tions taken to the amendments, viz. that the Collector had made the advances, as it were, with his own hands, and would decide the case himself. That was not the fact, as hon'ble members were well aware.

[The HON'BLE MR. DAMPIER explained that he meant the Collector as representing his Department. He knew personally the Deputy Collector, or the gomashta, or the circle officer who made the advance, and he was more likely to know than any one else whether the man who made the advance was a careless or a careful man. MR. DAMPIER alluded to the Collector as head of the Department, and contended that the Collector was more likely to get at the substantial truth than the Munsif.]

The HON'BLE BABOO KRISTODAS PAL continued.—The explanation given by the hon'ble member amounted to this: The Collector relied on the information of his subordinates, and the subordinate being, in many cases, either a sub-deputy, a golahdar, or a circle relief officer, the Collector could not thus be expected to have that local knowledge on which the hon'ble mover had laid so much stress.

As for the relief officers, they were only temporary; they came for a day and then went away—that was their position: and he did not see how their knowledge, whatever it was, could expand the knowledge of the Collector.

As regards the machinery of the Civil Court, BABOO KRISTODAS PAL'S object was not to revive the procedure of Act VIII of 1859. As he had explained in the remarks with which he introduced his motion, his object was simply to substitute the Munsif in the place of the Collector, the object being to vest the officer who had regular judicial training and experience with jurisdiction in these cases. The hon'ble and learned Advocate-General had observed that there could be no complex questions requiring judicial investigation, and that therefore it would not be necessary to have a trained judicial agency for the trial of these cases. Now, BABOO KRISTODAS PAL believed, as hon'ble members generally believed, that in the majority of cases there would be no litigation whatever; the ryots would pay without raising any objection. But there might be a few cases in which disputes might arise, and it was only in such cases he apprehended difficulty; and he therefore proposed that a judicial officer should be vested with jurisdiction.

As regards the question of additional expense to the ryot, if the certificate procedure as laid down in Act VII of 1868 were followed, he did not see how additional expense would be thrown upon the ryot when only the Munsif was substituted in place of the Collector as the trier of the suit.

With regard to the question of departmental bias, he must confess that the learned Advocate-General had argued the case with considerable ingenuity. He told us that where a zemindar or a collection of villagers was responsible for the debt or loan, it would not be difficult to identify the person; because the zemindars were men well known, and the particular villagers who stood security could easily be identified. But he had not said that in other cases, where the ryots were individually responsible, it would not be easy to identify the parties; and then the Collector might be carried away by his departmental bias in fixing responsibility, particularly if he thought, as one officer did, that the *onus* should be thrown upon the defendant, and that the latter should be

called upon to prove a negative. The learned Advocate-General, by his remarks, virtually implied that in other cases there might be difficulty; and in order to solve such difficulties he (BABOO KRISTODAS PAL) would prefer the trained experience of the Munsif to the patriarchal knowledge of the Collector. But the main objection of his learned friend to the Munsif seemed to be that his proceedings would be open to the general superintendence of the High Court. Now, he confessed that he was not prepared for an exhibition of such nervous dread of the High Court on the part of the learned gentleman, who had once graced the bench of that Court, and who was a representative of law in this Council. [THE ADVOCATE-GENERAL explained that he was speaking on the subject of expedition,—that where there was the superintending power of the High Court, matters would be delayed.] With regard to expedition, then, he had already explained that the procedure he recommended would be still more expeditious than the procedure under Act VII of 1868; because under that Act there was an appeal from the decision of the Collector to the Commissioner, whereas under the amendments he had proposed the judgment of the Munsif would be final; and even taking into consideration the supervising power of the High Court, the procedure he recommended would not be so dilatory, inasmuch as under Act VII of 1868 an appeal would lie to the Commissioner as a matter of right, whereas the interference of the High Court, under the power of general superintendence, would be optional.

As to the question of instalments, he need only point out that he did not mean that repayment by instalments should be made compulsory in all cases. He meant that the Collector should have a discretion to take the money in convenient instalments, according to the circumstances of each particular case. In some cases the Court might think it necessary to order repayment at once; in other cases it might exercise its discretionary power, and direct repayment by instalments. In making that proposal, he did not, as his hon'ble friend opposite had remarked, want to transfer the duty of humanity from the shoulders of the Lieutenant-Governor to the shoulders of the Munsif; the Munsif would, in that case, as much represent the Crown as the Collector.

The amendments were negatived.

On the motion of the HON'BLE MR. DAMPIER, the Bill was then settled in the form recommended by the Select Committee

The Council was adjourned to Saturday, the 20th instant.

Saturday, the 20th 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 Hon'ble Stuart Hogg,
The Hon'ble H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjée, 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.

RECOVERY OF ADVANCES MADE BY GOVERNMENT.

The Hon'ble Mr. Dampier moved that the Bill to provide for the summary realization of sums due on account of loans made by Government during the late famine operations be passed.

His Honor the President said. before the motion was put, he wished to make one or two remarks briefly on the subject of this Bill. He would first desire to express the satisfaction with which he heard the various remarks that fell from the hon'ble member opposite (Baboo Kristodas Pal). The hon'ble member, who might be considered to be one of the best informed Native gentlemen in Bengal, had borne the strongest testimony as to the necessity that existed for the making of these advances; and considering the hon'ble member was peculiarly cognisant of the views of the great landholding classes in this country, His Honor might assume that this very influential and highly educated class entirely concurred with the Government as to the necessity of making these advances. His hon'ble friend, however, had stated that a departmental bias might exist in respect to the recovery of these advances by the regular revenue officers. Now, he begged to remind the Council that the officers to whom the powers of the Bill, if it should pass into law, would be entrusted were members of the Covenanted Civil Service. It had always been one of the traditional and time-honoured principles of the Civil Service to defend the defenceless, to assist the helpless, and to cherish the poor. Further, although the Government was generally strict and particular in the realization of its demands, still he thought that every Native member of the Council would bear him out when he said that moderation and carefulness had always been the characteristics of the revenue management in these provinces. That being the general wish and policy of the Government, we might be sure that not only would the Covenanted Civil Servants act up to that intention on behalf of the Government, but would give a tone to the various Native officials, especially

the Deputy Collectors, employed under them in the administration of the law. His hon'ble friend further justly drew attention to the importance of the Government not being too hasty and harsh in the recovery of the advances. His Honor thought he could assure the Council that there was not the slightest fear of any such result occurring if the Bill was passed. From the very first he had issued instructions to the local officers not to be too quick in the enforcement of these demands, and to give the people all reasonable time for repayment. If the Bill passed, it was his intention to issue further orders to the same effect. He thought, if ever there was a case in which the Executive might claim confidence from the Legislature, this was one. It would surely be apparent to the Council that we were not likely now to ruin men whose lives we had interposed to save.

