each rupee of every ryot's rent, and to be told "your putnee rights are now confined to the particular quarter of the estate which has been allotted to your lessor; you must not come near the remaining three-quarters of the estate." Or, was the applicant to be refused separation of his share on the ground that the putneedar was entitled to retain his right to collect four annas from every tenant on the estate. It was obvious that this was a most difficult question, but it was better that it should be decided one way or the other by the law itself.

Then there was another question which had been the subject also of consideration both by the executive and judicial authorities, and of conflicting decisions. It was the case in which one of the proprietors of the estate was neither an ijmali shareholder, holding in common tenancy throughout the whole estate, nor the holder of specific lands representing his interest in the estate; but his interest was represented by a fractional undivided share in one or two out of many villages which the estate comprised. Was such putneedar of a joint undivided sharer in a specific portion only of the estate—and not in the whole—entitled to apply for a butwarrah or not? At one time the ruling was that he *was* entitled to butwarrah; at another that he was not entitled, and there had been much litigation on the point. There would be no difficulty whatever practically in making the butwarrah if the law allowed it; but the law did not allow it, and MR. DAMPIER thought there was no reason whatever why a sharer so situated should not have the same privilege as other proprietors.

Another question was, where a sharer had refused to engage for the payment of the revenue assessed on his estate, was a proprietor who was out of possession on this account entitled to apply for butwarrah?

Then it was doubtful whether, in the event of an arrear not being realized by the sale of the defaulter's share, the protected shares were liable to sale. In dealing with this question, the Committee would of course bear in mind the provisions of Act XI of 1859, authorising the opening of separate accounts of the revenue paid in by different sharers; and the Bill would be fitted into the provisions of that law.

Then there was the question as to whether it was, under any circumstances, legal to strike off the file a butwarrah which had once been brought on to it, otherwise than under the provisions of the Act of 1836.

It was held that, however physically impossible it might be to effect a butwarrah in accordance with the law, no case could ever be struck off except under the provisions of that law. If any one objected to the striking off, the butwarrah must remain on the file indefinitely without making progress, which was absurd.

Another very serious point for consideration was whether any limit should be imposed, for the safety of the Government revenue, as to the size of the estates to be created by butwarrah. MR. DAMPIER had shown that Regulation VI of 1807 had asserted the right of Government to impose a limit, but that the restriction was soon removed. The last proposition made was a compromise, that an estate which did not pay more than ten rupees jumma should not be divided by butwarrah unless the proprietor had pledged himself to redeem the revenue charged on the lands which might be assigned to him by the payment of a lump sum.

These were some of the doubtful points which would require consideration. There were also certain other points in the working of the law which required amendment.

The mechanism of the existing law was such that it was practically in the power of any proprietor to throw obstacles in the way of a butwarrah being completed. It was only lately that a butwarrah came under MR. DAMPIER'S

notice, which had been fifty years on the file. Nine, ten, or even twenty years, was no unusual time. If at any moment any sharer wished to prevent his co-sharer from obtaining the separation of his share, which was the object of his application for butwarrah, he had only to present a series of frivolous objections to the Collector. MR. DAMPIER could not put this question of delay in a more forcible way than Mr. Forbes had done in the letter which had already been referred to. In paragraphs 23 to 25 Mr. Forbes said :—

"Fines may be imposed on the zemindars for not delivering papers; but the zemindars may easily avoid these fines by giving papers that are utterly useless, whilst they may protract the business to an endless duration by prohibiting the ryots to attend and point out the land.

"If proof be required of this, I beg to refer to the heaps of *urzees* that immediately follow the appointment of a butwarrah ameen. The Collector must examine all these *urzees*, hold a proceeding on them, and submit them to the Commissioner with an English report. The Commissioner then returns them with an English letter. The zemindar in the meantime has been watching the correspondence, and complies just at the time that the coercion was about to operate. The papers are then even, perhaps, found to be incomplete or useless, or the *Rajoonuvees* affects ignorance of everything relating to the estate, and the correspondence between the Ameen, Collector, and Commissioner commences over again. In all this it is evident that the Collector must be entirely guided by the report of the Ameen, and the Commissioner by the report of the Collector, even if the Collector calls on the zemindar for a reply. It would therefore, in fact, be better, because more effectual, to give the Ameen the power to act summarily, and the zemindar the option of an appeal."

And what Mr. Forbes sketched out, would seem to MR. DAMPIER to be the course which ought to be followed. Mr. Forbes said :—

"The only adequate means that I can perceive of enforcing the butwarrah law is by vesting ameens with the authority of Deputy Collectors under Regulation IX of 1833, with full powers under Regulation VII of 1822, and to hold proceedings under Section 30 of Regulation II of 1819, and by remunerating them fully as liberally. The *jummabundee* of every village in the estate should be taken in the same careful manner as it would be if the estate were under settlement under Regulation VII of 1822 and Regulation VIII of 1832. The provisions of Section 19, Regulation XIX of 1814, should be carefully observed. The *jummabundee* papers should be finally delivered to the Collector, with a concise *roocdad*, stating the peculiar circumstances of every village, as required by Section 8 of the present law, and all the sharers should be served with notice that the *jummabundee* will be finally adopted on a fixed future day, unless satisfactory cause be shewn, and no steps should be taken towards the separation of shares until the *jummabundee* has been finally settled."

It was universally admitted that the status of the ameen was not such that he could be entrusted with the duties which the existing law assigned to him. The proper remedies seemed to have been shadowed out by Mr. Forbes, *i.e.* to make the Collector, or his representative, the Deputy Collector, take a more active part in the proceeding, and not to give the ameen the individuality recognised by the law, but merely to regard him as the agent of the Deputy Collector, leaving the Collector, or his Deputy, to deal directly with the proprietors.

If the Collector, instead of the ameen, required the proprietor to file his papers and produce his men, he would soon be able to enforce compliance with his orders, which the ameen could not do. The law assigned to the ameen the

initiative in assigning the different lands to the different sharers. It was true that the proceedings of the ameen were subject to the approval of the Collector, but this function of the ameen opened an enormous door to corruption. The ameen drew up his papers and gave them in to the Collector, after having made his proposed partition, and having carried through a mass of the proceedings, on the assumption that his allotment of lands would be accepted; and to this extent pressure was put on the Collector to confirm what the ameen had done. To interfere with it would perhaps be equivalent to retarding the completion of the butwarrah by some months. MR. DAMPIER would therefore take the assignment of lands entirely out of the ameen's hands, and would provide that the Collector or Deputy Collector should make the partition.

Under the present law, as MR. DAMPIER had said, if the share which the applicant claimed was disputed, the Collector was absolutely debarred from proceeding with the butwarrah until the question of right was settled in the Civil Court. However vexatious the objection might be, and however obvious its frivolity, the Collector could do nothing. That, MR. DAMPIER thought, should not be. He would mention one other great element of delay. The applicant applied for separation; everything had gone on well; the papers had been produced, and there was nothing left to be done but the confirmation of the Collector. At this stage another shareholder came forward and applied to have his share separated also. The whole thing had to be gone over again for the sake of separating specific lands for this new applicant. MR. DAMPIER thought that if a second applicant did not choose to come forward till near this final stage, he might well be required to wait until the proceedings for separating the original applicant's share were finally completed. Even then, of course, he would benefit to this extent, that the papers on which the first butwarrah was made would be available for the second; there would be little or no more field-work to be done.

MR. DAMPIER thought the Council would agree with him that he had said enough—he feared they would think it too much—to justify his application to bring in the Bill.

The HON'BLE MR. SCHALCH wished to make a few observations before the motion was put to the Council. After the very full exposition the Council had received from the hon'ble mover of the Bill, of what led to the difficulties attending the law of butwarrah, and the measures he proposed to meet them, MR. SCHALCH did not wish to keep the Council for any time on these points. He wished to add that the difficulties which had been pointed out were not at all overdrawn. The Board of Revenue had from time to time endeavoured to meet those difficulties by various rulings; but as these rulings had not the force of law, the Board had not always been able to succeed. In a great portion of Bengal but little recourse was had to the butwarrah law; but in other portions, such as Tirhoot, and other districts in Behar, the law was greatly in force. Speaking from memory, he believed that in one year there had been no less than eleven hundred cases in Tirhoot, and practically the district was fast becoming what might be called a ryotwaree district; and seeing how frequently the law was resorted to, he thought it was of great

importance that the subject should be taken up. From his own experience of the last six years in the Board, he knew that there was no more important measure that could be brought before the Council than the revision and improvement of the law of butwarrah. He proposed to say nothing now about the remedial measures suggested; these points would be better considered when the Bill went before a Select Committee. He trusted that the Council would allow so important a Bill to be brought into Council.

The motion was agreed to.

REGISTRATION OF MAHOMEDAN MARRIAGES AND DIVORCES.

The HON'BLE MR. DAMPIER said he hoped the reason he should give would be considered sufficient to meet antecedent objections to his asking His Honor the President to suspend the Rules of the Council in regard to the Bill to provide for the voluntary registration of Mahomedan marriages and divorces. He presented the report of the Select Committee on this Bill at the last meeting of the Council, and he then hoped that the Bill would be in the hands of the members that night, which would have complied with the requisition of the Rule, that reports of Select Committees should be in the hands of members seven days before the motion could be made that the report be taken into consideration. It so happened that the report could not be in the hands of members until Monday, which reduced the time to five days instead of seven; and that made it necessary to suspend the Rules before the report could be taken into consideration in order to the settlement of the clauses of the Bill. That was the technical difficulty. But the advantage to be gained was not a technical, but a practical one, which was the benefit of the assistance which the Council would have from the presence of their hon'ble colleague Moulvie Abdool Luteef, to whom the Committee were mainly indebted for the details of the Bill, and who had made the subject his study; and his assistance would be valuable to the Council in considering the Bill. MR. DAMPIER had therefore to ask the President to suspend the Rules for the conduct of business, to enable him to move that the report of the Committee be taken into consideration.

The Rules having been suspended—

The HON'BLE MR. DAMPIER moved that the report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Committee.

The motion was agreed to.

The HON'BLE MOULVIE ABDOOL LUTEEF said—"I feel it my duty to speak a few words in regard to this Bill before it is taken into consideration by the Council. As the only Mahomedan member to whom the subject properly belongs, I am bound to express my gratitude to the hon'ble mover of this Bill, who has discharged his trust in reference to it most admirably. He has so well explained on this and other occasions the objects of the Bill from the impartial point of view of an outsider to Mahomedan society, that I may the better spare the Council an exposition in detail of the necessity of the measure, and how it will affect for good the entire life of the mass of my co-religionists. As the last

occasion on which my voice will be heard in this hon'ble assembly, I may be permitted to say that the measure under consideration is one on which, in the interests of my Mahomedan brethren, I have long set my heart. According to the limited opportunities open to me—a man of humble capacities in an humble position—I did my best to point out the impolicy of the proposal, which since became law in 1864, for abolishing the office of Kazi as an institution recognized by the State; and since the passing of that Act I have never ceased to urge, in the proper quarters, the advisability of reviving the office in some modified shape as that proposed in the Bill before us. In public and in private, I have brought to the notice of the authorities the evils of the absence of the old system of registration of Mahomedan marriages and divorces as they began to crop up—evils of which I heard from all parts of the country in which Mahomedans muster strong, and of which I became personally cognizant in my capacity of a Magistrate. Unfortunately, few were conversant with matters purely Mahomedan, or cared much about them; unfortunately, as the evils pressed upon the poorer classes only or chiefly, the higher classes of Mahomedans were comparatively indifferent about the matter; unfortunately, too, from the circumstances of Mahomedan society, from its comparative backwardness in availing itself of the advantages of English education, and the consequent apparent disinclination of Mahomedans to share in the blessings of political life and public discussion open to all classes of Her Majesty's subjects, and of which our Hindoo fellow-subjects properly make the most: unfortunately from these various causes my voice was perhaps the only Mahomedan voice that at all reached the proper ears, and no wonder that it failed of the desired effect.

"At last Sir Cecil Beadon, when Lieutenant-Governor of Bengal, was persuaded to rectify the evils of the enactment of 1864, so far as these provinces were concerned; and it would have been rectified long before this but for, I am sorry to say, a serious mistake committed by my late lamented friend, Moulvie Syud Azumooddeen Hussun, Khan Bahadoor, the then Mahomedan member of this Council, who was permitted to introduce a Bill on the subject. That gentleman recommended to the Council the passing of a law for the *compulsory* registration of all Mahomedan marriages,—a measure which, while being for the most part a dead letter, would have been resented by the whole Mahomedan world as an attack on its religion and its social institutions that are an essential part of that religion. Both as a member of the Mahomedan community, who care for the preservation of the integrity of the Faith, and as a loyal subject of Her Majesty the Queen, and officer of that British Government, which has more than any other given peace and security to India, and under which the vast majority of Mahomedans, no less than of Hindoos, have so well thriven and prospered, I would be the last man to have anything to do with such a proposal, direct or indirect. The Mahomedan community felt not a little relieved when the former Bill was withdrawn by reason of the strong opposition it evoked. I am happy to think that the present Bill before the Council is of a far different character. It is simply a permissive Bill. It in no way attempts to detract from the validity of marriages otherwise valid according to the Mahomedan law. It simply offers the Mahomedan community a facility

for proving its marriages. The Mahomedans are welcome to avail themselves of the facility or not, as they choose. Of course it is expected that, practically, they will avail themselves of it largely; particularly the poorer classes, who execute no marriage settlements or rather contracts for dower, and who have, consequently, not the same means as the higher classes for proving their marriages in case of dispute. Thus will all the social evils of uncertainty be remedied. There is nothing in the Bill to which there can be any objection on the part of any Mahomedan. It is, indeed, one for which all sincere Mahomedans, who look with concern on the domestic misery and social immorality which are spreading, from its absence, through the entire lower strata of their community, will be grateful to the Government of Bengal. It will be a matter of no little personal satisfaction to me, who have laboured so long in the cause, to be assured—as I trust I shall be assured by the language and attitude of my hon'ble colleagues to-day—that though I myself may no longer share in their deliberations, the Bill is safe.

It remains for me to add a word on the single point on which I have had the misfortune to differ from the majority of the Select Committee,—a point which has now to be decided by the superior wisdom of the Council. We have it in the report of the Select Committee—and the hon'ble member in charge of the Bill has repeated it in Council—that columns 10 to 14 of the Schedule, Form (A), annexed to the amended Bill, have been included, at my request, for better consideration in Council, though my hon'ble colleagues in Committee were of opinion themselves that these columns had better be omitted from the registers. These columns refer to specification of amount of dower of the two kinds, *moájjul* and *mowujjul;* whether any portion of it is paid at the moment; whether any property is given in lieu of dower, or any portion thereof; and to any special conditions that may be attached to the contract of marriage. The reason given for omitting these entries is, that they 'touch upon difficult questions, which are beyond the scope of the Act.' I do admit that it is difficult work to legislate, however delicately, on any subject connected with the religious or social institutions of a people with whose religion or social life the legislators may not be sufficiently familiar. The deliberations of the Council on the present Bill involve that difficulty; but beyond the *general difficulty*, I do *not* agree that there is any valid objection to including the particular entries in question in the registers to be kept under the Act, such as would not apply with equal force to dissuade the Council from having anything to do with the Bill altogether. If, however, for sufficient reasons, the Council make bold, as they have made bold—or this Bill would not now be at its present advanced state;—if, I say, in view of the evils raging in Mahomedan society from its absence, the Council make bold to provide for a system of registration of Mahomedan marriages and divorces in accordance with the Mahomedan law and Mahomedan usage, and at the instance of Mahomedan society, I think that the Council ought not to stop short in the good work by refusing to include in the registration particulars which form an essential part of the Mahomedan marriage contract. So far from these entries touching upon questions foreign to the scope of the Act, they are of the very essence of it. By any scruple in including these

entries, all the best objects of the system of registration will be frustrated. The dower, I need scarcely remind hon'ble members, is a necessary condition of the Mahomedan marriage;—the consideration for the contract. It must, therefore, seem to all a needless delicacy to omit to provide for recording the consideration while providing for the record of the contract itself. But the necessity for providing a record of the consideration is above all questions of mere delicacy. The mere record of the marriage would be but an infinitesimal boon to the Mahomedan community; while the omission to record the dower would leave the door wide open to all that domestic misery and social demoralization, which it is, and ought to be, the object of the State to prevent, so far as it is preventible in accordance with Mahomedan law. Amid the great and almost absolute power granted by the Mahomedan law to the husband over the wife for arbitrary and capricious divorce, the dower, particularly the prompt portion of it,—the payment to them of which portion Mahomedan wives contrive to keep deferred as a constant check on their husband's caprice,—is the only guarantee; and it is a sufficient guarantee for the wife's good treatment at the hands of the husband. Unless the amount and description of the dower are registered, the Mahomedan wife would not have the benefit of that security of her position granted her by the law of dower If the Council would not provide for record of the dower, they might just as well almost not provide for any record of the marriage. In that case, both marriage and its terms may be left, as now, to be proved by parties by oral evidence; and the uncertainties and frauds to which such evidence is liable, and from which man and woman in Mahomedan society alike suffer, will be incalculable."