He would further express his satisfaction at many of the remarks which fell from his hon'ble and learned friend the Advocate-General. It was of course satisfactory to him to hear upon such excellent authority that the documents, registers, deeds, and all other papers connected with these advances, were upon examination found by the Advocate-General to be accurately and clearly drawn. Accustomed as the Advocate-General was to judge in these affairs—affairs generally conducted in times of peace and security,—His Honor was convinced the Council would perceive the care that must have been taken on the part of the Government and its officers to ensure so much regularity and precision, not in quiet times, but in times of urgency and distress. He believed that if this Bill should pass into law, there was little or no chance of its provisions being to any large extent carried into effect. The people who took these advances evinced the most laudable disposition to discharge their just dues to Government. At the same time it was just possible that amongst so large a number of men, who numbered literally tens of thousands in each of the lately distressed districts, there might be one or two individual cases here and there of men who desired to evade their just obligations. It was also possible that amongst a comparatively ignorant peasantry such an example would have a bad effect. It was therefore necessary that the people should know that the Government had power by this law summarily to enforce payment of these demands, and that such knowledge should operate to prevent any attempt at evasion.

Furthermore, if these advances should be recovered by summary process, it was clear that all chance of litigation would be avoided. Now, he need not point out to the Native members of the Council that if such litigation were to arise between the Government and the ryots, great inconvenience would be caused to the landholders, who at this period had arrears of rent to collect in all these lately distressed districts. The attempt to enforce the lien on the crop on the part of two different parties; the possibility of the crops being distrained or seized for the Government demand at the same time that the zemindars had to collect their rents, might cause great confusion in the agricultural arrangements of these districts. He was sure that if the Bill should be passed into law, all that confusion would be avoided, inasmuch as the possibility of litigation would be precluded.

With these remarks, then, he would commend this Bill to the consideration of the Council.

The motion was agreed to, and the Bill passed.

REGULATION OF JUTE WAREHOUSES.

The Hon'ble Mr. Hogg presented the Report of the Select Committee on the Bill to amend the Jute Warehouse and Fire-brigade Act, 1872, and moved that the Report be taken into consideration in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The Hon'ble Mr. Hogg also moved that the clauses be considered for settlement in the form recommended by the Select Committee.

The Hon'ble Baboo Doorga Churn Law moved the following amendments:—

"In section 2, in lieu of the 2nd paragraph, insert the following:—

'Every license for a jute warehouse granted under this section shall be subject to the following conditions—

(1.) That no loose jute, jute rejections or cuttings, or cotton, shall be stored, or screwed, or pressed, save within a building the walls of which shall be of masonry, and all the roof of which shall be of masonry or of tiles, and the beams of which shall be of wood or iron.

(2.) That such jute warehouse and buildings therein shall be supplied with solid doors or gates, which can be securely closed.

(3.) That no portion of such jute warehouse shall be used as a residence, and no artificial light or lucifer matches shall be introduced therein, and that no person shall smoke therein.

(4.) That such jute warehouse shall be at any time open to inspection.

(5.) That the engines and furnaces used in such jute warehouse shall be placed as may be considered necessary for safety by the Justices.

(6.) That an annual fee, as the Justices at a special meeting may think fit, shall be imposed in respect thereof at one of the following rates, viz.—

Rupees	1,000
,,	750
,,	500
,,	250
,,	150

and shall be paid in such instalments as the Justices may direct.

(7.) Such other special conditions as the Justices, with the sanction of the Lieutenant-Governor of Bengal, may, on consideration of the special circumstances of such jute warehouse, deem necessary for the convenience of trade, or to prevent risk to life and property in the neighbourhood.'

"Omit Section 8."

He said, in proposing these amendments he would take the liberty to observe that it was unconstitutional to pass a penal law without defining the offences for which penalties were prescribed. The power given to Government was nominal: it would be practically exercised by the municipal Corporations; and would it be proper to delegate the functions of the legislature to those Corporations? It was true that it was difficult to lay down hard-and-fast rules that would

meet all cases; but he thought it was possible to lay down such general rules that would apply equally to all cases, leaving the Executive to add such special rules as might be suggested by local peculiarities or the circumstances of each case. He had taken most of the conditions from the existing Act, divesting them of their objectionable features, and they seemed to him to be so general and necessary, that they must find a place in whatever rules might hereafter be determined upon.

The only other point was the reduction of the minimum fee from Rs. 250 to Rs. 150. He considered the existing rate too high for the smaller jute warehouses. Jute was an important article of commerce; and by throwing obstacles in its way, it would gradually disappear from the town, and house property must seriously suffer in the end.

The HON'BLE MR. BROOKES asked if it was the intention to publish the report of the Select Committee and the papers relating to the Bill. He thought it was desirable to do so, in order that those interested might have the opportunity of addressing the Government or the Council upon the subject.

HIS HONOR THE PRESIDENT stated that he would direct the publication of the report and papers in the next *Calcutta Gazette.*

The HON'BLE MR. DAMPIER said, in the Report of the Select Committee it was mentioned that there was a difference of opinion amongst the members as to whether the conditions which might be imposed on these licenses should be set out in the Bill, or whether a discretion should be given to the Lieutenant-Governor to impose such conditions as he might think proper without further restriction. MR. DAMPIER had been in the minority on that point. He considered that it was not desirable for the Council to throw on the Executive Government altogether the responsibility of prescribing the conditions under which licenses for jute warehouses should be granted. He thought it would be more satisfactory to the public and those concerned in the trade if some attempt were made by the Council to define the restrictions to which their trade and their operations might be subjected under the law. The Bill before the Council did not have its origin in any difficulty felt by the Executive Government as to imposing conditions on licenses which it considered to be desirable, but which the law did not authorize it to impose. The real difficulty which led to the introduction of the Bill was just the other way,—that the law insisted on certain conditions being imposed which experience had shown not to be necessary in all cases. It appeared to him that the best form for the Bill would be to set out, first, such conditions as it was absolutely necessary to impose on every jute warehouse, wherever it might be situated, and then to set out a further set of discretionary conditions, any of which the Justices, or whoever might be the licensing authority, might impose on each license, according to the circumstances of the case. For instance, a jute warehouse situated in a crowded neighbourhood and surrounded by very valuable property should obviously be more hedged in and guarded by greater restrictions than one in a less crowded locality. But the views which he advanced in Committee did not find favour with the majority.

The amendments which the hon'ble mover opposite (Baboo Doorga Churn Law) had brought forward did not entirely meet the views which MR. DAMPIER expressed in the suggestions he had made, but would go some way towards meeting them. In his amendments, the hon'ble mover had proposed to omit those conditions which had been found to be unnecessarily restrictive; such as that jute should not be dried and combed except in a roofed building, and that the roofs of warehouses should be entirely of iron or of masonry; and with those two exceptions he had proposed to re-enact entirely the conditions which were imposed by the existing law. So far so good; but then he went on, in clause (7) of section 2, to propose what seemed to MR. DAMPIER to be objectionable. After setting out the conditions which must necessarily be imposed in every case, the amendment proceeded to empower the Lieutenant-Governor to impose "such other special conditions as the special circumstances of each jute warehouse might render necessary for the convenience of trade or to prevent risk to life and property in the neighbourhood." If the Lieutenant-Governor might impose any additional conditions which might be devised on the occasion of each individual license being applied for, it was clear that no restriction whatever was imposed on the exercise of his discretion by setting out (as the amendment did) certain conditions which he must impose. Therefore the amendment did not go so far as MR. DAMPIER should have wished. He should like first to have the compulsory restrictions defined in the Act—all those which experience had shown to be absolutely necessary in the case of every license; and then to set out a list of discretional restrictions, leaving the Lieutenant-Governor to impose any of those which the circumstances of each case might require. If this were done, those engaged in the jute trade could not be suddenly called upon by the Executive to subject themselves to some newly contrived restriction which was not contemplated by the legislature.