The Hon'ble the Acting Advocate-General said he wished to make one or two remarks on the point in regard to which there was a difference of opinion between the hon'ble member in charge of the Bill and the hon'ble member who spoke last. He concurred with the Hon'ble Moulvie Abdool Luteef that the columns in question in Form (A) of the Schedule should be allowed to stand. The measure before the Council had been very aptly described by the hon'ble member in charge of the Bill as a measure intended to be a popular one, and the Advocate-General trusted it might be rendered in practice useful. He thought the reasons given by the hon'ble Moulvie for letting these columns stand were sound, as they were the ordinary clauses contained in contracts of marriages known as *Kabeenamahs*, the object of the Act being to provide particularly for the registration of the marriages of the poorer classes of the Mahomedans; and a great deal of fraud would be checked if these columns in the form of registration were allowed to stand, so that there might be some record of the amount of dower. The hon'ble Moulvie had referred to the fact that deferred dowers operated for the protection of wives. It appeared to him that it was clearly necessary for the protection of the husband, that in case of a divorce, the wife should not be able to put forward false or exaggerated claims as to the amount of dower previously settled between the parties. Therefore the Advocate-General thought it would be a useful measure to allow these clauses to stand. He did not think it would be

inconsistent with the scope and object of the Act to allow a few items to be included in the registration, which, as the hon'ble Moulvie said, were a part of the essence of the contract.

The HON'BLE MR. DAMPIER said that the reason of the majority of the Committee for wishing to exclude the items under discussion from the form of register was that they seemed to trench on those difficulties which the Council had resolved not to touch upon. The Council had directed the Committee to prepare a Bill providing for the registration of the fact of marriage and the persons between whom it was contracted. And so as to divorces. If the Council had directed the Committee to do what they could to give security to all the special conditions made at the time of marriage, the Committee possibly would have come to a different conclusion as to the admission of the proposed columns into the register. But the danger seemed to him to consist in the conciseness of the description which was required by the columns of the form in the schedule—"Whether any portion of the dower was paid at the moment? If so, how much? Whether any property was given in lieu of the whole or any portion of the dower, with specification of the same? Special conditions, if any." All those conditions and details, it seemed to him, if not described with technical precision, would leave open a door to differences and disputes, which would not have been left open if the attempt had not been made to register these particulars. Those were the grounds upon which the majority of the Committee opposed the introduction of these clauses.

After some further discussion, the motion was agreed to.

Section 1, the interpretation clause, having been read—

The HON'BLE BABOO JUGGADANUND MOOKERJEE asked whether it should not be stated that the Kazi was to be a "public servant."

The HON'BLE the ACTING ADVOCATE-GENERAL explained that the Hon'ble Moulvie Abdool Luteef had a proposal to make to that effect, which would be brought forward at the proper time. It would be better to provide that the Kazis appointed under this Act should be public servants.

The section was then agreed to.

Section 2 was agreed to.

Section 3 provided that every Kazi should use a seal having an inscription in the Persian language.

The HON'BLE BABOO JUGGADANUND MOOKERJEE thought that the inscription should also be in the vernacular language of the place in which the Kazi acted. In the eastern districts there were a number of persons who only wrote and read Bengali, and in other places there were Mahomedans who only knew Uriya. In order that every person who went to a Kazi for the registration of a marriage or divorce should be cognizant of the inscription used in the seal, BABOO JUGGADANUND MOOKERJEE thought that two languages should be used, viz. Persian and the language of the place in which the seal was used. He therefore moved that the words "language of the place" should be inserted after the word "language" in line 4 of the section.

The HON'BLE MR. DAMPIER thought it unnecessary to have a seal in any other language than Persian.

After some further conversation the motion was negatived, and the section was passed as it stood.

Section 4 was agreed to.

Section 5 provided that the Kazi should keep register books.

The Hon'ble Mr. Schalch asked whether it should not be provided in what languages the registers should be kept.

The Hon'ble Moulvie Abdool Luteef observed that that matter would be regulated by the rules to be passed by Government under the provisions of section 23.

The section was then agreed to.

Sections 6 to 10 were agreed to.

Section 11 provided that copies of the entries in the registers should be given to the parties without charge.

The Hon'ble Baboo Juggadanund Mookerjee suggested that the words "such certificate shall be considered *primâ facie* proof of the marriage or divorce," should be inserted at the end of this section.

The Hon'ble the Acting Advocate-General observed that all public documents were evidence; and when the Kazi was made a public officer in the service of Government, entries made by him in the register would, under the Evidence Act, become evidence. This Council could not alter or in any way affect the Evidence Act, but they could provide a state of things that would fall within the Evidence Act.

The Hon'ble Moulvie Abdool Luteef said he intended to move thereafter, for the introduction of a Section by which every Kazi would be made a public officer; and when that was provided, all documents and registers kept by such public officer would be *primâ facie* evidence by the Evidence Act. He thought, therefore, that there was no necessity to insert the words now proposed.

The section was then agreed to.

Sections 12 to 22 were agreed to.

Section 23 provided that the Lieutenant-Governor might make rules for certain purposes.

The Hon'ble Mr. Dampier said that in order to emphasize the fact that the Lieutenant-Governor was expected to prescribe the language in which the registers should be kept, he would suggest the insertion of the following as amongst the things for which the Lieutenant-Governor might make rules:—"For regulating the language and the character in which the Kazis should keep their registers."

The Hon'ble the Acting Advocate-General observed that *primâ facie* the Kazis would write in the Persian character. Then, if there was any special necessity for using any other character, there was provision made in this section for the purpose, in the clause which authorised the Lieutenant-Governor to make rules "for regulating such other matters as appear to the Lieutenant-Governor necessary to effect the purposes of this Act." It appeared to him that it would be better to leave the section as it stood.

The HON'BLE MOULVIE ABDOOL LUTEEF thought the learned Advocate-General's suggestion the best.

The section was then agreed to.

The HON'BLE MOULVIE ABDOOL LUTEEF said he would now propose the introduction of a new section. There seemed to be a shadow of a doubt whether a Kazi appointed under this Act would be a "public servant" within the meaning of the Indian Penal Code, and a "public officer" within the meaning of the Evidence Act or not; and therefore it would be better to make him a "public officer in the service of Government" by this Act. As a necessary consequence, the documents and registers kept by him would be "public documents," and, as such, *primâ facie* evidence. He moved that the following section be introduced after Section 23 :—

"23A. Every Kazi shall be, and be deemed to be a public officer in the service of Government."

The HON'BLE MR. DAMPIER said he had not the advantage of the assistance of the learned Advocate-General in Committee. The point was considered, and MR. DAMPIER referred to the definition of "public servant" in the Penal Code, which included "every officer in the service or pay of Government, or *remunerated by fees* or commission for the performance of any public duty." The definition, it would be seen, precisely met the case of the Kazis under this Act, and that was sufficient; it would be unnecessary to introduce the proposed section, unless the use of the words "public officer in the service of Government," which stood in the amendment, were intended to have some different effect from that which would attach to the words "public servant." To this point MR. DAMPIER'S attention had not been specially directed.

The HON'BLE THE ACTING ADVOCATE-GENERAL said the definition under the Penal Code was a definition for the purposes of the Code. Section 74 of Act I of 1872—the Evidence Act—provided that the following documents should be public documents—"documents of *public officers*, legislative, judicial, and executive, whether of British India, or of any other part of Her Majesty's dominions." Therefore all that was necessary was to provide that the Kazi should be a public officer. Also, to bring the Kazi under the Penal Code, we provided that the Kazi should be a public officer "in the service of Government." THE ADVOCATE-GENERAL had suggested the addition of the words "in the service of Government." There might be a scintilla of doubt on the point whether the Kazi performed public duties. He might be readily brought under the first by providing that he was a public officer; and to bring him under the Penal Code, the addition of the words "in the service of Government" were necessary. There might be a question whether the registers of these marriages would be public documents. Hence, in order to make the matter quite certain, it was advisable not to put it in the first branch, but in the second, so that he would be made a public officer; and being in the service of Government, would come both under the Evidence Act and the Penal Code.

HIS HONOR THE PRESIDENT inquired whether that would not give the Kazi a claim to pension. There would always be a certain amount of difficulty in admitting a fresh class of persons to pension. The tendency was, where any

persons performed *quasi*-public duties not under the Government, or under a corporation under the control of Government, to admit their claim to pension. Perhaps that question might be reserved for consideration at the next meeting.

The HON'BLE MR. DAMPIER said that the question as to pension of persons paid by fees was special, and subject to the decision of Government in each case. He did not intend to ask the Council to pass the Bill that day, and therefore perhaps the section might be passed now provisionally, subject to future reconsideration.

HIS HONOR THE PRESIDENT wished to have the opinion of the Hon'ble Moulvie Abdool Luteef, as to whether the Kazis themselves would accept the designation of officers of Government.

The HON'BLE MOULVIE ABDOOL LUTEEF said he thought they would be glad to be so recognised; and if they were declared to be officers of Government, their registers would be public property, and persons making false entries could be prosecuted: and unless it was provided that these registers were the property of Government, it would be difficult to procure the conviction of persons tampering or making away with them. He thought that was an additional reason why these registers should be declared to be .public registers and the property of Government.

HIS HONOR THE PRESIDENT wished to be informed whether, in the hon'ble member's opinion, the Mahomedan community would accept such a position for the Kazis.

The HON'BLE MOULVIE ABDOOL LUTEEF thought that Mahomedans would be thankful if such a position were given to the Kazis. He had no doubt that they would be glad of it.

The proposed section was then agreed to, subject to reconsideration at the next meeting of the Council, the President observing that the Section was rather an important addition to the Bill.

Section 24 was agreed to.

Form (A) in the schedule having been read—

The HON'BLE MR. DAMPIER said that for the sake of taking definitely the view of the Council as to columns 10 to 14 of this form, he would move that those clauses be omitted. He had no strong personal opinion on the matter. He had already laid before the Council the grounds of his opinion, and the Hon'ble Member opposite (Mr. Schalch) also thought it would be better to omit them, as being less likely to lead to complications; but as such complications, when they arose, would come under the treatment of the learned Advocate-General, and his professional fraternity, MR. DAMPIER was willing to defer his opinion to that of his Hon'ble friend.

The HON'BLE THE ACTING ADVOCATE-GENERAL said that so far from thinking that the retention of these clauses would lead to complications, he thought they would avert complications that would otherwise arise. The benefit would be, that in the case of marriages amongst the poorer classes, where no written contract of marriage was provided, and where it only lived in the recollection of persons, there would be some certainty. The entries in the register in such cases would be brief, and without any very complicated conditions. No

doubt the 14th column provided for the record of special conditions, but that was a state of things not often likely to happen. The principal items that were necessary were "how much of the dower was *moajjul* (prompt) and how much *mowujjul* (deferred); whether any portion of the dower was paid at the moment, and how much; whether any property was given in lieu of the whole or any portion of the dower, with specification of the same." He thought that a record of such facts would not only be popular, but useful to that class of the people for whom their hon'ble colleague Moulvie Abdool Luteef had poured forth his sympathy that day, and it would be desirable to retain these clauses.

The Hon'ble Mr. Eldridge inquired whether, if these clauses were retained in the form of registry, it would be necessary that the parties should specify all these conditions; or whether it would be optional what columns should be filled up.

His Honor the President explained that it was binding on the parties to give the information required by clauses 10 to 14, or they must forego registration. If, under those circumstances, they declined to register, the marriage did not thereby become invalidated.

The Hon'ble Moulvie Abdool Luteef observed that of these five clauses, the first two would apply to all cases; the remaining three would not apply to all marriages. It was very seldom that a portion of the dower was paid, or any property given at the time of marriage, or in which there were any special conditions made. If these circumstances did not arise, those columns would be left blank.

The Hon'ble Mr. Dampier said he knew of a case, which was also in the knowledge of his hon'ble colleague Moulvie Abdool Luteef, in which a friend had made it a special condition on his daughter's marriage, that if during her life-time, the husband married another wife, she should by that act become divorced. Was it safe to express such a condition as this in the loose way in which a Kazi would express it in his register? Mr. Dampier feared that cases would arise in which the loose description of conditions and particulars in the registers, although registered in perfect good faith, might give an opportunity for differences of construction and disputes, if *mala fides* should afterwards arise.

The Hon'ble Mr. Schalch said he agreed with the Hon'ble Mr. Dampier in thinking the insertion of these clauses beyond the scope of the Select Committee as laid down in the Instructions to them by the Council. He considered it, however, quite within the power of the Council to adopt them, if they thought it right to do so; and he would not lay quite so much stress as his hon'ble friend did on the question of complication. The entries would be merely a record of what the statements of the parties were at the time, and they would be open to be rebutted by other evidence. After what had been said by the learned Advocate-General, if the Council thought fit to go beyond their original instructions and adopt these clauses, Mr. Schalch had no objection to offer.

Form (A), with the clauses 10 to 14, were then agreed to; and so also were the Forms (B) and (C).

The title and preamble were then agreed to.

The Hon'ble Mr. Dampier said he did not propose to ask the Council to pass the Bill now, because it was safer that, after having been considered in Council, it should be carefully looked over by the learned Secretary and the Mover of the Bill.

RECOVERY OF ADVANCES MADE BY GOVERNMENT.

The Hon'ble Mr. Dampier said that although he had not put a formal motion on the paper, as the Select Committee on the Bill for the recovery of loans of money and grain made by Government had lost one of its most valuable members in the Hon'ble Baboo Digumber Mitter, and as it would be advisable that the Committee should be a little strengthened as well, he would move that the names of the Hon'ble Baboo Kisto Das Pal, and of the Hon'ble Mr. Rivers Thompson, be added to the Select Committee on the Bill.

The motion was agreed to.

The Council was adjourned to Saturday, the 23rd January.

Saturday, the 23rd 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 Stuart Hogg,
The Hon'ble C. E. Bernard,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Doorga Churn Law,
The Hon'ble F. G. Eldridge,
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syad Ashghar Ali Diler Jung, C.S.I.

REGISTRATION OF MAHOMEDAN MARRIAGES AND DIVORCES.

The Hon'ble Mr. Dampier said that the passing of the Bill to provide for the voluntary registration of Mahomedan marriages and divorces was postponed at the last meeting of the Council at his request, in order to enable the mover and the Secretary, as was usual, to go carefully over the provisions as finally amended. That had now been done, and the result was a rather long list of amendments. But hon'ble members would observe that, with one exception, they were purely verbal amendments. He had now to move that the Bill be further considered, in order to the settlement of its clauses.

The motion was agreed to.

The HON'BLE MR. DAMPIER moved that for section one the following be substituted :—

"In this Act—unless there be something repugnant in the subject or context—

"'Kazi' means any person who is duly authorized under this Act to register marriages and divorces.

"'Inspector-General of Registration' and 'Registrar' respectively mean the officers so designated and appointed under the Indian Registration Act, 1871, or other law for the time being in force for the registration of documents.

"'District' means a district formed under the provisions of the Indian Registration Act, 1871."

These were merely explanatory clauses.

The motion was agreed to.

The HON'BLE MR. DAMPIER then moved a verbal amendment which was not in the notice paper, that in section four, line 1, for "Local Government," the words "Lieutenant-Governor" be substituted.

The motion was agreed to.

The HON'BLE MR. DAMPIER also moved that in the same section, line 1, for "provide," the word "supply" be substituted. The word "provide" rather implied that the thing in question be provided at the expense of the Government, which was not to be done. The seals and registers to be used by the Kazis were to be supplied by the Government, and paid for by the Kazis out of the fees which they got.