The second part of section 8 of the Bill provided for the making of rules for regulating "all other matters connected with the enforcement of the Jute Warehouse and Fire-brigade Act, 1872, and this Act." That provision could not well be omitted, as provided in the amendment. Therefore MR. DAMPIER could not support the amendment, and would himself make another motion directly.

Another point to which he would refer was in connection with the representation submitted by the British Indian Association. They said that the owners of roperies were obliged to keep on their premises a certain quantity of loose jute for the purposes of their trade. He would ask the hon'ble mover of the Bill whether the objection had any practical existence. If the facts were as they were put; if the law did not admit of any of the restrictions regarding jute godowns being relaxed on behalf of jute taken in for daily consumption in a ropery, then he thought that the representation of the British Indian Association deserved consideration. The motion, which he would put in a definite form, was "that the Bill be referred back to the Select Committee, with instructions to define separately and expressly such conditions as shall necessarily be imposed by every license, and such additional conditions as may be imposed by any license, according to the circumstances of each case in which a license may be granted."

The Hon'ble Mr. Dampier.

The Hon'ble Mr. Hogg said he was not prepared to accept the amendment proposed by the hon'ble member on his left (Baboo Doorga Churn Law), nor the other amendment proposed by the hon'ble member opposite (Mr. Dampier). As he explained when he asked permission to introduce the Bill, it seemed to him that the proper course was not to lay down hard-and-fast rules, but to leave the matter altogether to the executive authority, with a view from time to time to fix such rules as experience might render necessary. The first of the amendments before the Council of which notice had been given would almost altogether nullify the objects for which the Bill was introduced, as the present cause of complaint by jute warehouse proprietors was that it was practically impossible to dry jute in confined godowns, and that it was absolutely necessary, therefore, to allow considerable latitude to the owners and occupiers of jute godowns, with a view to allow them, where the locality permitted, to dry jute in the open, so as to have the benefit of sun and air. As clause (1) of the amendment laid down that "no loose jute, jute rejections or jute cuttings, or cotton, shall be stored, or screwed, or pressed, save within a building the walls of which shall be of masonry," that would entirely prevent jute being dried in the manner considered absolutely necessary by those interested in the jute trade.

[The Hon'ble Mr. Dampier explained that the provision regarding the combing and drying of jute contained in the existing law was omitted in the amendment.]

The Hon'ble Mr. Hogg continued.—It was impossible to expect the owners or occupiers of jute warehouses to remove their jute daily for the purpose of drying, and have it removed again at night. To do so would entail great expense, which the legislature ought not to impose upon the proprietors and occupiers of jute warehouses. He had had the advantage of a personal interview with one of the chief proprietors of jute warehouses, the manager of the Camperdown Jute Company, who pointed out the defects of the present law, and complained of the vexatious interference of the suburban municipal authorities in the working of the Act. He was the representative of a large Company having their head-quarters at Glasgow, whose interest it was to secure their property from fire. Mr. Hogg found that the place of business of this Company was at Cossipore; that it was well managed, and situated far from crowded localities, and no restrictive enactments were called for in governing the arrangements of that particular warehouse. It was far from all other habitations, and had enclosed within its walls a considerable space of land. In institutions of that sort, he thought it should be left to the discretion of the managers to dry and comb jute in the open air. He merely gave this illustration as a case in point, to shew that all hard-and-first rules, however lax, would be too stringent to be imposed upon a jute godown situated in an isolated position.

If the Council adopted the amendment proposed by the hon'ble member opposite (Mr. Dampier), it must necessarily lay down both classes of rules, which he proposed should be of different degrees of stringency,—one a set of hard-and-fast rules to govern all jute godowns, whether in the town or the suburbs, or in Howrah; the other a set of still more stringent rules, which would

be extended, at the option of the Lieutenant-Governor, to any special localities. If such clauses were adopted, considerable inconvenience must necessarily follow, as the rules could not be so drafted as to meet every case. Circumstances might year by year arise which would render it necessary in some cases to relax the rules, and in other cases to make them more stringent.

It was objected by the hon'ble member on his left (Baboo Doorga Churn Law), that it was an unconstitutional course for the legislature to delegate its authority to the executive, and to pass penal clauses for offences which were not laid down in the Act itself. From this objection it would really seem as if this were an entirely new course. The Council had merely to refer to Act VII of 1864, the British Burmah Municipal Law, and the Act which was passed in 1873 for the Municipality of Oude. We there found exactly the same power given to the executive to pass bye-laws and penal clauses imposing penalties for the infringement of any bye-law passed by the Municipality under the sanction of the law.

He trusted that the amendments before the Council would not be accepted, but that the principle which had guided the Select Committee, namely to leave it to the executive authority to frame rules subject to the sanction of the Lieutenant-Governor, would be adhered to.

The Hon'ble Mr. Schalch said, as one of those members of the Select Committee who adopted the report which was submitted to the Council, he wished to say a few words in regard to our having taken away from the Council the whole responsibility of laying down strict rules. It struck him that the main point for consideration was the situation of these jute warehouses. There were three classes into which they might be divided in reference to their situation. First came those which were in the heart of a wealthy and populous town; next those which were situated at some distance from the crowded thoroughfares of the town; and the third class comprised those warehouses which were situated in almost open spots, where there would be very little risk of fire to the property in the neighbourhood. To ask the Council to lay down rules which would apply to all these classes of jute warehouses would be to impose on them an extremely difficult task. In fact, as had been just said by the hon'ble mover of the Bill, those rules which would apply to one locality would not apply to another. We therefore thought it better that rules suited to each locality should be drafted by the Municipality within whose jurisdiction the places proposed to be effected were situate. They would have better means of judging than this Council what the circumstances of each locality required, and would have the advantage of the opinion of many of their members who were more or less interested in the trade. The opinion so digested would go up to the Government, and the Government would exercise a discretion in refusing to sanction the rules if they considered them unnecessarily harsh on the one hand, or unnecessarily lax upon the other.

With regard to the conditions proposed in the amendment, he must observe, as the hon'ble mover of the Bill had mentioned, that the first clause was open to the objection which had been raised. There was no provision made in the proposed conditions for the combing and drying of raw jute, and that would necessitate the removal of the jute every day from the main building to the

yard or elsewhere, which would involve a very heavy expenditure. The proposed conditions had been taken, with that one exception, from those in the present Act. In the second condition it was stated that "such jute warehouse, and the buildings therein, shall be supplied with solid doors or gates, which can be securely closed." He was aware that the Port Commissioners had a building in which they certainly violated the condition that the beams should be of iron; but, on consideration by the Justices, they allowed a license, believing that iron was not a really necessary material. But the warehouse had solid doors, which were shut up at night, and ventilation was thereby shut out from the jute stored in the building. The consequence was, that many complaints were made that the want of ventilation was very injurious to the jute.

In the third condition it was proposed that "no artificial light" should be introduced. Now one of the great objections to the operation of the Act was that in consequence of this prohibition work could not be carried on at night.

Then, the hon'ble member opposite (Mr Dampier) observed that no consideration had been given to the question of the storage day by day of small quantities of loose jute for the purpose of manufacturing rope. MR. SCHALCH thought there was a good deal in what had been urged in behalf of a provision of that kind by the British Indian Association; and he should like to see some provision made for this purpose, by referring the Bill back to the Select Committee, or by the subject being taken into consideration by an amendment being moved at the next meeting of the Council.

There was one other point which the hon'ble mover of the Bill had not noticed. It was proposed to lower the rates of fee by bringing them down to a fee of Rs. 150. MR. SCHALCH thought that the fee might be well lowered to Rs. 150 in the suburbs, and power had accordingly been given to the Suburban Municipality to that effect; but it would not be at all advisable to allow small storehouses to be set up in the town, where the risk of fire and the consequences thereof would be so much increased: for, while you kept the rate of fee considerably high, you had some safeguard against the erection of a number of small warehouses. But if you extended the rates of fee to small sums, you would have a number of small store-godowns springing up, and the risk of fire would be considerably increased.

He, therefore, was not in favour of the amendments which the hon'ble member (Baboo Doorga Churn Law) had proposed.

The HON'BLE MR. HOGG said, in reply to the Hon'ble Mr. Dampier's remarks regarding the application of the law to small quantities of jute brought in daily for the purpose of the manufacture of small quantities of rope or other articles of that description, that there had never been any practical difficulty in that respect. It was obvious that the bringing in daily small quantities of jute and other such articles was not within the meaning of "storing," and therefore it had not been the practice of the municipality to proceed against persons who carried on trade in such manner. However there could be no objection, if the hon'ble member preferred it, to introduce a section providing that the term "storing" should not apply to small quantities of jute, say two maunds, brought in for use from time to time.

The HON'BLE MR. DAMPIER said, after the explanation given to the Council, and the illustration brought forward of a jute warehouse which the hon'ble mover of the Bill had seen, and with regard to which, in his experienced opinion, absolutely no restrictive conditions would be necessary on behalf of the public, there remained no ground for the portion of MR. DAMPIER'S amendment which contemplated the setting out in the Bill of conditions which should be compulsory in all licensed warehouses. But still the objection remained that it would be more satisfactory to those engaged in the jute trade to know that they could not be taken by surprise by the imposition of any newly devised condition, and to have before them every possible condition which they could legally be called upon to observe. Therefore, he would change the form of his amendment, and would now move "that the Bill be referred back to the Select Committee, with instructions to define the conditions, all or any of which may be imposed on the grant of any license under this Act."

The HON'BLE BABOO KRISTODAS PAL said, the question before the Council was whether it should be left to the executive to prescribe the conditions under which licenses should be granted for jute warehouses. As he took the liberty on a former occasion to state his views on this point at some length, he would not tread over the same ground again; but he begged to observe that he entirely agreed that whatever restrictions the Council might determine to impose upon the grant of licenses, they should be embodied in the law, and that, as the hon'ble member to his right (Baboo Doorga Churn Law) had observed, it would be unconstitutional to pass any law providing penalties for offences which were not themselves defined in the law. It was true that the rules embodied in the amendment moved by his hon'ble friend were for the most part re-enacted from the existing law; but, as pointed out by another hon'ble member (Mr. Dampier), there must be some general rules laid down: and if the proposed rules did not meet the requirements of the case, they might be altered, amended, added to, enlarged, or otherwise modified; and if the Bill were sent back to the Select Committee for revision, they would consider the whole matter.

From the discussion which had taken place that day, it seemed that hon'ble members agreed that there must be some rules laid down, if not by this Council, then by the Municipal Corporations. Now, if those Corporations were in a position to lay down the rules, he did not see why this Council should be considered incompetent to perform that task. It was true that the same rules which might apply to Calcutta might not apply with equal force to the suburbs; and if the Select Committee were of that opinion, they might provide two sets of rules,—one applicable to the town, and the other to the suburbs. Such distinction between the town and suburbs already existed, because the same scale of fees did not apply to the town and suburbs; and in other respects also the law made distinctions between the town and suburbs. So much for the difficulty of legislating for the town and suburbs in the same Act.

He did not think the hon'ble mover of the Bill would maintain that any jute warehouse, though not open to any objection for the time being, should be entirely and for ever exempt from all control, supervision, or other legal restrictions: even the Cossipore institution, to which he had alluded, though

a model jute warehouse, ought not to be treated exceptionally, for although its construction or management might at present be not open to objection, still circumstances might arise which might render it necessary to bring that warehouse under the law. BABOO KRISTODAS PAL did not think that the Council would agree to a fast-and-loose system and allow any jute warehouse to be without the pale of the law; and that being the case, he thought the Bill ought to provide certain general rules, which might or might not be applicable in all cases, but which, at the discretion of the executive, might be wholly or partially extended, according to the circumstances or merits of each case.

As to the objection to lowering the rate of fee, on the ground of the encouragement it would give to the establishment of small buildings, he might observe that it would be optional with the Justices to license such places or not. If they found that a building, by its size and situation, was more liable to fire than another, the Justices need not grant a license; but he did not see any reason why the fee should not be lowered when the present rate admittedly pressed hardly on the proprietors of small buildings, and when a high scale was not needed, there being a large excess of revenue over expenditure.

After some further discussion the Hon'ble Baboo Doorga Churn Law's amendments were put and negatived.

The Hon'ble Mr. Dampier's motion "that the Bill be recommitted to the Select Committee with instructions to define the conditions, the whole or any of which may be imposed on the grant of any license under this Act," having been put, the Council divided—

Ayes—9.	Noes—3.
The Hon'ble Nawab Sayad Ashgar Ali.	The Hon'ble Mr. Hogg.
„ Baboo Kristodas Pal.	„ the Acting Advocate-General.
„ Baboo Doorga Churn Law.	„ Mr. Schalch.
„ Mr. Brookes.	
„ Baboo Juggadanund Mookerjee.	
„ Mr Reynolds.	
„ Mr. Dampier.	
„ Mr. Rivers Thompson.	
His Honor the President.	

The motion was therefore carried.