The motion was agreed to.

The HON'BLE MR. DAMPIER moved the following amendments in section fourteen, the object being to make the nomenclature uniform :—

In section fourteen, in the fifth line, after the word "Registrar" to insert the words "of the District." In the seventh line for "District Registrar" to substitute "Registrar of the District." In the twelfth line, after "Registrar" to insert "of the District." In the sixteenth line, for "District Registrar" to substitute "Registrar of the District."

The motion was agreed to.

The HON'BLE MR. DAMPIER moved—

In section fifteen, line one, for "Every District Registrar and Kazi shall" to substitute "Every Registrar of a District and every Kazi shall for the purposes of this Act."

The motion was agreed to.

The HON'BLE MR. DAMPIER moved that in the same section, line 7, the words "other than the first copy referred to in section eleven of this Act" be inserted after the word "Register."

He said that section fifteen empowered the Kazi to levy certain fees for granting copies. But in section eleven it had been provided that a copy of the entry in the register was to be given immediately after the registration, and that this first copy should be given without the payment of any fee. The amendment merely referred to that section, so that there might be no chance of misapprehension in the construction of the Act.

The motion was agreed to.

Verbal amendments were, on the motion of the HON'BLE MR. DAMPIER, made in sections sixteen and seventeen.

The Hon'ble Mr. Dampier moved that in section nineteen, line 1, for "document" be substituted the words "marriage or divorce." This error, he said, had crept into the Bill from the circumstance of this section having been taken from the Registration of Assurances Act. The word was out of place in this Bill, which only applied to the registration of marriages and divorces.

The motion was agreed to.

The Hon'ble Mr. Dampier moved that the following words be inserted in section twenty-three, after the fifth clause:—

"for regulating the application of the fees levied by Registrars of Districts and Kazis under this Act and."

The object of this amendment was to meet cases which might render necessary executive orders of the Government for regulating the application of the fees raised under the Act.

The motion was agreed to.

The Hon'ble Mr. Dampier said the next motion in his name was to move that the Bill be passed; but as His Honor the President wished that the passing of this Bill be deferred to the next meeting of the Council, he would not at present make that motion.

His Honor the President asked the Hon'ble Nawab Syad Ashgar Ali to favor the Council with his opinion on the general merits and policy of the Bill.

The Hon'ble Nawab Syad Ashgar Ali would say a few words in compliance with the request of His Honor the President. Being the only member of the Mahomedan community in this Council, he had thought it his duty carefully to consider the Bill and to peruse all the papers connected with it. He had also consulted his friends, both of the Sunni and Shiah sect, and he found that they were agreed that a Bill of this kind should be passed, in order to prevent the frauds which had hitherto been practised. He thought that the Mahomedan community in general would be gratified by the passing of this Bill.

His Honor the President then observed that perhaps the Council would allow the motion for the passing of the Bill to be deferred for a week, with the view that the Bill might be taken into consideration once more before it was passed.

The motion that the Bill as amended be passed was then postponed.

REGISTRATION OF JUTE WAREHOUSES.

The Hon'ble Mr. Hogg said the Bill which he proposed to move be read in Council had for its object the amendment of the Jute Warehouse and Fire-brigade Act, especially with a view to modify the restrictive clauses of the Act, which the owners of jute warehouses had brought to the notice of the Council were unnecessary and unduly prejudiced the jute trade; and their representation was supported by the Chamber of Commerce. From the papers circulated to the Council, it would be seen that the owners took exception to the clauses in Section 7 of Act II of 1872, especially in regard to the clause which provided that loose jute should not be dried except within buildings the walls of which should be of burnt bricks, or of stone, or of iron, and so on. They also pointed

out that it was unnecessary that the roofs of jute warehouses should be constructed of iron or masonry, as provided in the Act. Another objection which they took, though not a very strong one, was with regard to the fees, which they maintained were unnecessarily high. It was pointed out by him, when he asked leave to introduce this Bill, that although the concession as regards the drying of jute might well be conceded in the suburbs of the town, it would be objectionable, as regards the town of Calcutta, to remove the restrictions which already existed. To introduce a definite clause in the proposed Bill, which provided for the requirements both of the suburbs and the more crowded thoroughfares in the town, would be difficult. He had therefore in the draft Bill prepared a section to the effect that this matter should be left to the discretion of the Government of Bengal. If the Council would look at Section 7 of Act II of 1872, they would find that it included all the prohibitory clauses connected with the granting of licenses for jute warehouses. There would be found all the conditions under which licenses were to be granted; and the 7th clause of that section provided that the Justices might make such other special conditions as the circumstances of each locality seemed to them to require. In the Bill which he had prepared, it was proposed that the whole of Section 7 of Act II of 1872 should be repealed, thereby removing from the Act all definite prohibitory clauses; and that power be given to the Government of Bengal from time to time to issue such rules for the granting of licenses to the owners of jute warehouses as might be deemed necessary, having regard to the special locality for which such licenses were applied. If that principle were accepted by the Council, no doubt the Government of Bengal would issue separate rules for the suburbs of the town, where the occurrence of fires need not be much apprehended; and separate rules for the town of Calcutta, where the Government would probably consider that greater care and caution in the granting of licenses were absolutely necessary. If that principle were accepted, it would remove the objection of the proprietors of jute warehouses in regard to the restrictions to be placed on the licensing of jute warehouses in Howrah and the suburbs. No doubt the Government would remove the condition which prohibited the roofs of jute warehouses being made of any other material than iron or masonry.

When he moved for permission to introduce this Bill, he also pointed out that, according to the Act as it stood, it was not clear what person was liable to punishment—whether the owner, the occupier, or the person actually infringing the conditions of the license. Mr. Hogg had therefore introduced in the Bill a clause imposing the primary liability on the occupier, and had provided that in addition to the name of the owner of a jute warehouse, the name of the occupier should be invariably entered in the license; and by section eight of the Bill, the actual infringer of any rule was also rendered liable to penalty.

Since the Bill had been drafted, there had been a further representation received from the Chairman of the Suburban Municipality on behalf of that body. They desired that the arrangements for the suburbs, as regards the licensing of jute warehouses and the establishment and maintenance of a fire-brigade, should be altogether distinct from that of the town of Calcutta. They

argued that during the last few years there had been but few fires in the town and suburbs; that therefore the annual expenditure now incurred seemed unnecessarily high; and then they went on to ask for permission to have a separate fire-brigade for the suburbs. He thought the Council would agree with him that, considering the position of the suburbs as regards Calcutta, it would hardly be wise to have a separate fire-brigade for the suburbs. The Suburban Commissioners also urged that they be allowed to expend the whole of the surplus proceeds derived from the licensing of jute warehouses on the general municipal improvement of the suburbs, and that the fund should not be under the control of the Justices of Calcutta. This suggestion was in a measure met by the Bill before the Council, in which there was a section which provided that the surplus fund should be applied for such purposes as the Justices with the sanction of the Lieutenant-Governor might direct. If the principle of that section was accepted by the Council, it would be within the power of the Lieutenant-Governor to distribute the surplus arising from fees on account of jute warehouse licenses in such proportions as he might think best between the town and suburbs.

The Suburban Municipal Commissioners also pointed out that Honorary Magistrates were at present in the habit of inflicting very small fines on persons who infringed the law, and it was therefore necessary to impose a minimum fine, and to make it compulsory that the minimum fine should be imposed in cases of repeated convictions. How far such an amendment of the law was desirable would no doubt be carefully considered in Committee.

With these few remarks, he begged to move that the Bill to amend the Jute Warehouse and Fire-brigade Act, 1872, be read in Council.

The Hon'ble Baboo Kristodas Pal said this was one of those little amending Bills the principles of which did not need much discussion. There were, however, one or two points involved in it with regard to which he wished to offer a few remarks. The hon'ble mover of the Bill had stated that it was inconvenient to embody in the law the conditions which were imposed in regard to the grant of licenses for jute warehouses, and that the power to do so should be delegated to the Lieutenant-Governor. For his own part, he thought the Council would not be acting fairly by throwing the task of legislation upon the head of the executive Government and thus shifting its own responsibility. He believed that the Lieutenant-Governor would not refuse to undertake any duty which this Council in its wisdom might assign to him. But Baboo Kristodas Pal was not sure whether any one in His Honor's position would possess that detailed acquaintance with the minute requirements of the town which would enable him to discharge the duty to his satisfaction. He would necessarily be dependent on the town and suburban corporations for information and advice; and the Council, by adopting the principle recommended by the hon'ble mover of this Bill, would be practically making over the business of legislation to the several corporations affected by the Bill. This, Baboo Kristodas Pal held, would not be fair to the head of the executive Government, nor to the Council, nor to the public at large. It was meet that we should share with His Honor the responsibility of framing the rules and regulations. Besides, Baboo Kristo-

DAS PAL submitted that when a legislature was called upon to prescribe penalties for certain offences, it ought to know what were the acts which would constitute offences under the law. We had no opportunity of judging as to whether the penalties provided would be sufficient or not for the offences contemplated by the Bill, but to be defined hereafter by executive authority. Such a proposal appeared to him anomalous and unsound in principle. He admitted that the conditions prescribed in the present Act were stringent, and had worked in some cases oppressively. It was the function of the Council to remedy those defects, and not to shirk its own responsibility. The subject had attracted the attention of some of the proprietors of jute warehouses and the Chamber of Commerce, and he admitted that the representations of those gentlemen were grounded on facts and therefore entitled to consideration. If the Council referred to the opening speech of His Honor the President, when the Council was summoned this year, and to the address of the hon'ble mover, when he applied for leave to introduce the measure, they would find that the original proposal was to modify those conditions of the law which were complained of in the representations which had been received, and not to exclude altogether from the Act all the conditions which were imposed on the grant of licenses for jute warehouses, and leave them to the discretion of the executive Government. There might be differences of opinion in regard to some of the conditions, but BABOO KRISTODAS PAL thought those differences might be reconciled in this Council without much difficulty. It might be advisable—in fact desirable—to give power to the town corporation, or to the Lieutenant-Governor, to make subsidiary rules or bye-laws consistently with the substantive law, just as was now done under the Municipal Acts. In fact such a provision was contained in the present Act. Clause 7 of Section 7 of Act II of 1872 provided for the imposition, in addition to the conditions specified in the law, of such other special conditions as the Justices might, on consideration of the special circumstances of each jute warehouse, deem necessary to prevent risk to life and property in the neighbourhood. That discretion might well be left to the town and suburban corporations and the executive Government, and would meet the case of the town and the suburbs alike; but the substantive law, he submitted, ought to be laid down in the Bill, with a discretion to the executive authorities to make bye-laws consistently with the substantive law.

The next point to which he wished to draw attention was as to the scale of fees prescribed for the granting of licenses. It would appear from the papers circulated to the members along with the Bill, that the Suburban Municipal Commissioners recommended the lowering of the rates for suburban licenses. Mr. Peacock, Magistrate and Chairman of the Suburban Municipality, proposed that the scale should go down so low as Rs. 150. And with regard to this part of the law, BABOO KRISTODAS PAL might read to the Council an extract from the report of the Justices of the Peace for Calcutta for the year 1872, which was to the following effect:—

"The minimum fee for a license is Rs. 250, which was prohibitory in the case of several small houses. This point should be remembered whenever any amendment of the Municipal Acts is in contemplation."

He might observe that the present rate of fees, as far as he was aware, had been laid down as a tentative measure only. Neither this Council nor the town corporation were then in a position to estimate exactly the proceeds of the new licenses. On the other hand, a heavy charge had been imposed on the two municipalities for the maintenance of a fire-brigade. It was therefore necessary that such a scale of fees should be prescribed as would cover the possible charges. The working of the Act for the last two years had shown that there was great room for reduction in the scale of fees. He believed the surplus in the hands of the Justices now amounted to about Rs. 60,000. It was a question for the Council to consider whether a particular branch of trade should be made to contribute to the general municipal funds of the town. He admitted that jute was a thriving branch of our national industry, and that the small tax which had been laid upon it in the shape of license fees did not materially check its progress or expansion; but the Council ought to consider this tax upon jute from another point of view. There were, as the Council was aware, two classes of licensees: *firstly*, those who themselves occupied the warehouses; and *secondly*, those who let their licensed godowns; and the present scale of fees pressed severely upon the last-mentioned class; and this hardship, so far as proprietors of small houses were concerned, was admitted by the Justices in the report already quoted. Baboo Kristodas Pal could state from his own knowledge that the tendency of municipal taxation in the town was to depreciate the value of house property; and it might be fairly questioned whether the legislature would be acting wisely by aggravating that tendency. It was therefore worthy of consideration whether the scale of fees for the licensing of jute warehouses should not be revised.

The hon'ble mover of the Bill had pointed out the necessity of fixing the responsibility of carrying out the provisions of the law upon the occupier. Baboo Kristodas Pal must say that he considered this provision a very great improvement on the existing law. The present law was not quite clear upon the subject, and practically the owner of the house, who was the owner of the license, had hitherto been held liable. As already observed, there were two classes of licensees. Now, it was very hard that the owner of the house, who took out a license, but had no connection with the business, should be made responsible for a breach of any of the conditions upon which a license was granted when he could not in any way control the action of the occupier. The amendment of the law on this point was much needed, and would remove a great complaint which had been made on all sides. But he did not agree with the hon'ble mover that a high fee should be levied on the registration of the occupier's name; he did not see why it should be made a source of revenue. We ought to encourage and facilitate the registration of the names of occupiers, and in that view he would recommend a nominal fee of one rupee, and not twenty rupees, as proposed in the Bill.

Next came the question of what he might call the decentralization of the fire-brigade fund. That point was raised in the letter from Mr. Peacock, the Chairman of the Suburban Municipal Commissioners. It appeared that the control which the Justices at present exercised over the fire-brigade fund was

a source of irritation to the Suburban Commissioners. They seemed to think that they were, as it were, sacrificed to the interests of the town. He must confess, as he thought, that they were greatly mistaken in that view. According to Mr. Peacock's own letter, it would be seen that the number of fires was very much greater in the suburbs than in the town. In fact, if the Council looked into the statistics of fires in the town, he believed it would admit that there was very little cause for the alarm which in 1872 led to the enactment of the present law. He found from an official paper, which he held in his hand, the following statement of fires in Calcutta from 1865 to 1871 :—

	Number of fires.	Pucca houses.	Tiled houses.	Remarks.
1865	... 12	9	4	Three jute-godowns.
1866	.. 7	3	4	Two ditto.
1867	... 10	6	6	None.
1868	... 6	5	1	One jute screw house and one jute godown.
1869	... 9	5	4	Two jute-godowns.
1870	... 8	3	5	None.
1871	.. 12	6	4	(River two) four jute screw-houses.

Since the Jute Warehouse Act had come into operation, he found that there were four fires in the town and 29 in the suburbs. So after all it might not unreasonably be said that the fire-brigade was maintained chiefly for the benefit of the suburbs, and that the town was unjustly taxed for the advantage of its neighbour.

If anybody would gain by the decentralization of the fire-brigade fund, it would be the town of Calcutta; and he did not see any reason why that principle should not be carried out. Formerly, as the hon'ble mover of the Bill could bear him out, the Justices worked the town fire-brigade at an annual expense of Rs. 6,000. Now the fire-brigade costs somewhere about Rs 20,000 annually. [The Hon'ble Mr. Hogg: Rs. 25,000.] He, however, agreed with the Suburban Municipal Commissioners that the town and the suburbs should be independent of each other in the management of the fire-brigade. The Justices might have their own establishment, and the Suburban Commissioners their own; and whatever surplus might accrue from their respective funds, they should be at liberty to apply to their own purposes. There would be then no just cause of complaint or heart-burning in the matter.

As regards the imposition of a minimum fine, as suggested by the Suburban Commissioners, he hoped the Council would not do anything of the kind. In Calcutta the working of the Jute Warehouse Act, as far as he was aware, and he believed the hon'ble mover would bear him out in this statement, had been fair and equitable, and he thought there did not exist any necessity whatever for fettering the discretion of the Magistrates in the way proposed; and if the Act had worked successfully in the town, he did not see why it should not work with equal success in the suburbs. To take away discretion from the Magistrates in the adjudgment of fines according to the merits and circumstances of each case, would be to tell them to leave their consciences behind when sitting on

the Bench. This interference with judicial discretion was opposed to the principles of the substantive criminal law of the country, for the Penal Code prescribed only maximum, and not minimum, penalties; and he hoped that the Council would not sanction an infraction of the general law of the land.