On the motion of the HON'BLE MR. HOGG, the Hon'ble Mr. Brookes and the Hon'ble Baboo Kristodas Pal were added to the Select Committee on the Bill.

The Council was adjourned to Saturday, the 27th February.

By order of THE PRESIDENT, the Council was further adjourned to Saturday, the 6th March.

Saturday, the 6th March 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 H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syud Ashghar Ali Diler Jung, C.S.I.

INSPECTION OF STEAM BOILERS.

The Hon'ble Mr. Hogg presented the report of the Select Committee on the Bill to amend Bengal Act No. VI of 1864, and moved that it be taken into consideration in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The Hon'ble Mr. Hogg also moved that the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

The Hon'ble Mr. Hogg then moved that the Bill be passed; and in doing so said that the Bill consisted of but one section, which gave power to the Lieutenant-Governor to revoke a boiler certificate already granted, or to be granted, on the ground of the incompetency of the person who had charge of the boiler to carry on his duties as such. The Select Committee, in order to provide against the too arbitrary exercise of the power by such officer as the Lieutenant-Governor might delegate in that behalf, provided that an appeal might be made to some officer appointed by the Government; and if he thought the man was competent, he was authorized to issue a certificate, and then it would be competent to the officer who had charge of the working of the Act either to grant a certificate or to allow a former certificate to remain in force.

The motion was agreed to, and the Bill passed.

SURVEYS AND BOUNDARY MARKS.

The Hon'ble Mr. Dampier said he had the honor to move that the Bill to provide for the survey of land and for the establishment and maintenance of boundary-marks, which had been for some days in the hands of the members, be read in Council. In asking leave to introduce the Bill, he had mentioned to the Council that much of the value of the survey operations in Bengal had been lost owing to the boundaries not being secured by marks on the ground after they had been ascertained and laid down by the survey officers; and sometimes after, in the process of the survey, they had been settled after much dispute

For many years the Supreme Government had pointed out to the Government of Bengal that the provinces under its administration stood alone in that respect; that in all other provinces boundaries were secured by boundary-marks; and that the charge for erecting and maintaining them fell upon the land. The survey officers had long insisted upon the erection of boundary-marks as a necessary measure for the benefit of the landed classes, and the Government of Bengal was entirely in accord with the Supreme Government in the opinion which had been expressed: *first*, that it was a great waste of power making these surveys and letting the results of them be lost by not securing the boundaries by marks; and, *secondly*, that the expense of erecting and maintaining the boundary-marks should fall on the holders of land.

It having been decided to introduce a Bill to supply the want, the opportunity had been taken, in the second Part of the Bill, of declaring the power of the Government to order a survey to be made—either a general survey, as of a district, or a special survey, as of a tract of country, such as that now being carried on in the dearahs south of Goalundo for the identification of property, or such as was required in different parts of the country for irrigation purposes. Clauses empowering the Government to order such surveys had been introduced, because there had been a doubt whether the law, as it now stood, did expressly authorize the Government to undertake such surveys for any purposes except those of a revenue settlement. The clauses now proposed would do away with any doubt on this point.

The third Part of the Bill provided for the erection of boundary-marks.

It had always, in making a survey, been necessary to have temporary boundary-marks. The civil revenue officer first ascertained the boundaries, which the professional surveyor following him was to survey, and it was necessary, until they had been surveyed, to secure the recognition of them by the erection of petty mounds of earth,—works not of an expensive nature, but in regard to which the co-operation of the villagers and the people about the land was required. Sometimes, where the survey was unpopular, in consequence of its object not being understood, much difficulty had been caused by the removal of the temporary boundary-marks; the people destroying at night what had been set up in the day. That difficulty had been felt in Behar in the survey operations now going on there in connection with the irrigation works. Such mischievous proceedings could not be tolerated, and the Bill contained provisions which would check obstructions of that sort being put in the way of survey officers. Boundary-marks were, under the Bill, divided into temporary marks, which were required to be kept up until the survey was completed, or until permanent marks were erected, and permanent boundary-marks. The provisions of Part III had for their object to enable the Collector to get the temporary marks erected as easily and as promptly as possible with the assistance or by the agency of the local holders of land. They were to the effect that the Collector might call upon any occupant to erect such marks as were necessary, and to maintain and keep them in repair until the completion of the survey, or until the erection of permanent boundary-marks. Practically, in any particular length of boundary the Collector would call upon the man who had the

greatest influence in the locality and the greatest command of the necessary labour and materials. The use of the term "occupant" was in order to enable the Collector to call upon even a well-to-do ryot to put up temporary boundary-marks. If the ryot happened to be locally the most influential person as regards any particular length of boundary, then the Collector would call upon him rather than upon the absent zemindar, who was perhaps only an annuitant upon the land.

Then, again, on the survey being finished, the Collector might call upon the occupant to put up permanent boundary-marks. As the Bill stood, it provided that the expense neither of the temporary nor of the permanent boundary-marks should rest eventually on the person who had been required to erect them. It was to be refunded to him; and the Select Committee, to whom the Bill would be referred, might perhaps think it proper to go further and to provide for an advance being given to the occupant, so that even in the first instance the expense might not fall upon him.

The Bill, as it stood, provided that, as soon as the occupant had put up either temporary or permanent boundary-marks, he was to give to the Collector a Bill for the amount of expenses incurred, and the Collector, after satisfying himself that the charges were reasonable, was to pay the amount. As soon as the Collector had ascertained the whole cost of the boundary-marks put up by the occupant in any convenient tract of country, or the amount he had himself disbursed in that behalf, if he had himself erected the boundary-marks, he would proceed to assess the cost upon the different estates, including the lakhiraj tenures, within which any lands had been distinguished by marks, proportionately to the interest which each had in the boundary-marks put up. In making this assessment, much must of course be left to the discretion of the Collector; everything would depend upon the circumstances of each case.

Having assessed the sum which each estate was bound to pay to refund the Government the cost of erecting the boundary-marks, the Collector would proceed to allot the sum so assessed on each estate amongst those who held permanent tenures therein superior to those of occupancy ryots, and the zemindar, who was bound to pay that lump sum to the Government, would have the same powers given to him for recovering the quota due to him by the different tenure-holders as he had in respect to the recovery of rent from them.

The exact mode of assessment upon the tenure-holders was a difficult question; so difficult, that it seemed to MR. DAMPIER impossible to lay down any general rule upon the subject. It appeared to him that the Collector who knew the locality would be the best judge as to what would be a fair proportion for the tenure-holders to pay according to the situation of the tenures themselves. In some cases it would be simple enough: for instance, where a zemindar had let his whole estate in putnee, and the putneedar again let in durputnee, the latter was obviously the man upon whom the chief expense should fall, and not the zemindar or the putneedar, who would probably, however, have to pay a trifling amount, as representing the contingent benefit they derived in virtue of their position as annuitants upon the estate. But other cases would

not be so simple: for instance, the adjustment of the proportions payable respectively by the holder, on the one hand, of a small tenure, of which the boundary marched for some length with that of the mouzah or estate, which boundary was therefore actually demarcated by the boundary-marks of the mouzah, and on the other hand by the holder of a tenure which was situated in the centre of the mouzah, and which, therefore, received a less direct benefit from the erection of the boundary-marks.