The Hon'ble Baboo Doorga Churn Law said, he agreed with the hon'ble member who had last spoken that the substantive law as to the conditions on which licenses should be granted for the establishment of jute warehouses should be laid down in the Bill, and that power might be granted to the executive Government to frame rules or bye-laws in accordance with such law. He thought the present opportunity should be taken to revise the scale of license fees. The present scale was undoubtedly high, and he thought the minimum ought to be reduced to Rs. 100 or Rs. 150, and the intervening rates should also be reduced.

Then, with regard to changes of occupation, the provision, as worded in the Bill, met only the case in which a person took an entire house; but there were cases in which a warehouse was let to several parties in several parts or portions, the license being granted to the owner or landlord. For such cases provision ought to be made for the registration of such occupiers on the application of the owner or landlord. It was proposed to charge a registration fee of twenty rupees on occupiers. He could not see any occasion for imposing such a fee. The proceeds of license fees ought to be quite ample for all purposes; and to charge another fee on the occupier would be only to increase the burden already existing.

The Hon'ble Baboo Juggadanund Mookerjee said, with His Honor the President's permission he begged to make a few observations, especially with reference to the fifth section of the Bill, which was one of the subjects now under consideration. It appeared that under the present law a tax was levied on the grant of licenses to the owners of jute warehouses in the town and suburbs, and the proceeds were to be applied for the purpose of maintaining a fire-brigade, which would remain under the sole control of the Justices of the Peace for Calcutta. Well, he saw, from the returns submitted both by the Justices and the Suburban Commissioners, the following results for the suburbs—

From 1st August 1872 to 31st July 1873—

	Rs.	A.	P.
Receipts.			
Jute warehouse license-fees	16,766	10	8
Fines under the same Act	3,706	8	0
Total ...	20,473	2	8
Expenditure.			
Establishment	3,992	13	3
Contingencies	147	0	0
Total ...	4,139	13	3
Remitted to the Calcutta Justices	16,333	5	5

	Rs.	A.	P.
Receipts.			
From 1st August 1873 to 31st July 1874—			
Jute warehouse license fees	20,479	2	5
Fines	1,883	8	0
Total ...	22,362	10	5
Expenditure.			
Establishment	4,527	10	0
Contingencies	238	3	0
Total ...	4,765	13	0
Remitted to the Calcutta Justices	17,596	13	5
Amount collected by the Calcutta Justices from August 1872 to 31st December 1872	31,329	0	0
Amount expended	12,123	0	0
Saving	19,206	0	0
Amount collected by the Calcutta Justices in 1873 ...	18,875	0	0
Contribution by the Suburban Commissioners ...	16,333	0	0
Total ...	35,208	0	0
Amount expended	21,064	0	0
Saving	14,144	0	0
Amount collected by the Calcutta Justices in 1874 ..	41,494	0	0
Contribution by the Suburban Commissioners ...	17,597	0	0
Total ...	59,091	0	0
Expended	31,527	0	0
Saving	27,564	0	0

The Act did not provide anywhere as to how the surplus was to be applied, but there was no power to the Suburban Commissioners to make use of any portion of the money except in the way mentioned, namely to pay the necessary establishments and the like, and remit all the surplus to the Justices of Calcutta. The Council would see the amount of saving made in this year. Mr. Peacock in his letter said :—

"That the funds are liable to be appropriated towards purposes for which they were never intended, is shown by the action of the Justices in allotting money from that fund for extra police to keep the roads within the town of Calcutta clear from overcrowding, and that the suburbs do not receive anything in return commensurate with the sum paid by them."

From that it was quite clear that the Municipal Commissioners of the suburbs were taxed for purposes for which they in no way benefited. The whole of the money went to the Justices for Calcutta, who were at liberty

to apply it as they thought best, and it appeared that they employed it to pay for extra police to keep the roads within the town clear. And for this reason and other reasons stated in the letter of their Chairman, the Commissioners of the suburbs proposed that a separate fire-brigade should be maintained by them. That, he thought, stood to reason, because from the report of the Chairman of the Justices and what had fallen from the hon'ble member opposite (Baboo Kristodas Pal), it appeared that the greater portion of the fires took place in the suburbs. If that was so, the use of the fire-brigade was chiefly limited to the suburbs, and the people within the town derived little or no advantage out of the brigade that they maintained. It therefore stood to reason that the Suburban Commissioners should have the control of their own fire-brigade, and it was also fair that the town of Calcutta should not be burthened with the expense of a fire-brigade which was used chiefly for the benefit of their neighbours. Therefore the Chairman of the Suburban Municipality proposed that they should be empowered to maintain a fire-brigade of their own, and it seemed that they had sufficient funds for the purpose. At the time the Act of 1872 was passed, the Legislature never anticipated that there would be a surplus fund: they even seemed to expect that the sums realized from the grant of licenses would not be sufficient to maintain the expense of a fire-brigade. Now it appeared that a large proportion of the sums realized would from time to time be saved, and there was at the present time a large sum of money in the hands of the Justices. It was therefore proposed by the Suburban Commissioners that they should maintain a fire-brigade of their own; and if that proposition was not agreeable to the Council, they suggested that they should be permitted to remit to the Justices of Calcutta only such amount as was necessary to maintain the fire-brigade under the control of the Justices, and that the Commissioners be allowed to retain in their hands the surplus proceeds for the proper keeping of the suburban roads, the traffic on which had recently very much increased by carts laden with jute constantly passing through them, and the damage done to them had therefore proportionately increased. It appeared that there was a surplus annually accruing of from Rs. 16,000 to Rs. 20,000, and the whole of that sum went to the Justices of Calcutta. If the first of these propositions was not agreeable to the Council, BABOO JUGGADANUND MOOKERJEE thought that the second proposal, namely that the Suburban Commissioners should have the benefit of their own surplus proceeds, should at least be conceded.

With these observations he would ask the Council to take this matter into their consideration, and he had no doubt that the Select Committee to whom the Bill might be referred would deal with the representation of the Suburban Municipality in a just and equitable manner.

The HON'BLE MR. ELDRIDGE said he should not have ventured to encroach upon the time of the Council but for his almost immediate departure from India. He had no doubt that many of the points which had been discussed, and the suggestions which had been made, would be duly considered in the Select Committee; but having no other opportunity of addressing the Council upon

this subject, he desired to express his satisfaction at the manner in which the hon'ble mover had conceded, in the Bill before the Council, the requests made by a large and responsible body of merchants, who were largely interested in the question, and had a great amount of money at stake in connection with the jute industry. He regretted that he could not agree in the remarks of the hon'ble members who proposed that a substantive law should regulate entirely the working of these jute licenses. It seemed almost impossible that hard-and-fast rules could be made which would apply equally to a large place like Calcutta, in which many of these jute warehouses and jute screwhouses existed, and to a place like the suburbs, where the warehouses were more scattered. Many proprietors of jute warehouses had gone to some distance from the city, probably with the view of being to a certain extent in an isolated position, where the very strict rules made for the more crowded localities would not be enforced as regards them. There were many jute warehouses in the vicinity of the town which were surrounded by huts and villages which would be endangered by the application to them of the same lax rules which would with safety apply to the more distant localities. And it seemed to him that the proposal to leave a discretion in the matter to the Lieutenant-Governor was only reasonable and just. When the law was put into force, in 1872, MR. ELDRIDGE was not in India, but he noticed that the hon'ble mover, in speaking on this subject (January 2nd) on the occasion of the introduction of this Bill, referred to the fact that, in consequence of certain disastrous fires having occurred, a great deal of alarm had spread through the town with regard to the dangers to be apprehended from a recurrence of such conflagrations, and that the Chamber of Commerce, the Trades Association, and other representative bodies, cordially co-operated in the passing of such a law as was then deemed to be necessary. But now, after the experience of two-and-a-half years, many of the rules which were passed in a time of semi-panic were found to be obstructive and unnecessary; and it was believed that, with the practical experience gained within that time, it might be left to the discretion of the Lieutenant-Governor to grant certain facilities in certain localities which could not be granted to others. As far as the erection of buildings with iron beams was concerned, it appeared to him doubtful whether that was a necessary measure at all. In a building (the Riverside Press) erected, he believed, since the passing of Act II of 1872, by the Port Commissioners, many of the members of which body were Justices of the Peace for Calcutta as well, he thought he had seen teak beams even in the engine-rooms, and the talented and efficient Engineer to the Port Trust told him that he was not quite clear that teak beams were not better for the purpose than iron beams. MR. ELDRIDGE had hoped that the hon'ble mover would have taken up some of the other suggestions which had been made by the large representative body of merchants with reference to this matter in their petition now before the Council; and from the conversation he had with the hon'ble member, MR. ELDRIDGE understood that he would have done so if the representations had not reached him after his draft of the Bill had been prepared. MR. ELDRIDGE hoped, however, that the matter would be seriously considered by the Select Committee, as he thought the experience of practical men, who had the carrying

out of the rules now laid down, was entitled to great weight, as they also had a very large interest in the property, and had every desire to prevent conflagrations; for although they might be recouped by insurance, the loss of time and interest on their capital would fall on them in the event of any accident of that kind taking place.

With regard to the scale of charges for licenses, he thought it was unnecessary and unfair to retain the present rates. The Calcutta Municipality had apparently proceeded, prior to 1872, almost entirely under the delusive hope that there were to be no fires in the city and no necessity for a fire-brigade. Suddenly when two or three jute warehouses were burnt down, the Justices immediately organized an expensive fire-brigade, and recouped themselves almost entirely from the jute trade. He thought it should be taken into consideration whether a fire-brigrade was not an absolute necessity in a large city like Calcutta, independently of the question of jute or cotton warehouses. There were stores of hay and straw and a variety of other combustible substances kept in native huts and warehouses, as well as in the open air, all liable to conflagration; and, admitting that every ounce of jute and cotton was kept beyond a distance of ten or fifteen miles from the town, there would still be the necessity for a fire-brigade. Why, therefore, should the proprietors of jute and cotton warehouses alone be taxed for the support of one? He thought it was most unfair and unreasonable that they should be taxed more than a very moderate proportion of the cost. He found from a letter of the Chairman of the Suburban Municipal Commissioners, under date of August 18th, 1873, that during the previous year the license fees and fines had contributed Rs. 20,473 towards the expense of maintaining a fire-brigade, which, from MR. ELDRIDGE'S knowledge of the increased number of jute warehouses and screwhouses now existing, had doubtless already been augmented very considerably, and would be still more increased in future years. It was a severe tax on a growing industry, which ought to be fostered as much as possible in these days of competition. He thought, therefore, it was but reasonable that the scale of these license fees should be reduced rather than be allowed to exist as it at present stood

The HON'BLE MR. HOGG said he was not at all prepared to admit that the principle of the Bill as regards shifting the responsibility from the Legislature to the Lieutenant-Governor was open to the objection which had been brought forward. As pointed out by the Hon'ble Mr. Eldridge, it was impossible in any Act to lay down hard-and-fast rules which should apply equally to the suburbs, where very stringent provisions were not necessary, and to the town of Calcutta, where the greatest possible care was necessary. Circumstances might arise from time to time which might require the rules to be altered; and if we were to lay down rules in the Act, it would require an alteration in the law whenever experience showed that the rules were not quite in accordance with the requirements of the safety of the public.

As regards the reduction of the rates of fees for licenses, he thought they ought not in any great measure to be reduced, especially in the town of Calcutta. It was urged that there were many small houses in the town where jute was stored, and it was hard that owners of such warehouses should be called upon to pay a fee of Rs. 250.

The Hon'ble Mr. Eldridge.

He submitted that it was these small warehouses which were most dangerous in town as regards conflagration, and that, as far as possible, it was expedient that such houses should be suppressed, and the trade in jute limited to large godowns belonging to persons who were in a position to carry out such precautions as would reduce to a minimum the risk to property in the neighbourhood. As regards the suburbs of Calcutta, a reduction in the rates of license fees might well be made, and the lowest rate be reduced to Rs. 150; because the same arguments which applied to the storage of jute in the town did not apply to the suburbs.

It was urged that the value of property in the town had of late very materially decreased, owing to the increase of municipal taxation and other causes. That statement was one which could not be allowed to pass unnoticed, as, he submitted, it was not correct. As a matter of fact, whenever, during the last ten years, the Justices had revised the assessment on house property, an increase to the municipal revenues had been obtained, thereby distinctly proving that the value of house property in the town was not decreasing, but increasing. It was apprehended that the opening of the Howrah bridge might lead to a reduction in the value of property in the town, but he was informed on the best authority that that was not the case; and that owing to a water-supply and other improvements in the town, persons formerly residing in Howrah were giving up their houses and living in Calcutta.

Much had been said about the inequitable distribution of the cost of the fire-brigade as between Calcutta and the suburbs, especially by the hon'ble member opposite (Baboo Juggadanand Mookerjee). Perhaps the hon'ble member was not aware that nearly all the present block of the fire-brigade had been paid for from the municipal revenue of Calcutta. It was true that by the Act the fire-brigade was placed under the control of the Justices, but as a matter of fact the Justices had delegated the complete control of the brigade to the Commissioner of Police, who was also in charge of the police of the suburbs. This was a reasonable arrangement, as it resulted in the police force being called into requisition whenever a fire occurred. He thought this was the most economical arrangement both for the town and the suburbs.

His hon'ble friend opposite (Mr. Eldridge), who remarked as to the inequitable arrangement by which the proprietors of jute warehouses were called upon to pay the whole cost of the fire-brigade, was slightly in error. He had forgotten that by the existing law insurance companies, who were most interested in the maintenance of a fire-brigade, had, by Section 26 of the Act, to contribute to the cost at the rate of one-half rupee for every ten thousand rupees value of property insured. Consequently, according to the existing arrangement, the cost of the fire-brigade was partly borne by the insurance companies. This he believed, nay he was certain, was the principle adopted in London, where insurance companies were compelled to contribute towards the maintenance of the fire-brigade. It was by following the English Act that this clause was introduced in Act II of 1872.

No doubt all the suggestions made by honorable members would be duly considered in Select Committee. He hoped therefore the Council would allow the

Bill to be read, and then direct the Select Committee to consider its clauses, and also such other modifications of the Act as might be considered by them necessary.

THE HON'BLE MR. RIVERS THOMPSON said, with His Honor the President's permission he wished to make a few remarks. The hon'ble mover of the Bill scarcely anticipated, when he took charge of it for the purpose of relaxing one of the restrictions imposed on the grant of licenses to the owners of jute warehouses, that so many other points of discussion would arise. Most of the speakers who had addressed the Council had suggested different proposals regarding the amendment of Act II of 1872; and if the hon'ble member was to take all these proposals into consideration, and if all of them were, upon consideration by the Select Committee, likely to be carried, MR. THOMPSON thought it would be advisable that the whole law on the subject should be included in one Act instead of two,—a course which would secure much greater convenience. And if, in the wisdom of the Committee, it should be determined that the suburbs should, for the purposes of the Act, be amalgamated, as now, with the town of Calcutta, he would suggest that it should also be considered whether the Howrah fire-brigade should not also be amalgamated with the suburbs and Calcutta, so as to have one fire-brigade for the whole. At present Howrah, to which Act II of 1872 was extendible, had a separate fire-brigade of its own, and that without the Act having been extended to that place. The expenses of the Howrah fire-brigade were paid out of the municipal fund of that place; and it had only lately come to the notice of the Government that they had a fire-brigade, the expenses of which were paid out of the funds of the Municipality. MR. THOMPSON would suggest, therefore, that if the management of the fire-brigade for the joint use of Calcutta and the suburbs was to remain with the Justices of the Peace for Calcutta, the Howrah fire-brigade should be amalgamated with it.

HIS HONOR THE PRESIDENT inquired whether it would be competent for the Select Committee to make such extensive changes as those suggested by the hon'ble member who had just spoken.

The HON'BLE MR. DAMPIER said he did not think it would be within the competence of the Select Committee to take into their consideration such an enlargement of the Bill, unless the Council made it an instruction to the Committee to do so.

The HON'BLE THE ACTING ADVOCATE-GENERAL observed that it would be the duty of the Select Committee to consider the Bill which was referred to them. They could not go beyond the four corners of the Bill.