The fifth Part of the Bill provided that the Collector, if he came across boundary disputes in the course of his survey, should have the same power of deciding such disputes as he had in cases of settlement; and not only would he have such powers if he came across a case of disputed boundary in the course of a survey, but also if, where the boundaries had once been marked, a dispute arose in consequence of the marks having become obliterated, the Collector might, of his own motion, call upon the parties concerned and say—"We have once decided this boundary and secured it by marks, but you have allowed those marks to be obliterated; we shall again identify the boundary and you must again erect marks."

He would next notice the provision contained in section 32. Under the general law of limitation, when an award was made by the revenue authorities in the course of a settlement (survey officers professed to act under setttlement powers), the parties aggrieved need not bring their civil suit to reverse the award of the revenue officer until three years after the date of the award. The result was frequent alterations in survey maps and records of property after they had been completed, and was productive of much inconvenience, which was brought prominently to the notice of the Government by the Board of Revenue. After consideration and discussion, the Lieutenant-Governor for the time being decided that six months would be a sufficient time to allow for the institution of a civil suit to reverse the award of a revenue officer. It might be objected that this Council had not that power in regard to the law of limitation; but MR. DAMPIER thought that if hon'ble members who felt a doubt upon the subject would look into the Limitation Act, they would find that there was specially reserved the power to make special limitations in special cases.

The last point that remained to be noticed was in section 36. The Supreme Government was very decided that the operations now being carried on in Midnapore should be made permanently useful by the erection of boundary-marks, and they agreed to advance the money necessary to erect boundary-marks, *pari passu* with the survey in the field season just past, on the distinct understanding that provision should be made in the Bill which was to be introduced for the recovery of the amount so advanced in accordance with the practice of other provinces.

He would repeat what he had said in his previous speech, that there was no idea of going over the old ground which had been already surveyed for the purpose of putting up boundary-marks. It was a great pity that boundary-marks had not been put up; but to go over the old ground again for this one purpose would do more harm than good. Therefore this Bill would only at present come into practical effect in Midnapore, in the survey of

which there were about two seasons' work left, and in the dearahs below Goalundo now being surveyed, and probably it would be used for the irrigation surveys which were being carried on in Behar; and also when the Government had a resettlement of their own estates to make, as in Khoorda or in Orissa, it would certainly cause the boundaries, when once ascertained and settled, to be secured by marks. He was not aware that any other operations were now immediately contemplated to which the Bill would apply.

The Hon'ble Baboo Kristodas Pal said there were three or four important points involved in this Bill: *firstly*, the erection of boundary-pillars; *secondly*, the cost of erection and its apportionment; *thirdly*, the recovery of the cost; and *fourthly*, the question of appeals. As regards the erection of boundary-pillars, the hon'ble mover of the Bill, both when he asked for leave to introduce the Bill and on the present occasion, had clearly elucidated the necessity of doing so: in fact the survey was incomplete without proper demarcation of plots of ground by boundary-pillars, and it was to be regretted that this idea was not carried into effect whilst the survey was going on throughout the country. Practically, as had been pointed out by his hon'ble friend, the benefit to be derived from this Bill would be limited to one district only, or rather to one-half of it, namely Midnapore. The survey had been completed for the rest of the province, and it would entail enormous cost if the work were to be done over again. The survey operations, as the Council were well aware, had been very expensive, not only to the Government, but to all classes of the people interested in the land, and the re-survey of the country could not therefore be carried out without calling into being the many evils which flowed from the first undertaking. But where the survey must be made, it was certainly desirable that demarcations should be effected by the erection of boundary pillars: in fact, the erection of such pillars formed part and parcel, as it were, of the survey system. At the same time he should observe that the benefit expected from this Bill could not be realized in all cases: for the minute and frequent sub-division of property in this country was a great obstacle to the permanency of land-marks. What might be considered permanent marks to-day, might in five years have to be changed in consequence of change of ownership in the same property by the natural operation of the Indian law of inheritance. This was particularly the case with small holdings which were not hampered by a cumbrous partition law. As regards large estates, partitions were not so frequent, simply because the *butwarrah* law was an almost insuperable obstacle in the way; but this obstacle would to a great extent be removed by the proposed simplification of the *butwarrah* law. Nevertheless the object of the Bill was good; demarcation of lands by boundary-pillars would be beneficial, and, he hoped, would prevent the frequency of boundary disputes, which at one time use to flood our Courts.

The next point was as to the cost of the erection of boundary-pillars. He confessed that opinions differed on that point. It was urged on one side that the survey was an imperial work; and as the demarcation of lands by the erection of boundary-pillars formed a part and parcel of that work, the State ought to bear the cost of such demarcation and erection. On the other side

it was argued that the landholders benefited by the demarcation, and therefore it was but right and proper that they should pay the cost. He submitted that much might be said on both sides of the question. It was true that in all other provinces save Bengal the cost of demarcation was paid by the landholders; but because the Government followed a different principle in other parts of the country, it did not necessarily imply that that principle was right. It should be borne in mind that the State as landlord was interested in knowing how the lands were distributed, and that therefore it ought to bear the cost of demarcation. In private estates in Bengal the zemindar had no power under the law to levy the cost of a survey from the ryots, and the reason was obvious—it was the interest of the zemindar to see how the lands were distributed and parcelled out. Private landholders were undoubtedly interested in the demarcation of the land by boundary-pillars, but the Government was also similarly interested. When estates were sold for default of payment of revenue, if there was not this demarcation of land by boundary-pillars, the new purchaser was put to great difficulty, and the Government was bound to point out to him the land which it had sold. If the Government failed to identify the estate, the sale would become void. He believed there had been some cases of small estates in which the Government could not identify the land, and that consequently the sale became null and void. Then, again, in the case of the dearah lands or alluvial lands, the Government was equally interested as the private landholder. In cases of the formation of *chur* land, the Government had a right to make a fresh assessment; the zemindar also could claim an abatement of revenue where the land was washed away. It not unfrequently became a matter of dispute between the Government and the private landlord in identifying lands so washed away or so newly formed. It was consequently the interest of both in this wise to see proper boundary-marks put up and maintained for the purpose of future identification of the lands, and it was therefore equitable that the cost should be distributed between the private landlord and the Government.