The HON'BLE MR. HOGG said he understood the meaning of the Hon'ble Mr. Thompson to be that the Act of 1872 should be repealed and one Act passed, which should include the provisions of this Bill.

The HON'BLE MR. RIVERS THOMPSON explained that if all the suggestions that had been made were considered and approved by the Select Committee, it would make the Bill such a large Bill that he thought it would be better to consolidate the whole law on the subject.

HIS HONOR THE PRESIDENT said he understood that this was a Bill to amend a particular Act. The Hon'ble Mr. Thompson proposed that the Select

Committee who should be appointed to consider this Bill should include in it another Act, which was not now mentioned in the Bill at all. His Honor ventured to doubt whether it was in the power of the Select Committee to alter the Bill referred to them for report in the way that had been suggested.

The Hon'ble Mr. Rivers Thompson observed that the Jute Warehouse and Fire-brigade Act was mentioned in Section 11 of the Bill before the Council.

The Hon'ble the Acting Advocate-General thought that Act II of 1872 did not cover Howrah, unless it was extended to that place; therefore Howrah was at present out of the Act altogether.

The Hon'ble Mr. Eldridge inquired if the Hon'ble Mr. Thompson was sure that Act II of 1872 had not been extended to Howrah. Mr. Eldridge thought the hon'ble member must be mistaken in declaring that the Act was not in force there, as Mr. Eldridge had heard strong representations made from people who had jute warehouses and screwhouses in that town. In the very letter before the Council, sent up by Messrs. Ralli Brothers, and sixty others whose names were not printed, they said:—

"A native was recently fined heavily at Howrah (where the Act appears to have been carried out most stringently) for drying a cargo of jute, which had been wrecked, in an open garden belonging to an uninhabited house at Ghoosery, where, had it all gone on fire, no possible harm could have resulted to any one. In this case it was not the spirit of the law that was carried out, but the letter of it, and many other equally hard cases have occurred."

The Hon'ble Mr. Dampier said he did not see why the Council was called upon to take any notice of Howrah. There was no mention of Howrah in the Act, except that as to the Municipality of Howrah the Act should commence and take effect from such date as the Lieutenant-Governor might direct by notification published in the *Calcutta Gazette*. If the Lieutenant-Governor thought that the Act ought to be brought into operation in Howrah, he had only to make an order extending the Act to that town, and thenceforth whatever was made applicable to Calcutta and the suburbs by the present Bill would become applicable to Howrah. Therefore he did not see why the Council were called upon to notice Howrah specially in the Bill.

The present motion was that the Bill should be read in Council. To that motion he supposed there would be no objection. Then, in the discussion of the Bill, several new points had arisen. The next motion would be to refer the Bill to a Select Committee. The discussion had brought out several points which, as the thing stood, it would not be within the competence of the Select Committee to take up; but it appeared to him that it would be within the competence of the Council to direct the Select Committee, in addition to the provisions contained in the Bill, to consider and report upon the points that had been raised in the discussion. He therefore begged to suggest that the motion now before the Council, that the Bill be read in Council, be put, and that the further progress be then deferred, in order that the suggestions that had been made might be well matured and put into form, with the view, at the next meeting, that the Council should lay down lines as to the point or points that should be taken into consideration by the Committee.

The Hon'ble Mr. Hogg suggested that it be an instruction to the Select Committee to consider the suggestions which had been made in Council, and the

expediency of repealing Act II of 1872 and passing one consolidated Act. It seemed to him that most of the suggestions which had been made were of a technical character.

His Honor the President said it appeared to him that the best course would be for the Hon'ble Mr. Thompson to move a specific amendment or amendments as soon as the Bill was read in Council. The subject of the amendment would be that this Bill and the existing law be incorporated and made into one consolidated Act relating to jute warehouses.

The Hon'ble Mr. Rivers Thompson said he thought the usual course was that, on the motion to read a Bill in Council, the principle of the Bill was discussed, and different suggestions were made as to various points in connection with it. Then, on the nomination of the Select Committee, it considered the Bill as it stood, and all the suggestions that had been made were brought to its notice. It might be made an instruction to the Select Committee to say whether, in the event of their adopting the suggestions that had been made, it would not be a good course to amalgamate all the amendments that were proposed and frame one consolidated Act on the subject. If it turned out that the Select Committee rejected the suggestions that had been made, and the Bill remained a small one, as it now was, there would be no necessity to amalgamate it with Act II of 1872. But if these suggestions were carried out, he thought it would be a wise course for the Select Committee to consider whether the law should be consolidated.

His Honor the President said the question before the Council seemed to be a matter of form more than anything else. It appeared to him doubtful whether it was regular for the Council to instruct a Select Committee to alter the whole frame-work and substance of a Bill about to be read in Council.

The Acting Advocate-General said he was not aware of what had been the practice of the Council. The difficulty he felt as to the Hon'ble Mr. Thompson's motion was this:—It was admitted that Act II of 1872 did not apply to Howrah, and a Select Committee had no power to consider any other proposals than what were contained in the Bill which was referred to them: those proposals did not form a part of the frame-work of the Bill.

His Honor the President said he thought the more regular course would be for the Hon'ble Mr. Thompson to move an amendment, and after that the Select Committee could be instructed to consider the several suggestions that had been made. The present Bill was one of about ten sections. If the question of consolidation was raised, there would be at least thirty-five sections added to the Bill from Act II of 1872, and probably some others; so that what was now a Bill of small dimensions would become a Bill of very considerable magnitude, which was altogether a different thing from the proposal before the Council.

The Hon'ble the Acting Advocate-General said that considering the urgency of the representation made by the owners of jute warehouses, he thought this Bill should be passed as expeditiously as possible, and that would be a reason for not entertaining at present the suggestion which had been made for the enlargement of the Bill.

The Hon'ble Mr. Eldridge said he thought it would be found that a great number of the suggestions which had arisen during the debate would not prove so formidable in the Select Committee as was anticipated by the hon'ble member on his left (Mr. Thompson). The hon'ble mover of the Bill had proposed that the conditions to be imposed on the granting of licenses for jute warehouses should not be contained in the law, but should be regulated by rules to be passed by the Lieutenant-Governor. The hon'ble member who spoke next thought that the conditions should be specified in the law. That would be a question for the consideration of the Select Committee. One other suggestion that had been made was as to the fees to be levied for the registration of the names of occupiers of jute warehouses. While supporting the hon'ble mover in his proposal to repeal the objectionable clauses in the present Act, the only suggestion that Mr. Eldridge had made was that the scale of fees for the licensing of jute warehouses should be reduced, as he thought that the rate at which the fees were now fixed was too high. There had been a great deal of discussion over other matters in connection with the Bill, which he thought it would perhaps have been better to have postponed till the Bill passed the Select Committee. His only reason for making the suggestion which he had mentioned was that he would not have another opportunity of speaking in the Council. His opinion was that the Select Committee might report on this Bill in such a way that the law might be passed very rapidly.

The Hon'ble Mr. Rivers Thompson said if His Honor the President would allow the Bill to be read in Council, he did not think he should propose any amendment now, but would leave it to the sense of the Select Committee whether there should be any consolidation of the law. He was not prepared to propose any amendment which might cause delay.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Mr. Schalch, the Hon'ble the Advocate-General, the Hon'ble Mr. Dampier, the Hon'ble Baboo Doorga Churn Law, and the mover.

REALIZATION OF GOVERNMENT ARREARS.

The Hon'ble Mr. Dampier presented the report of the Select Committee on the Bill for the realization of arrears in Government estates. The Bill, as amended by the Select Committee, had, he said, been for some time in hands of the members, and he proposed that the report of the Committee be taken into consideration in order to the settlement of the clauses of the Bill. The object of the Bill was to make the procedure now applicable to the realization of arrears due from tenants who held transferable rights in Government estates also applicable to arrears due from tenants who had no such rights. The Select Committee had made two alterations in the Bill before the Council. In the description of arrears to which the certificate procedure was made applicable, they had included arrears due on account of "interests in pasturage, forest rights, fisheries and the like," as well as mere rent of land. The object of this was obvious. They had also divided the Bill into two clauses: the first related to the realization of arrears from tenants of Government estates proper, and in the second clause they had made separate provision

for the realization of arrears due to the Collector on estates which he managed in trust for private individuals. As the Bill originally stood, it purported to make the certificate procedure applicable to arrears due to any manager appointed by the Government; but in Select Committee it was found that this would not be consistent with the existing law as regards arrears due from tenants with transferable rights. Under a section of the existing Wards' Act, tenants on Wards' estates were subject to similar procedure as those in Government estates; but it was specially provided that only in cases in which the Collector managed directly without the intervention of a manager, could he make use of the summary certificate procedure. Therefore the Committee simply followed the model of the existing law; and in estates managed under trust, they proposed that the summary procedure should only be applicable where the Collector himself managed the estates direct, and not where he appointed a manager. An appointed manager would have to sue for the recovery of arrears. MR. DAMPIER now moved that the Report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to, and the clauses of the Bill were passed without amendment.

HIS HONOR THE PRESIDENT observed that as the Bill would not be passed that day, there would be time for honorable members to give notice of any amendments which might occur to them.

The Council was adjourned to Saturday, the 30th instant.

Saturday, the 30th 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 STUART HOGG,
The Hon'ble C. E. BERNARD,
The Hon'ble H. J. REYNOLDS,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO DOORGA CHURN LAW,
The Hon'ble BABOO KRISTODAS PAL,
and
The Hon'ble NAWAB SYAD ASHGHAR ALI DILER JUNG, C.S.I.

REGISTRATION OF MAHOMEDAN MARRIAGES AND DIVORCES.

The HON'BLE MR. DAMPIER, at the request of His Honor the President, postponed the first two motions which stood in his name, viz., the motions for the

further consideration and the passing of the Bill to provide for the voluntary registration of Mahomedan marriages and divorces.

REALIZATION OF GOVERNMENT ARREARS.

The Hon'ble Mr. Dampier moved that the Bill for the realization of arrears in Government estates be passed.

The Hon'ble Baboo Kristodas Pal said when this Bill was introduced in Council, he had no opportunity of discussing its principle, but he had the honor of serving on the Select Committee upon the Bill, and of considering the provisions contained in it. He did not propose to offer any objection to the passing of the Bill, but he thought it his duty to draw the attention of the Council to the tendency of one of its provisions. The hon'ble mover of the Bill, in introducing it, had pointed to the necessity of supplying an omission in Act VII of 1868 passed by this Council. He said that the Collectors and officers of the Government had from 1797 exercised the power of summarily realizing rent from tenants in Government estates, and that when Act VII of 1868 was passed it was by an oversight that section 25 of Regulation VII of 1799, which contained the law on the subject, was repealed. The hon'ble gentleman was quite correct, and Baboo Kristodas Pal agreed with him, that the same facility should be given to the Collector to realize rents from ryots of Government estates having non-transferable tenures that he possessed in respect of ryots who held tenures with transferable rights. But Baboo Kristodas Pal need not remind the Council that the old law proved innocuous in the then system of management of Government estates, inasmuch as Government then used to manage its estates through farmers, who dealt directly with the ryots, and who were subject to the ordinary rent-law in recovering their dues. The policy of the day was, however, different: the Government did not now farm out its estates, but held them under *khas* management through the intervention of its own officers. It was, therefore, deemed necessary to include, under the certificate procedure for the recovery of rent, non-transferable with transferable tenures. So far so good. But it was proposed in the Bill to extend the power to the Collector in charge of Wards' estates. When the Bill was considered in Select Committee, he was doubtful whether it would apply to such estates; but the hon'ble mover explained that it was so intended. Now, when the Wards' Act was revised and consolidated in 1870, this provision was not included in that Act. It was therefore fairly open to question whether this power should be given to the Collector in charge of Wards' estates. He readily admitted that the Collector in charge of Wards' estates was *ipso facto* in the same position as when in charge of Government estates. But the anomaly would appear when you considered that the Collector, as manager of a Ward's estate, when that estate formed part of a joint and undivided estate, would be subject to one law of procedure for the recovery of rent, and the other co-parceners would be subject to another, though the different fractions composed an integral whole. The same estate might be held by a number of persons, and because the Collector by an accident came to be the manager of a portion of the estate,

he was armed with more summary powers then the other co-sharers of that estate. This, BABOO KRISTODAS PAL submitted, was an anomaly. Then the Collector might farm out the estate: the farmers, who were responsible for the punctual realization of the revenue, were not vested with that privilege. They must go to the Civil Court in the regular way to realize the rents; but the Collector-manager was placed in a different position. This also was anomalous. It was, BABOO KRISTODAS PAL observed, one thing to arm the Collector with summary powers when he was the manager of Crown property, and another thing when he was the manager of private property. BABOO KRISTODAS PAL was aware that, under the law, an estate which was under the management of the Collector was exempt from the operation of the sale law for default of revenue; but this exemption was a necessary and natural sequence of that condition of things. The Collector being in charge of an estate, it could not be just to put up the estate in his charge to sale for default which might arise from his own laches or from circumstances which were within his control. But it was worthy of consideration whether, when it was deemed necessary to arm the Collector with such summary power for the realization of rent, notwithstanding the prestige and influence of his official position, a private landlord was not entitled to the same facility for the realization of his dues. This question, BABOO KRISTODAS PAL was of opinion, was a logical sequence of the power vested in the Collector by this Bill. A private landlord was under greater disadvantages than the Collector-manager of an estate could ever be. He need hardly remark that the present law for the recovery of rent was attended with many inconveniences and hardships. A suit in the Civil Court was harassing, tedious, and expensive; and it might well be asked whether the same facilities should not be given to the private landlord which it was deemed necessary to give to the Collector-manager of an estate for the realization of rent.

In making these remarks, he simply wished to draw the attention of the Council to the anomaly of the provision as regards the power given to the Collector-manager of estates, and to the tendency and effect which this law might have upon landlords generally. He did not wish to oppose the passing of the Bill, but he considered it his duty to impress upon the Council the probable effect it would have upon the landed classes.

The HON'BLE MR. DAMPIER said he had only to correct what, if he understood it rightly, was a misapprehension on the part of his hon'ble friend. He understood him to say that when the Wards' Act was passed in 1870, the procedure which was now known as the certificate procedure was not mentioned, even as against tenants who held transferable rights. But under the Wards' Act, if his hon'ble friend would turn to Section 75, he would find that—

"Farmers and others holding tenures in estates in charge of the Court direct from the Collector, shall be subject to the same rules, regulations, and Acts as are applicable to other persons holding similar tenures and interests under Collectors of the land revenue; but when the farm is held from the manager, these rules, regulations, and Acts, shall not apply."

Thus that Act placed the tenants in Wards' estates which were managed by the Collector direct, and not through the intervention of a manager, precisely on all fours with tenants in Government estates proper. Independently of the

present Bill, the effect of the existing law was that in Wards' estates managed by the Collector direct (as in Government estates proper), a tenant who held transferable rights was subject to the certificate procedure, while a tenant who held a non-transferable holding was not subject to that procedure: in fact Wards' estates, when managed by the Collector direct, were in precisely the same position as Government estates.

The second point advanced by the hon'ble member was that when the Collector managed one share in a Ward's estate, while other shares were held by other proprietors, who managed it in their own interests, it was anomalous that the Collector should have summary powers of realizing rent while the other sharers had no such powers. There certainly was an anomaly to the same extent as in all cases in which the Collector, on behalf of Government, was vested with more summary powers of realizing rents than any private landlord could exercise; but the anomaly was adopted by the Council in the Certificate Act VII of 1868. The principle on which it was based was that whatever bias the Collector and his subordinates might have in the matter of realizing rents and dues for Government was not a personal, but a departmental bias, whereas the bias of the private landlord in collecting rents from his ryots sprung from personal interest. MR. DAMPIER thought that the distinction was clear, and at any rate it had been accepted generally by the Council in Act VII of 1868, and was by no means novel elsewhere.

The HON'BLE MR. BERNARD said he would like to say one or two words with respect to the objections which had been taken by the hon'ble member on his left (Baboo Kristodas Pal): these seemed to be two-fold. First, that it would be hard upon the ryot that there should be a more summary remedy against ryots in Government estates than there was against them in private estates; secondly, that it was hardly fair upon the zemindars that one of their brethren who happened to be a minor should have a quicker remedy than themselves. In the first place, it was only fair to say that, as far as the experience of the last two or three years had gone, the system of managing Wards' estates by the Collector, instead of letting them out to contractors, had answered. This system was introduced, as His Honor the President knew, about three or four years ago, and was at the time much challenged. He recollected that the managers of the larger Wards' estates, and not only the managers, but some of the revenue officers connected with the management, were very much against the new system; and they much preferred the old plan of letting out villages for five or seven years to outsiders. First, they said that the direct system of collecting revenue would harass the ryots; next, they said that the rents would never be collected. These objections were urged by persons who really understood zemindary work, and among others by the gentlemen who were then managing the great Durbhunga estate. MR. BERNARD had recently visited many parts of that estate in Tirhoot, Purneah, and Bhagulpore; the officers who were in charge of the estate were the same now as then, and they all said that the system had answered very well so far as they knew. They were in the best possible position to know whether the rents were collected, and they thought that by the new system the relation

of the zemindar the Court of Wards was very much nearer to the ryot, and the ryot to the zemindar, than under the old system. He thought, therefore, it might fairly be contended that the new system had proved advantageous, and had worked well.

Unfortunately, as things now existed, it was very difficult to find out the opinion of ryots. But so far as it was known to the managers of Wards' estates, it might be said that the ryots preferred the system of paying direct to the manager at the raj zemindary, rather than the old system of paying to the contractors.

Then the second objection that had been taken was that it would be a hardship to the zemindars who were managing their own estates that their brother proprietor should have a more summary remedy than themselves. The hon'ble member had told the Council that the present system, whereby the zemindars collected their rents through the intervention of the Civil Courts, was harassing, tedious, and expensive. No doubt his hon'ble friend was in an excellent position to judge. We had heard, within the last four or five years, something about the difficulty in collecting rents, and we had been told that the law for the collection of rents required revision. If the present law did make it difficult for the zemindar to collect his rents, and if that law required revision, he did not see that the harassment, expense, and difficulty upon the zemindar was any reason why the Court of Wards, where it managed directly and in the face of the public, with all its books more or less accessible to the public, should not have the advantage of realizing its rents direct as the Government did from its ryots. As the hon'ble mover of the Bill had explained, when the Collector, on behalf of the Court of Wards, gave over the management of Wards' estates to somebody else, then the farmer would have only the old remedy against the ryots, in the same way as zemindars now had.

The HON'BLE THE ACTING ADVOCATE-GENERAL would say one or two words on the question before the Council. It had been pointed out by the hon'ble mover of the Bill that a measure providing for the certificate procedure existed under the Wards' Act. The present Bill was simply to extend that principle to cases of non-transferable tenures—or, in other words, to enable the Collector managing a Ward's estate to obtain a sale certificate which would have the force of a Civil Court's decree in that particular case. It was simply to give the Collector managing a Ward's estate the privilege of exercising the same power as regards non-transferable holdings as he had as regards transferable holdings. The distinction would be this, that those who had non-transferable tenures would not have their tenures sold; but the remedy acquired against personal and movable property would be the same in both cases.

With regard to the anomaly respecting co-sharers in Wards' estates, that was an anomaly which existed at the present time. This Bill did not introduce it in any way. It was merely an anomaly in name, and not one in reality. In this country rents were collected in fractional shares; and although the whole rent was paid by the same ryots, still, so far as the ryots and the zemindars might be concerned, this Bill would make no alteration. It

did not appear to him to be a case in which these fractional shares should be considered.

He thought that the objection fell to the ground, and that the motion of the hon'ble mover did not appear to be open to any objection. It was merely an extension of the remedy which the Collector had against one class of tenants, to another class. He could not see why one class of tenants should have an immunity which the other class had not.

The Hon'ble Mr. Dampier wished to say one word more, so that the Council might not overlook anything in passing this Bill. Much had been said as to this Bill providing for the extension to tenants without transferable rights of a principle now in force against tenants who possessed such rights. But he must point out distinctly that with regard to estates (other than Wards' estates) which were managed by the Collector direct in trust for private individuals, the Bill provided something more than this.

In estates so circumstanced, the certificate procedure had not yet been made applicable to any class of tenants. Legislation had not touched them at all. So far, then, the Bill provided for the introduction of a procedure which was new to the limited class of estates. But the position which Mr. Dampier took up was that when once this procedure was accepted as applicable against ryots with non-transferable interests in Wards' estates, there was absolutely no room left for discussion as to whether it should be applied to estates other than those of Wards, which were managed direct by the Collector. When this Bill was passed, a tenant in an attached estate managed direct by the Collector, if he had a non-transferable tenure, would be liable to be proceeded against by the certificate procedure; but if he had a transferable tenure, he would not be liable to be so proceeded against, the law never having extended that procedure to them. The result would be that in such estates the tenant with the weaker and lower degree of right in his holding, would be less privileged in this respect than one who possessed the higher and transferable interest.

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

RECOVERY OF GOVERNMENT ADVANCES.

The Hon'ble Mr. Dampier presented the report of the Select Committee on the Bill for the summary realization of loans of money and grain due to Government. When the Select Committee proceeded to look into this Bill, it appeared that there was not sufficient information before them as to the means which the Collectors had of satisfying themselves as to advances having been made, as to the persons to whom they had been made, and as to whether they had been repaid. The Select Committee therefore summoned two witnesses, namely the Collector of Sarun and Mr. MacDonnell, the sub-divisional officer, who had so much distinguished himself at Durbhunga, and ascertained from them the exact procedure which had been followed in making these loans of grain and money. In Sarun the agency of planters had often been made use of to make the loans; and in the Durbhunga sub-division, which the Committee were informed might be taken as a type of what was done generally in East Tirhoot, advances were made by circle officers, who were in the position either of Covenanted Civilians or of Deputy Magistrates. Bonds were taken both

when grain advances were made from the golas and when money was paid over, and these bonds were afterwards sent in to the Collector or the sub-divisional officer, to be kept in his custody. In the bonds that were taken in Durbhunga and East Tirhoot, the instalments by which the money was to be repaid were distinctly specified. In Sarun there was no such specification: not only were bonds taken, but careful registers were prepared in which each advance was posted up; the name of the person receiving the advance, and the name of the surety being entered, and provision was made for entering up the instalments which might be repaid. Then the witnesses informed the Select Committee that the procedure they were adopting to recover these advances was this: just before the time when the first instalment fell due, notices were to be issued to the ryots. In Sarun these notices called upon the ryots to come in and make an arrangement as to the instalments in which they could repay the advance, as the time had now come for repayment. It was obvious that here, before any proceeding was taken against, or pressure put upon the ryot, the issue of these notices afforded the ryot an opportunity to make any objections he might have to make. In Durbhunga, where the instalments were recorded in the original bond, the notice to the ryot intimated that a certain tehsildar was appointed, or was about to be appointed, to realize advances, and called upon each ryot to pay the amount due by him to the tehsildar. The tehsildar would send in to the Collector a list of those who did not pay in accordance with this call, and the Collector would then call upon them individually and hear what they had to say. That was the procedure which was now in train independently of the present Bill; and MR. DAMPIER might here mention that although the instalments of repayment were distinctly stated in these Tirhoot bonds, yet, under instructions from the Government, the officers concerned had been directed to give the ryots more time than that within which they were strictly bound by their bonds to repay. The time of recovery had been extended to beyond the main crop at the end of 1875.

A petition had been presented by the British Indian Association, which had not been before the Select Committee, but the arguments urged in it had been pressed before the Committee by the hon'ble member (Baboo Kristodas Pal) who represented the views of that body, and in fact MR. DAMPIER thought all the points urged in the petition had received the consideration of the Committee. No doubt the hon'ble member would lay his views before the Council, and MR. DAMPIER should therefore reserve any remarks he might have to make on those points until the hon'ble member had done so. The form in which the Committee had recommended the Bill to be passed was essentially the same as that which had been referred to them for report. The only material alteration which they had made was to enable one individual ryot, out of a number of ryots who had jointly stood security for one another, to proceed summarily against any person for whom he had paid and who refused to pay his share.

The Council was adjourned to Saturday, the 6th February.

By subsequent order of THE PRESIDENT, the Council was further adjourned to Saturday the 13th February 1875.

The Hon'ble Mr. Dampier.

Saturday, the 13th February 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 Honb'le Stuart Hogg,
The Hon'ble H. G. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble T. H. Brookes,
and
The Hon'ble Baboo Kristodas Paul.

INSPECTION OF STEAM-BOILERS AND PRIME MOVERS.

The Hon'ble Mr. Hogg moved that the Bill to amend Bengal Act No. VI of 1864 be read in Council. When he asked permission to introduce this Bill, he brought to the notice of the Council that the use of machinery being greatly on the increase in Calcutta, it seemed desirable to frame regulations by which some control should be had over persons who were placed in charge of the boilers and prime movers; more especially as upon inquiry it was found that the machinery belonging to the poorer classes were constantly placed in charge of persons who had no practical knowledge of the working of boilers or engines. If the Council would refer to Section 6 of Act VI of 1864, passed by this Council, they would see that there were certain conditions under which the Lieutenant-Governor or any person authorized by him in that behalf might revoke any certificate granted for the working of a boiler. The way Mr. Hogg proposed to deal with the subject before the Council was to repeal the whole of Section 6 of Act VI of 1864, and to re-enact it with the addition of a clause providing that the Lieutenant-Governor, or any person authorized by him, might, in addition to the conditions stated in that section, revoke a certificate when it was found that a boiler or prime mover was not in charge of a person competent to have charge of the same. Mr. Hogg had treated the subject in that manner because he found that in many cases the persons placed in charge were illiterate men; and it therefore seemed difficult to impose upon them any sort of examination previously to their being placed in charge, whereby the inspecting officer would be able to ascertain their qualifications and issue certificates. The plan he proposed seemed to be the simplest one that could be followed, and would, he believed, effect the object in view.

The Hon'ble Baboo Kristodas Pal said he wished to preface the few remarks which he had to offer on this Bill with an observation, which he trusted the Council would receive with indulgence. He was a new-comer to this assembly, and was not familiar with its practice and procedure. But he believed he was

correct when he said that in all deliberative bodies it was usual to circulate, previous to discussion, the papers relating to subjects on which projects of legislation were based. It was indeed most inconvenient to discuss the merits of a measure without knowing the reasons upon which it was founded; the circumstances which might have led to its inception; and the history of the different stages through which it had passed before it had obtained the maturity of a draft Bill. With reference to the subject-matter of the present Bill, he was sorry to observe that, beyond the half-a-dozen lines in the shape of Statement of objects and reasons from the hon'ble mover, the Council had not a scrap of paper before it to show whether there existed any necessity for the measure or not. He believed that if such a measure were introduced in the English Parliament, the evidence of experts would have been taken before any decisive action would have been adopted. The executive Government, if he was rightly informed, had practically followed that course by inviting opinions from competent persons on the subject; but these opinions had not been laid before the Council, though it had been asked to pass the Bill. The Council was utterly in the dark as to whether, in the opinion of the persons consulted, there was good and valid reason for a measure of this kind. In another capacity he happened to come into possession of the papers on the subject; and from those papers it appeared that in 1873 the Government appointed a Commission to inquire into the working of the Steam-Boilers' Act in the town and the suburbs. Mr. Horace Cockerell, who was President of that Commission, stated that—

"In flour and soorkey-mills worked by native proprietors, common coolies, entirely unacquainted with the working of the steam-engine, are placed in charge of the machinery; that the mills are frequently kept working day and night without a change of men, and that the practice of working mills at night is greatly on the increase."

He was also of opinion that—

"The supervision over steam-boilers in the town and suburbs cannot be considered complete and effectual unless we take measures to ensure that the working of the machinery is placed in the hands of competent persons."

He believed from that report originated the present measure. But from inquiries which he had been able to make, he found—and he believed the hon'ble mover of the Bill would bear him out in the statement—that in boilers worked by natives there had not occurred a single accident. Some of those boilers had been worked for about twenty years or more; and however ignorant the men employed might be of the general principles of science, they were experienced in their work. He did not deny that in the abstract it was desirable to employ men well versed in the principles of science and in the theory of conducting machinery; but when we got practical men, experienced in their business, he thought it was quite sufficient for all practical purposes: and the best proof of the efficiency of these men was that there had been no accidents. A few accidents, it was true, had occurred with machinery in Calcutta and the suburbs; but in those cases the boilers and prime movers were under the superintendence of European gentlemen or workmen. The natives of the country were just

The Hon'ble Baboo Kristodas Pal.

beginning to learn the use and advantage of the means and appliances placed at their disposal by Western science; and this, he submitted, was not the moment to fetter or clog their efforts by restriction or repressive legislation. The Government ought rather to encourage, consistently with public safety, the use of steam power in the manufactures of the country. It ought to take a broad view of its own position and of the duty it owed to the people. Holding that view, and remembering that there had been so few accidents, and that self-interest was a sufficiently powerful motive to keep the men engaged in the work on their guard, he thought the Bill might not improperly be called a piece of unnecessary legislation.

The present Bill was practically, as had been stated by the hon'ble mover, a re-enactment of Section 6 of Act VI of 1864. The only clause added was that a certificate might be revoked if the boiler or the prime mover was not "in charge of a person competent to have charge of the same." He must confess that the hon'ble mover had drawn up that provision with very great care. He had not followed the recommendation contained in the report of Mr. Horace Cockerell, who suggested that only certificated men should be permitted to be employed. If that suggestion had been carried out, a particular class of men would have a monopoly, and the result would be a considerable rise in the wages of the men employed to manage steam-engines. Now, hon'ble members were no doubt aware that success in the employment of steam power in Indian manufactures was chiefly dependent upon economic management; and if the wages of the men employed by the masters to conduct the machinery were in ordinately high, the result would be that most of the soorkey-mills would have to be closed. Surely, the Government did not contemplate such an untoward result. BABOO KRISTODAS PAL was therefore of opinion that the hon'ble mover had shown much consideration in framing this provision; but it appeared to him that the provision in question was open to other objections. It left it entirely to the discretion of the Inspector to declare a man competent or incompetent: in fact it threw great responsibility upon the executive officer. He did not think that this wide discretion should be left to the executive officer, particularly when there was no necessity for the measure. He thought that the general penal law of the country was quite sufficient to meet the object aimed at by the Bill. If the Council would refer to Section 287 of the Penal Code, they would find that the present law was amply sufficient. That section provided as follows:—

"Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Now, he submitted that the Penal Code sufficiently met the cases contemplated by the Bill. He believed that about two or three years ago a case was tried by the Bombay High Court under that section, and the party concerned was punished: so when the general penal law of the country was

sufficient to meet the requirements of the public, he did not think there existed any necessity for a measure of this kind.

The HON'BLE MR. DAMPIER said he had been prepared to suggest, for the consideration of the Select Committee, if the Bill should be referred to a Committee, an objection which the hon'ble member who had last spoken had just mentioned, but had himself answered, that it was leaving too much to the discretion of the Government to provide merely that the certificate should be withdrawn if the man found in charge of the engine was not competent to manage it. The Bill gave no definition of competency. It had occurred to MR. DAMPIER that it would be better to have some definition, and that the natural means of defining the degree of competency would be by requiring a certificate to be taken out. He should have made the suggestion in the interest of the owners of machinery; but if, as appeared from the speech of the hon'ble member who spoke last, such a provision would not be agreeable or palatable to them, there would be no reason for pressing it further.

The HON'BLE MR. HOGG said that the hon'ble member on his left (Baboo Kristodas Pal) was correct in saying that the action of the Government was taken on the report of Mr. Horace Cockerell, who brought to the notice of the Government that boilers and prime movers in the town were, as a rule, placed in charge of persons utterly unqualified to take charge of them. As that report was based on statements made by a very experienced officer, Mr. Walker, who was for a long time the Inspector of Boilers in the town, the Government addressed the Locomotive Superintendents of the East Indian Railway and the Eastern Bengal Railway, the Trades' Association, the Chamber of Commerce, and other public bodies, and some private individuals who had special knowledge on the subject.