Then the Bill provided that tenure-holders and other ryots having beneficial interests in the land ought to be made to contribute to the cost of the erection of boundary-pillars. The provisions of this Part of the Bill had been taken from the Embankment Act. Now in the case of embankments, the benefit from such works to parties beneficially interested in the land could be distinctly defined, but he did not think that in cases coming under this Bill the benefit could in all cases be so distinctly traced and described. He admitted that where an entire estate had been let out by the zemindar in putnee, and by the putneedar in durputnee, and by the durputneedar in seputnee, and so on, the under-tenure-holders ought to be made to contribute, because the zemindar and the sub-tenure-holders (except the representative in the last degree) were in such cases mere annuitants; but it was a question for consideration whether all persons, having a beneficial interest in land, however their holdings might be situate, should be made to contribute, though they might not derive any direct benefit from the erection of the boundary-pillars, or though the benefit might be infinitesimal—perhaps more imaginary than real. As hon'ble members were aware,

the survey had been made estate by estate, or mouzahwarry. Now there might be numerous tenures or holdings comprised within the estate or mouzah; it might be necessary to erect boundary-pillars at the junctions or borders or parting lines, or where the lands of one estate might be dovetailed into those of another; the only tenures or holdings which might be benefited by the erection of the boundary-pillars would be those which would lie near the boundary line. Would it, under such circumstances, be fair and just to tax all holdings of a permanent nature alike when the benefit derived was not alike? Those whose lands abutted upon the boundary line were directly interested in the establishment and maintenance of boundary-marks, whilst those whose lands were far away from the boundary-towards the centre of the estate or any other part would have little or no interest in the erection of the boundary-marks. It was therefore worthy of consideration whether all persons having a beneficial interest in lands in the estate so demarcated should be made to contribute. Moreover the rule of proportion laid down in the Bill did not seem to be clear. The hon'ble member said that it was a difficult subject, and he therefore proposed to throw the task upon the Collector. That officer being upon the spot, would be in a better position to adjust the proportion of interest of the persons benefited by the erection of boundary-pillars. He did not deny the truth of this; but he thought the Council ought to consider whether all persons should be taxed for a work the benefit of which they did not share alike, and whether it would be right in principle to leave it to executive officers to vary the rule of proportion according to their varying judgment.

With regard to the recovery of the cost, he observed that it was proposed to recover it as an arrear of revenue, and to authorize the sale of the estate for default in payment. He submitted that it was not proper or reasonable to proceed at once against the land in case of default of payment of such demands as these. If the moveable property of the debtor was not sufficient to satisfy the claim, it would then be right to proceed against the land. His Honor the President was aware how tenderly the land was dealt with in northern India, but here, Baboo Kristodas Pal regretted to say, an opposite feeling prevailed. Almost every demand of Government was converted into a revenue demand, and the land was sold outright for default. He would therefore suggest, for the consideration of the Select Committee, whether it would not be better to treat this as a State demand and recover it under the certificate procedure, in the same manner as the Council had lately enacted for the recovery of famine advances. It might be easily imagined that the moveable property in cases coming under the Bill would generally be sufficient to satisfy the demand; but if it was not sufficient, then the land might be sold; but he held that it was a questionable policy to sell the land primarily to satisfy a demand which was not, strictly speaking, a revenue demand.

With regard to the question of appeal, he confessed he was not in favour of a multiplicity of appeals, and he entirely went with the hon'ble mover of the Bill in reducing the number of appeals in respect of boundary disputes. At present two appeals were allowed, but under this Bill only one appeal would be allowed from the Collector to the Commissioner; but he was sorry to observe

that the Board of Revenue, to whom a second appeal lay, had been deprived of the general power of superintendence and control in proceedings connected with decisions upon boundary disputes. He was of opinion that this general power of control and supervision should not be taken away from the Board. He would not certainly allow parties to appeal to the Board as a matter of right, but leave it optional with the Board to exercise the power in those cases in which they might think fit. There might be cases of peculiar hardship in which the Board might think fit to interfere; but under section 36 the Board would be precluded from exercising such a power.

As for the limitation of time, he observed that the Board of Revenue were divided in opinion. Mr. Money held that it would be amply sufficient to give parties dissatisfied with the decisions of revenue officers in boundary disputes six months' time within which to institute a suit in the civil court; whereas Mr. Campbell, the other Member of the Board, thought that one year ought to be allowed. He was inclined to support the view taken by Mr. Campbell. Baboo Kristodas Pal thought six months too short a time, and that it would be quite sufficient to reduce the present period of three years for the institution of a civil suit in a boundary case to one year, as suggested by Mr. Campbell.

The Hon'ble Mr. Dampier said the first point he should notice of those which had been brought forward was the argument that the demarcation as well as the survey was a matter of imperial interest, and therefore the expense should fall upon the Government; or, to substitute another word, upon the general tax-payers rather than upon the landholders. Now, he thought there was a distinction in this respect between the general survey and record of the allotment of the land to the different estates to which it appertained on the one hand, and on the other the demarcation by boundary-marks on the ground of those estates and other local divisions of land which came under such survey. The former process was certainly a matter of general interest and of general statistical utility, which gave it an imperial character. For instance, the record of the distribution of the land in Tirhoot among estates and proprietors would be a matter of interest to the statistician, not only in Tirhoot, but in Chittagong; whereas the securing the boundaries between the different estates and tenures on the ground was a question of purely local interest: it concerned only the local landholders. And so it seemed to him that there was a distinction between the character of the survey operations and that of the operations for securing boundaries on the ground, which fully justified the cost of the former being treated as an imperial charge while the expenses of the latter were localized.

The hon'ble member who spoke last had next said that tenures within an estate might be very differently affected and interested in the demarcation of the particular portion of the boundary of the estate; that one tenure might be situated at the heart of the estate at a distance from the boundary, another might abut on the boundary, and therefore in the demarcation of that portion of the estate, the boundary would be *pro tanto* a demarcation of the tenure itself. Mr. Dampier was not quite certain that he understood his hon'ble friend,

but he seemed to say that for these reasons the holders of tenures should not be made to contribute to the expense of erecting boundary-marks. If the hon'ble member's meaning was so, MR. DAMPIER could not follow the argument at all. All that had been said seemed to him to point to the conclusion that the greatest latitude must be given to the authority who was in the best position to make a fair assessment with reference to all the local circumstances. If one tenure might be situated on the boundary of an estate, and another at some distance from it, towards the centre of the estate, the officer making the allotment would find that the holder of the tenure situated on the boundary of the estate was much more benefited and interested in the erection of the marks, and ought therefore to bear a higher proportion of the expense than the owner of the tenure situated in the centre of the estate. But it seemed to MR. DAMPIER that no central authority could possibly lay down rules for these matters. If the Select Committee could devise any lines to guide the Collector in the apportionment of the expense, he should not oppose such lines being introduced in the Bill; but he thought it would be found practically impossible to do so.

The suggestion made that the recovery of these expenses should be dealt with, not as arrears of land revenue, but as demands due to the State, MR. DAMPIER thought was worthy of consideration by the Select Committee, and he should be fully prepared to consider it there.