All these public bodies and gentlemen were strongly in favour of MR. COCKERELL'S proposal being adopted by the Government. Some native gentlemen were also consulted, but they were against the measure. There was, then, a concurrence of opinion of all the European gentlemen best qualified to take an impartial view of the matter, and they advised the Government in favour of having some supervision over those who might be entrusted with the working of steam-boilers. On the other hand, the only persons who were averse to the proposal, were a few native gentlemen, who had not the same means or opportunity of arriving at a fair conclusion as those who supported the Government. He was certainly unable to agree with his hon'ble friend that it would be wise to await the occurrence of an accident before taking any action in the matter. The Bill as framed was intended to obviate as far as possible any inconvenience upon the proprietors of machinery. He quite agreed that it would be a very great inconvenience if an Act were passed compelling the persons placed in charge of steam-boilers to submit to an examination and obtain certificates. It would be difficult to test their qualifications, and we should have to fall back on the employers and ask them how far their men were qualified. He was certain that it was not the intention of the Government to work the Bill in a harsh manner, and the only object sought was to guard against boilers being left in charge of incompetent persons.

The motion was then agreed to, and the Bill referred to a Select Committee, consisting of the HON'BLE MR. DAMPIER, the HON'BLE BABOO KRISTODAS PAL, and the mover.

RECOVERY OF GOVERNMENT ADVANCES.

The HON'BLE MR. DAMPIER moved that the Report of the Select Committee on the Bill for the summary realization of loans of money and grain due to Government be taken into consideration in order to the settlement of the clauses of the Bill. He had the honor to present the Report of the Select Committee with some remarks at the last meeting of the Council.

The HON'BLE BABOO KRISTODAS PAL moved the amendments of which he had given notice, and which were as follows:—

In clause 1, for lines twelve, thirteen, fourteen, and fifteen, read the following:—

"And whenever any arrear of such demand shall remain unpaid, the Collector or other officer to whom such demand is payable shall give to the Moonsif, within whose jurisdiction such demand is payable, a notice in writing in the form in Schedule (B) annexed to the said Act, and such Moonsif shall make under his hand a certificate of the amount of such arrear so remaining unpaid in a form similar to that in Schedule (A) annexed to the said Act, and shall cause the same to be filed in his office, and every certificate so made shall be deemed to be a certificate made in pursuance of section nineteen of the said Act."

Omit the last paragraph.

In clause 2, lines twelve and thirteen, *for* "Collector of the District in which," *read* "Munsif within whose jurisdiction." In line seventeen, *for* "the Collector," *read* "such Munsif"

Omit the last paragraph.

After clause two, insert three fresh clauses, as follows:—

"For the purposes of this Act, the Munsif, as mentioned in the two last preceding sections, shall have the same and the like powers and duties as are given to, and imposed on the Collector by sections twenty, twenty-one, twenty-two, twenty-four, twenty-five, twenty-six, twenty-seven, and twenty-eight of the said Bengal Act No. VII of 1868."

"Any Munsif making a certificate in accordance with sections one and two of this Act, may, in his discretion, order in such certificate that the amount payable be paid by instalments."

"Every order made by a Munsif in accordance with the provisions of this Act shall be final."

He believed there was no one in or out of this Council who could take the slightest exception to the objects of this Bill. The Government came forward most nobly to help the ryots at a time when they were threatened with starvation and death, and when assistance to them was not available from any other quarter. The debt which the ryots owed to Government he might say was a sacred one; and he was glad to find, from the reports which had been received from the district officers, that they did not apprehend the slightest difficulty in realizing it. In fact, it appeared from some of the papers that portions of the loans had already been recovered in some districts. The question before the Council was whether, if any suits should arise in connection with these loans, the procedure for the trial of these suits should be that which was laid down by Act VII of 1868, or any other procedure equally or still more summary. Now, with regard to the summary character of the procedure, he

believed that there was no difference of opinion. The Select Committee were agreed on that point. They were unanimous that the procedure should be sharp and summary. The question simply was whether the Collector or the Munsif should be the trier of the suits. It was BABOO KRISTODAS PAL'S misfortune to differ from his colleagues in Committee upon the last point. The majority of the Committee were of opinion that the Collector would be the proper person to try the suits. He, however, felt that the regularly constituted tribunals of the country would be the proper courts for the trial of these suits. He believed the Council would admit that the Collector was in one sense an interested party in this matter. It was true that his own pockets would not suffer whether the cases ended one way or another; but his reputation was pledged as it were to the recovery of the loan, and it would therefore be individually his interest to see that every pice was recovered without loss. He did not for one moment believe that any intentional or conscious injustice would be committed; but there was in the Collector what the hon'ble member opposite (Mr. Dampier) called the other day, a departmental bias. There might be that departmental bias in the revenue officers which might lead them to overlook the interests of the other parties involved in the case. The Munsif, on the other hand, would be free from that bias; he would be an independent officer, and his judgment would not be open to that charge which might not without reason be taken against that of the Collector. He believed the Council would agree with him that there might arise questions of fact and law in connection with these advances which would require trained judicial experience for their solution; and it could not be pretended that the revenue officers possessed superior qualifications in that respect compared to the judiciary. When the Munsif was trusted in cases between private parties, he did not think it would be just to show any distrust in them when the Government became a party. The Government in other cases trusted the Munsif in suits in which it was interested; why then should suits coming under this Bill be taken out of his jurisdiction? What would be the moral effect on the public mind of such distrust in the Munsif on the part of the Government? Besides, it needs be borne in mind that the suits covered by this Bill were in the nature of money demands; and when such suits arose between private individuals, they were told to go to the Small Cause Court or to the Munsif's Court. If, then, the Government happened to be an interested party in a case of that kind, BABOO KRISTODAS PAL did not see why a different agency should be resorted to for the trial of the suit. It was true that the Government employed a special agency for the trial of cases in the nature of arrears of demand; but it could not be desirable to broaden this invidious distinction in all cases. In fact there ought to be as little distinction as possible between the Government and private parties in the trial of suits. The Government, as the employer of the judicial agency, ought to show its confidence by entrusting the trial of suits in which it might be interested to the ordinary tribunals of the country.

There were also other weighty reasons why the revenue officers should not be entrusted with the trial of these suits. From some of the papers before him, he found that already doubts were entertained by some officers as to whether it would be always easy to identify the parties who took advances in such cases

in which they might deny having received the advances. For instance, he found from the report of the Collector of Bhagulpore that Mr. Kirkwood, the Relief Officer, said that "of course in many cases the parties must have only made their mark, and the only difficulty would be if they *denied* their identity and urged false personation on the part of some one else, it would be impossible for any one to identify each man to whom the order was given." Then the report of the Collector of Monghyr went further, and even proposed to throw the *onus* of proof from off the shoulders of the plaintiff to those of the defendant Mr. Campbell, the Sub-divisional Officer in Monghyr, said on this point:—

"In the Bill now before the Council, it should be well to insert a section throwing the *onus* of proof on the person repudiating his identity and asserting personation or fraudulent entry of his name in a bond."

Now, with these opinions entertained by the revenue officers, it might be easily imagined whether ryot defendants would receive fair play; whether they might not be called upon to prove a negative in defiance of the recognized principles of civilized law. Then how were the advances made? They were made by golahdars, relief officers, sub-deputies, *et hoc genus omne.*

There might have been many abuses. When the villagers in their collective capacity took the advances, some of the ryots might not have received the full quantity entered against their names—some might not have received any at all. Then persons holding in common tenancy might not have shared alike. There might be many questions in connection with these advances which it was very desirable should be carefully sifted by a properly qualified judicial agency. It might be said that the trial by a judicial court would be dilatory and tedious, and might defeat the objects for which the Bill was introduced. He denied that. He did not propose that these suits should be tried under the Civil Procedure Code. He simply suggested that the certificate procedure laid down in Act VII of 1868 should be followed, with this modification that in lieu of the Collector the Munsif should be inserted. If experienced Munsifs were appointed to try the cases, they would be able without much difficulty to sift their real nature and merits and decide satisfactorily. He did not think the interests of the Government would suffer in the least by transferring the jurisdiction in these cases from the revenue officer to the Munsif. On the other hand, he might observe that if his proposal were adopted, the procedure would be still more summary than that contained in Act VII of 1868. That Act, as the Council were aware, allowed an appeal from the decision of the Collector to the Commissioner, whereas he proposed that the judgment of the Munsif should be final. Thus the primary object of the Bill would be attained if the proposed procedure were adopted.

The next question was as to the time for the repayment of the loans. None was better aware than His Honor the President of the condition of the ryots at the time when they took the advances: they had gathered no crops from the field; they had sold all they had at home to keep their body and soul together; they were on the brink of starvation, and then came in the Government, like the good Samaritan, to give them money and food when they hungered and water when they were thirsty. That was a most noble act of humanity. But should

not the same generous consideration which was shown to the ryots in their distress be shown to them in the recovery of these loans?

It should be remembered that these ryots were entitled to peculiar consideration on the part of Government. If they had not, from a sense of self-respect, taken loans from the Government, but had, on the contrary, gone to the relief centres as poor beggars, the Government would have been obliged to feed them, and would have had to debit the whole amount so expended against the revenue. But because these ryots had a sense of self-respect, and wanted to earn their livelihood by honest labour, and to borrow money when they had not any, and to repay it when they had sufficient means,—because, he said, these ryots followed an honest and honourable course, the Government was in a position to recover what it had laid out for their maintenance, and they were not unwilling to pay their just debt. As he had already observed, the Collectors as a body thought that there need be no apprehension entertained about the recovery of these loans. Now, what was the position of the ryots to-day? They had in the first place to meet these loans from the Government; then the rents of the zemindar, which were in arrear; then their own household expenses; and numerous other demands. With respect to the Government demand, it should be remembered that they contracted the loan at one rate and had to repay it at a different rate; they received the loan in grain and had to repay it in money. They borrowed it at from 10 to 12 seers to the rupee, and they would have to sell rice from 25 to 35 seers to make up that rupee. Here they would suffer great loss. Then, again, the rents of the zemindars had been in arrear, which they must pay up.

The zemindars, as the Government had testified, had shown considerable liberality and humanity in assisting their distressed tenantry; but they could not be expected to meet the Government revenue this year, as they did last year, from their own pockets, or by borrowing money. The ryots, as a matter of course, must now pay their rents to the zemindar, and they had their own expenses to meet. Was it possible that one year's crop would be sufficient to meet all these numerous demands? It was true that last year's crop had been left to the ryots, because the Government did not in all cases enforce their demands this year. But the demands upon them were so many, that it was doubtful whether in all cases the ryots would be able to meet fully all these demands with the next year's crop. Indeed if such was possible, then the failure of one year's crop would not have brought millions of ryots very nearly to death's door. There might be ryots in good circumstances who might be able to pay at once; there might be others, again, who would want two, three, or four years to meet the aggregate demands upon them, and in these cases the Government ought to show some consideration. It was therefore necessary that a discretion should be given to the Collector and the Court to receive the money in convenient instalments. It might be said that the amount of loan per family or head was very small; it might be small compared to the means of others: but the amount was not small compared to the means of those who had contracted them. Already in one district a complaint had come that though it was understood that the loan would

have to be repaid in two years, notice had been served for its repayment at once. He did not know how far the case was true, or how far this was general, but such a complaint had come. It was therefore of the utmost importance that some provision should be made in the Bill authorizing the Collector to receive payment in convenient instalments, according to the circumstances of each party, and he had accordingly thought it proper to insert a provision to that effect in his amendments. He was aware that this object might be met by an order from the Executive Government. If the Hon'ble President would give such an assurance from his chair, it would not be necessary perhaps to make such a provision in the Bill. But BABOO KRISTODAS PAL might point out that if the procedure he recommended were not adopted, there would be an appeal to the Commissioner; and if there were no provision in the law authorizing the Collector to receive the money in instalments, it would not be open to the ryot, on appeal to the Commissioner, to urge that no time had been given to him for the repayment by instalments. As one of the grounds of appeal, it would be convenient to insert this provision in the Bill.

In making these remarks, he would only add that he was as anxious as any hon'ble member of the Council to afford every facility to the Government for the recovery of these loans: in fact it was but barely just to the general tax-payers of the country to provide such facilities. But he would repeat that the same generous spirit which had characterized the operations of Government in assisting the ryots in their late distress, should actuate it in providing for the realization of the famine loans.

The HON'BLE MR. DAMPIER said, as he anticipated in his speech at the last meeting of the Council, the hon'ble member who had just spoken had most ably expressed most of the arguments which were advanced in the memorial which the British Indian Association had presented to the Select Committee. In that memorial three points were made: first, that it would be better that it should be left to a judicial rather than to a revenue officer to pronounce an authoritative declaration that a certain amount was due to the Government in repayment of the loan in question; secondly, that the Bill should restrain the Government from proceeding against tenures in realizing sums which had been authoritatively declared to be due; and thirdly, that a discretionary power should be left to the officer making the authoritative declaration to fix the instalments by which the debt should be repaid. The hon'ble member had moved amendments which embraced the first and third of these points, and had dropped the second as regards not proceeding against tenures.

The first objection was founded on what MR. DAMPIER had before termed departmental bias of the revenue officers; and after the fair and temperate way in which the hon'ble member had put this objection, it was not for MR. DAMPIER to say that it was unreasonable, that it was a slight upon the Collectors, that it showed a want of confidence in the revenue officers, and so forth. The objection was not a frivolous one: he recognized it as a fair one, and as raising a fair subject for discussion. He could well understand that there was a feeling that the Collector (as the executive officer who had been bound to use moderate caution in making these advances, and who was responsible for the

realization of them to the Government,) would be to a certain extent unconsciously biassed in the direction of recovering these loans summarily and arbitrarily. But this objection had been very fully considered by the Select Committee; and on behalf of the majority of the Committee he had to say that they came to the conclusion that it was outweighed by considerations on the other side of the question. These considerations were that the Collector (and in the term Collector he here included the higher officers of the Revenue Department, who, under the Bill as it stood, would have to make the authoritative declaration that the amount demanded was due,) was in a better position to do substantial justice in these cases, and to ascertain the real facts of the case, than any officer of another department, whether judicial or other, could be. The Committee thought it was possible that if the case went for hearing before the judicial officer, the debtors might in some cases get the advantage of technical objections, which they would not perhaps get from the Collector; but they felt convinced that in the vast majority of cases, at any rate, substantial justice, as between the two parties, was more likely to be done by the Collector than by an outside Judge. Considering the habits of the people, the Committee thought that the very knowledge that the mere raising of an objection to the debt would lead to an inquiry by an officer of the Civil Court, would be sufficient to induce the ryot to try and put off the evil day, or even to get off paying what he felt himself to be a fair and just debt, by making *malâ fide* objections. In regard to questions of disputed identity, the Committee took into consideration the departmental knowledge which the Collector had; and with his special knowledge of the villages in which these loans were made, his relations with which had been drawn more close by the events of the last year, and considering these, they thought that on a question of identity the Collector was in a better position to give a substantially just judgment than any officer of the Civil Courts could be. Further, they considered that as to the particular matter of identity, if a question was raised at all, it must be in its simplest form; for these loans were not made in a corner: they were made in the presence of the village community, at the doors of the recipients, with the people standing round them. Of course there might be rascality and fraud; but the protection and guarantees against fraudulent personification seemed to be greater in the case of these loans than in almost any transaction that could be imagined. And Mr. Dampier could not think that when once a doubt as to identity was fairly raised, departmental bias would come into play in the matter. He could not believe that a revenue officer, in the position of those now in question, having any doubt whether the person from whom repayment of a loan was demanded was really the person who received the money, any amount of departmental bias would make him stop short of thoroughly satisfying himself on the subject before enforcing payment.

Passing from questions of identity, the majority of the Committee were of opinion that to call in the interference of the establishments and machinery of the Civil Court was to entail additional expense upon the ryot without sufficient counterbalancing advantage. Every case of this sort must first be got up in the Revenue office. According to the procedure which the Government had asked

the Council to allow, it would begin and end in the Collector's office, and the establishments of the Revenue office alone would extort the illicit gratifications which unfortunately were notoriously inseparable from proceedings in public offices in this country; but according to the proposal of the hon'ble member to substitute the Munsif for the Collector, after the Collector's subordinates had enjoyed their gratification, the case would go to the Munsif, and a new horde of underlings would fall upon the unfortunate ryot. These considerations preponderated with the Select Committee over the objection to the adjudication of the Collector which the hon'ble member had so ably argued.

And there was one other consideration, that the Collector had been accepted by the law as the authority who was to enforce demands similar to these—demands due to Government. It did not seem to him that there was any good reason for going specially to the Munsif in this particular class of cases, and requiring him, as the hon'ble mover of the amendments had explained, not to act according to the procedure of the Civil Courts, but *pro hac vice* to exercise precisely the functions with which the legislature had vested the Collector in all similar cases.

The objection as to proceeding against tenures had been dropped; and he did not think that practically there would be any procedure against them, except in the cases which the Bill was intended to meet,—cases of *mala fides* in the repayment of a just debt, where the repayment was opposed by chicanery and fraudulent combination. Then he thought the Government would be perfectly justified in pressing for repayment by proceeding or threatening to proceed against tenures. But in the ordinary course of things, he did not think that the Government would be led to proceed against tenures

The third point was the question of instalments. The procedure in the recovery of these advances might be looked upon as dividing itself into two parts: the first up to the point of the decree or authoritative declaration being given that the money was due—that was, the declaration upon which legal action could be taken; the second part was the procedure for realizing money due under that declaration. The proposals as to tenures and instalments touched the second part of the procedure, the mode of realizing the amount due. It would be observed that these were not proposals to refuse to give the Government the extraordinary powers for which they asked; but they were proposals to restrict the Government, and to tie its hands by withdrawing the powers which it could ordinarily exercise in realizing any kind of debt,—powers which not only the Government, but every other judgment-creditor, possessed in realizing debts decreed. The hon'ble member said that the ryot should have the same consideration shown him afterwards in the realization of the debt as he had had when the money was advanced. Certainly MR. DAMPIER admitted that; but there was no reason for the exercise of such consideration at the latter time being made the subject of legislation any more than at the former. The hon'ble member had then said that if the President would give an assurance that such consideration would be shown, he would not press this objection. In this place MR. DAMPIER might say that, in his

judgment, it was not desirable that the Council should be too frequently called upon to proceed upon personal guarantees from the Lieutenant-Governor sitting in that chair. He would prefer that, on the one hand, the Council should not be too ready to ask for such guarantees, and, on the other, that it should not be too often asked to allow them to influence its action. In the present case he would ask the Council to judge of the matter as it would of any other, without reference to guarantees. It was known that up to this point the Government, as a body of men, had, under certain circumstances, acted in a certain way towards those who had suffered in the famine; they had, in the interests of these poor men, acted up to the extreme limit to which their duties and responsibilities to the general tax-payer would allow them to go. From this, without falling back on any assurance from the Lieutenant-Governor, the Council might fairly draw the inference that the Government would continue to show the same leniency and consideration throughout the whole transaction. The whole arguments in favour of leniency which the hon'ble mover of the amendments had advanced were certainly such as would weigh with His Honor and the Executive Government; they would doubtless be borne in mind, and go far to influence the Government in its action. But they did not give any valid reason for transferring the duty of humanity from HIS HONOR'S shoulders to those of every Munsif in the districts concerned; for that was what the proposal amounted to. It must not be forgotten that every *mahajun* to whom a ryot was indebted would be able to throw him into absolutely the same difficulties as the hon'ble member had described. But there was no proposition to restrain creditors in general from pressing indebted ryots who had lately suffered from the famine; why then should the Government be more restricted than any ordinary creditor? He would ask the Council to look at the course of this Bill. The Government came to this Council, saying this great calamity had occurred, and that they, as trustees of the public money, had been obliged to make temporary use of some three-quarters of a million in relieving private distress, on the distinct understanding that the requirement was temporary only. Under the pressing circumstances of the case, it had been impossible for the Government officers to take all those precautions and all that care on technical points which would have been due to the public under ordinary circumstances. They were obliged to waive technicalities, and to give the money away loosely to those who required it so urgently. Having done that, the Government now came to the Council, after the pressure was over, after the lives were saved, and asked for the same measure as they had dealt to the debtors in the time of their necessity; they asked that technicalities and forms might, to some extent, be waived in the recovery of the debts, as they had been waived in making the advances. They asked the Council to give a procedure by which substantial justice would be done, though not in the highest and the most advanced form, that of judicial procedure. The Collectors were the officers absolutely in the best position to judge whether the money was due or not in each case: let these men be entrusted with the power to make a legal declaration that the money was due, upon which legal action could be taken afterwards. That done, the Government asked for no facilities greater than

every creditor had for the recovery of debts due to him. The answer which the British Indian Association proposed to give to the Government was—"We highly approve of your action; you were quite right in relaxing all these technicalities and lending the money without insisting on the precautions which would have been necessary under other circumstances, and we quite acknowledge that you require special facilities for recovering the money: nevertheless we will not give you the facilities for which you have asked towards obtaining the authoritative declaration. On the contrary, we shall take the opportunity of your having asked the Council for this facility to limit the ordinary powers which you in common with other creditors have of recovering debts when formally declared to be due. After once it is declared that money is due on account of these loans, we shall not allow you to proceed against tenures, and we shall tie your hands by fixing instalments; thus placing you under special disabilities as regards the recovery of these loans, which are not imposed upon any other creditor." If the Council would look at the matter in that view, it would scarcely be surprised if the Government replied—"If this is the only measure which the Council can offer to us by way of facilities for the recovery of these loans, we will not ask the legislature for any special assistance at all; we had rather be left to recover under the ordinary procedure of the law." He thought upon these grounds the Government was fully justified in asking the Council to reject the amendments which had been moved.

The Hon'ble Baboo Jagadanund Mookerjee said the question before the Council was whether the summary procedure should be given to the Munsif or the Collector. There could be no doubt that it was the Collector who made the advances, and he was therefore the person who, in a subsequent proceeding, should be vested with the power of realizing the money. The Collector who advanced the money would be in a better position to know whether the person before him was the identical person to whom the money had been given,—whether the identity was fully proved. If that question were submitted to another tribunal, it would go before a new officer, whose experience was much more limited than that of the Collector; because the Collector was supposed to be an officer of at least ten years' standing, and the Munsif might have been appointed only the other day. Therefore, comparatively speaking, the Collector was supposed to be better experienced than the Munsif. To give power to the Munsif in a matter like this, would throw upon him a duty which, to say the least, he was very little acquainted with. The advantage that might be gained would in no way override the disadvantage apprehended of prejudice and bias which were supposed to influence the Collector. In the non-regulation districts, the Deputy Commissioner was an officer who was entrusted with the powers of a Collector, a Judge, and a Magistrate; and though all those powers were exercised by one and the same individual, we had not yet heard that, as a rule, he showed a bias when he had to try a question judicially. If, therefore, we could trust the Deputy Commissioners, who were vested with the powers of both Collector and Judge, why should we say that the Collectors of districts would be biassed, and were not fit to be entrusted with the powers

which the Bill conferred upon them. It appeared to BABOO JAGADANUND MOOKERJEE that it was the Collector who, from his past knowledge in the particular matter, ought to be better able to try these questions summarily. He thought the amendments proposed went to a great extent beyond the objects which the Government had in view in bringing this Bill before the Council.

The HON'BLE THE ACTING ADVOCATE-GENERAL said he thought if the main provisions of the Bill were carefully examined, it would be found that the principal objections advanced against it by the hon'ble mover of the amendment would resolve themselves into fears and apprehensions of an unreal character. It was quite clear that the hon'ble member who assisted in the deliberations of the Committee had not been at all convinced by the discussions which had taken place at the Committee meeting, as he had repeated precisely the same objections as he had then made. We endeavoured to convince our worthy colleague of the position we took up in the report which we had presented; but it appeared we had not succeeded in convincing the hon'ble member of the propriety of that position. The ADVOCATE-GENERAL would repeat that if the provisions of the Bill were carefully looked into, the objections which had been advanced would wholly fail. As he understood those objections, they might be generally put down thus: first, that the Collector, being pledged as it were to the recovery of the money, would naturally be biassed in favour of the Government to whom he would have to account; secondly, that difficult questions of law and intricate questions of disputed identity would necessarily arise in the consideration of these cases, and would render it necessary that the scene of contest should not be the Court of the Collector, but that of an officer ordinarily exercising functions of a judicial nature.

With regard to a portion of the second objection, namely that difficult questions of law requiring judicial determination would arise, he was wholly unable to make out how such questions could arise in respect of such simple matters. It was however possible (though highly improbable) that serious questions of identity might arise in the investigation of these cases; and these were the only questions to which it was necessary to refer as bearing on the subject of bias, which formed one of the principal grounds urged in support of the proposed amendment. The objections urged by the hon'ble member were those originally made by Baboo Digumber Mitter, and consequently the Committee appointed to consider the Bill were fully aware of those objections; and the Committee, bearing in mind the objections raised, considered it necessary to have the evidence of gentlemen acquainted with the procedure adopted in the making of loans. Two gentlemen who attended with bonds and books to show how advances were supported by evidence, were fully examined; and any one there present would have been struck with the very great care and clearness with which the books had been kept. In the absence of any just ground of suspicion or distrust, one might fairly assume that these bonds and books faithfully represented a true state of things. The books stated the names of the ryots to whom loans were granted, the names of their sureties, the amounts of loan granted, and they contained a column under which any repay-

ment would be entered. By looking into his books, the Collector would at once see what were his outstanding advances, and by whom due; and he would thus be enabled to make his certificate without difficulty. It should be remembered that Government advances were made to two classes of people; the zemindars or a collection of villagers, who stood as sureties and who were well-known and substantial persons; and the ryots, or the persons who received the benefit of the advances. Certificates would therefore be ordinarily made against the surety or sureties and the principal debtor, the ryot. If it should appear, upon cause being shown against a certificate, that a ryot mentioned in such certificate disputed his identity, and there should exist good grounds for doubting his having been a borrower, it would not be necessary in the majority of cases for the Collector to do more than to omit or strike out the name of such person, and to amend the certificate, making the same available against the supposed borrower's surety or sureties, who were, as previously observed, well-known and substantial persons. In this manner the supposed bias calculated to induce the Collector to fix liability upon a particular ryot would not be allowed to have any effect on his mind. On the Government recovering the amount of any advance from a zemindar or other surety, the right to have a certificate under the second section of the Bill would accrue to such zemindar or other surety. If, in the assertion of this right, a certificate be applied for and made by the Collector, and cause be afterwards shown against the same, on the ground that the ryot charged thereby disputed his identity, the question of his liability or otherwise would then be entered on and decided by the Collector, without such bias as had been imputed, inasmuch as the Government would have been previously paid off by the zemindar or other surety, and the Collector's interest in the matter would have thereby ceased. If, however, in a few exceptional cases the supposed bias of the Collector might be deemed a disturbing element in the proper administration of justice, a correction had been provided by an appeal to the Commissioner. The ADVOCATE-GENERAL had assumed that no question of identity could possibly arise as regards a zemindar or other well-known surety, and he considered that he was perfectly justified in making that assumption, for reasons which were self-evident and need not be further stated.

Then, with regard to the other question, namely the question of joint tenancy and advances received by one person for the benefit of several persons, being members of a joint family, he considered that such questions could not arise. The estate and interest of the debtor alone would be liable to be sold, and not the whole estate of a joint family. Under the certificate procedure the Collector would not be entitled to adjust equities between the Government and all the recipients of its bounty, but merely to settle the amount of the liability of the debtors named in the bonds and books. The only questions which would ordinarily arise for determination were, *first*, whether the money was lent; *secondly*, whether a particular advance was made to the ryot against whose name the same was entered; *thirdly*, whether the whole or any portion was repaid. On the first question, there would exist no doubt; and with reference to the third question, repayments would be

supported by receipts. The second question raised the question of identity, already referred to and discussed. With great distress prevalent in a particular district, it was difficult to suppose that all, or almost all, persons in the position of ryots would not readily avail themselves of Government advances, and consequently the fraudulent insertion of a particular man's name in a bond or in the Collector's books would indicate a case of a highly improbable character—so improbable, that in dealing with the general subject for the purposes of legislation, the possibility of the occurrence of the above case of fraud should not be treated as a serious objection to the summary remedy proposed by the Bill.

Having attempted to show—the ADVOCATE-GENERAL trusted in a satisfactory manner—that the jurisdiction intended to be conferred by this Bill on the Collector was not open to any well-founded objection, he would proceed to consider the advisability of the substitution of the Munsif for the Collector. As no difficult questions of law requiring investigation were likely to arise, there existed no necessity for the substitution of an officer in the Judicial Department for the Collector, and consequently the proposed amendment was not required. He would go further and say that if the amendment, as it was worded, were accepted, the Bill had better be dropped. If jurisdiction were given to the Munsif, upon objections taken to the certificate filed, written statements on behalf of both parties would probably follow, and the case would be decided according to the procedure observed in civil suits. An appeal might be taken away, but the power of superintendence vested in and exercised by the High Court over the Munsif's court would exist, and any litigious individual might, upon *ex parte* statements, succeed in invoking in the first instance (though unsuccessfully in the end) the exercise of the power of superintendence, and thus cause delay, and thereby frustrate the whole scope and scheme of the summary remedy intended to be provided by the present Bill. It appeared to him, therefore, that the summary remedy intended to be provided was incompatible with the proposed amendment of vesting the Munsif with jurisdiction over these cases. If the Bill were not to be accepted in its present shape, it would be better to leave the Government to invoke the agency of the civil courts in the ordinary way.

Then, passing on from that, the ADVOCATE-GENERAL would observe that he did not think the Council ought now to be called upon to consider the question whether the jurisdiction already given to the Collector in respect of Government demands in a great number of cases was right or wrong, whether it was desirable or undesirable. The principle had been accepted, and the only question before the Council was, should that principle be extended to the simple cases which were the subject of this Bill, and as to which the Collector had the fullest evidence in the books and bonds in his possession. If it were once conceded that the principle of the certificate procedure should not now be questioned, this was just one of those cases to which it should be made to extend. The principle enunciated by Act VII of 1868 remained; and he submitted that if that principle was shown fairly to apply to the circumstances brought before the Council, no reasonable ground would exist for the limitation of the principle contained in that Act. On the subject

The Hon'ble the Acting Advocate-General.

of vesting Munsif's with jurisdiction, he would make one observation as arising from his own experience as a practising Barrister in regard to the change which had already taken place in the transfer of rent-suits from Collectors to Munsifs; and that observation was, that rent-suits were not now decided so expeditiously or broadly upon their merits as previously by Collectors, and that probably upon inquiry it would turn out that technicalities were allowed to prevail, and suitors were delayed in obtaining their decrees.

He now passed on to the question of the payment of the money by instalments. The objection on that score came to this—"You might have a summary procedure for investigation, but you are not to collect your money expeditiously." The humanity and liberality of the Government in having made these advances were generally admitted; and that being so, it might be fairly presumed that the Government would continue to deal with the ryots in the same liberal spirit, and that, when any such persons were really unable to pay the whole amount at once, the Government would not compel them to do so.

But the hon'ble member thought that it was just possible that some cases might turn up in which the same consideration would not be shewn. The ADVOCATE-GENERAL did not see that the Collector, as representing a humane Government, should be put in a worse position than any ordinary creditor. Did the ordinary creditor press a person, who was able and willing to pay by instalments, with immediate payment of the whole decree so as to ruin him? Experience satisfied us that he did not; but the power of enforcing immediate payment from persons able, but unwilling to pay, should be left unfettered. There were persons in this and other countries, nay even of the class of zemindar, who had a natural aversion to paying their debts, and who would not pay unless a decree had been obtained and attachment issued; and any indulgence or leniency towards such persons was not desirable. Considering, moreover, that in the majority of cases substantial persons were bound to the Government for the repayment of advances, it appeared to him that the Bill should not contain the proposed amendment.

While submitting to the Council that the objections of the hon'ble member were not tenable, the ADVOCATE-GENERAL would admit that they were proper objections to raise for the purpose of inviting discussion, and that the objections had been placed before the Council in a lucid and frank manner by the hon'ble mover. In conclusion, he would repeat that he trusted that the Council would be satisfied that they were dealing with a simple matter, and that no questions of law would be likely to arise, and cases of mistaken identity would be very rare; and that, as the certificate granted by the Collector on becoming final would simply take the place of a decree of a Civil Court, all matters connected with a fair and just mode of getting in payment of such a decree should be left to the unfettered discretion of the Government.

The HON'BLE BABOO KRISTODAS PAL said he would not detain the Council with any lengthened remarks by way of reply to the objections taken to the amendments which he had moved. He felt much obliged to hon'ble members for the very fair and frank manner in which they had met his remarks. At the same time, there was one misconception which underlay almost all the objec-