Then the hon'ble member did not approve of the Board's right of supervision being withdrawn in cases of boundary disputes. The principle upon which the Board acted generally, where a discretional power of supervision was given, was this. Where the order of the revenue authorities was final, as in cases of butwarrah, the Board always went carefully into objections and looked into the case with a view to correcting any defects which they might discover; but where the award of the revenue authorities was only provisional, and where the law provided a remedy in the Civil Court to upset that award, the Board were less willing to interfere. Whatever the Board might do, or might not do, a dissatisfied party would still be sure to go to the Civil Court ultimately, and therefore in cases of that description the Board generally refused to interfere with the quasi-judicial award of the Collector and Commissioner. The Bill followed the same principle.

As to six months being too short a period to allow for the institution of a civil suit to contest the award of a revenue authority, he had in this matter followed the recorded decision of the Lieutenant-Governor for the time being, who passed an order that when a Bill was brought in on this subject, the period of six months should be adopted as the limitation of time for the institution of a civil suit. Personally MR. DAMPIER was inclined to agree with the hon'ble gentleman that one year would be a more proper time to fix. The Select Committee would probably consider the point, and would come to a proper finding.

The motion was then agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Mr. Schalch, the Hon'ble Baboo Kristodas Pal, and the mover.

The Hon'ble Mr. Dampier.

REGISTRATION OF JUTE WAREHOUSES.

THE HON'BLE MR. HOGG presented the further report of the Select Committee on the Bill to amend the Jute Warehouse and Fire-brigade Act, 1872, and moved that it be taken into consideration in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The HON'BLE MR. HOGG also moved that the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

Section 1 was agreed to.

Section 2 having been read—

The HON'BLE BABOO KRISTODAS PAL moved that in clause (7) of section 2, below the figures "250," the figures "200" be inserted. This point, he said, was considered in Select Committee, when some of the members were of opinion that the present minimum rate of fee was quite low enough. But there was a difference of opinion, and he therefore thought fit to give notice of the amendment. He submitted that the present minimum was too high. It was not needed for purposes of revenue, because the working of the Fire-brigade Act for the last two years had left a surplus of nearly Rs. 60,000: on the other hand, it pressed very severely and unnecessarily on the proprietors of small warehouses. It was urged that the lowering of the minimum rate of fee might encourage the establishment of small jute warehouses, which would be a source of danger to property in their vicinity; but he believed that the rules for the grant of licenses contained in section 7 would prove sufficiently discouraging to the establishment of small warehouses, and the Justices would have sufficient discretion in licensing places for the storage of jute. So, all things considered, he thought that the minimum rate of fee was too high, and would therefore propose to reduce it to Rs. 200.

The HON'BLE MR. HOGG said he was decidedly opposed to the amendment proposed by his hon'ble friend. The objection to the present minimum rate was that it pressed too severely on small warehouses. He submitted that it was not desirable, especially now, when we were relaxing many of the restrictions which had hitherto hampered the jute trade, to allow small warehouses to exist in the Native part of the town. If a jute warehouse was not sufficiently large to enable it to afford to pay the minimum fee of Rs. 250, he thought it ought not to be allowed to be used for the purpose. We wished to restrict the trade to large warehouses and properly constructed buildings, and on that ground it appeared to him that a fee of Rs. 250 was by no means too large.

The HON'BLE MR. SCHALCH said he fully agreed with the hon'ble mover of the Bill. He considered that all warehouses of the class which would apply for a license of Rs. 200 would be a source of great danger to the town, and he would certainly wish to see houses of that kind excluded from the town. There was ample space in the vicinity of the town for the establishment of warehouses of this description, where they were not so much a source of danger, and where the minimum fee at present was Rs. 150, and where also he saw a further amendment, to be proposed by the hon'ble mover, would enable the Municipal

Commissioners to reduce it to Rs. 100. It was better that houses of that class should be driven from the town and confined to the suburbs, where the risk to valuable property was not so great.

The Hon'ble Mr. Reynolds said he did not think it was a matter of great importance whether the minimum fee were fixed at Rs. 250 or at Rs. 200; but on the whole he thought it better to adhere to the present rate of Rs. 250. It appeared to him that the tendency of the diminution of the minimum amount would be to lower the character of the buildings used as warehouses. It might be said that the Justices were at liberty to refuse a license to a building not constructed on the conditions specified in the Act; but he would appeal to the hon'ble mover of the amendment whether the exercise of that discretion did not place the Justices in an invidious position, by calling upon them to refuse a license to a building the construction of which the action of the legislature had encouraged by the reduction of the minimum amount of fee.

There was one other matter as to the minimum fee on which he thought the Bill was liable to misconstruction. By the 7th clause of section 2 provision was made for the imposition of four specific rates of fee for the grant of licenses, and in a subsequent part of the section it was provided that the Justices might alter the amount of fee to be paid—

[The Hon'ble Mr. Hogg explained that that provision would be modified by an amendment which he intended to propose.]

The Hon'ble Mr. Reynolds expressed himself satisfied with the explanation.

The Hon'ble Mr. Hogg said he was going to suggest that in the concluding clause of this section, after the words "amount of the fee," should be inserted the words "in accordance with the rates hereinbefore mentioned." As it now stood, the Justices might think that they were at liberty to alter the rates to other rates not in accordance with the rates fixed by the section; and although he was advised that the clause as it stood was hardly open to that construction, it was wise to remove all possible misapprehension by introducing the words which he had suggested. That, he thought, would meet the objection of the hon'ble member who had last spoken.

The Hon'ble Baboo Kristodas Pal said the objection taken to his amendment was simply this, that the lowering of the fee would encourage the establishment of small jute warehouses—an objection which he had anticipated in his opening remarks. He begged to point to clause 3 of the section under consideration, which sufficiently provided against the establishment of warehouses of the class to which they were referring. That clause provided that space should be reserved on land appertaining to the jute warehouse for the loading and unloading of carts. That provision could not be complied with by the proprietors of small jute warehouses; it would be incumbent on the Justices to see that warehouses were provided with sufficient space for loading and unloading, and the amendment could not therefore be said to have a tendency to encourage the establishment of small warehouses. Strictly speaking, if the lowering of the fee were carried, it would only apply to the small warehouses which now existed; and as it was not the object to suppress these, he did not see on what principle of justice the benefit was

denied to them, if it was admitted that these small warehouses were not sufficiently remunerative to enable the owners to pay a fee of Rs. 250. It was true that they did pay the fee at present, but it pressed severely upon them; and he thought that in justice to the proprietors of small warehouses the fee ought to be reduced.

The Council then divided:

Ayes—4.	Noes—6.
The Hon'ble Nawab Syud Asghar Ali.	The Hon'ble Mr. Brooks.
„ „ Baboo Kristodas Pal.	„ „ Baboo Juggadanund Mookerjee.
„ „ Mr. Dampier.	„ „ Mr. Reynolds.
„ „ The Advocate-General.	„ „ Mr. Hogg.
	„ „ Mr. Schalch.
	„ „ The President.

The motion was therefore negatived, and the section was passed with the amendment referred to by the Hon'ble Mr. Hogg.

Section 3 having been read—

The Hon'ble Baboo Kristodas Pal proposed to withdraw the next two amendments in his notice.

The Hon'ble Mr. Hogg said he thought it would be desirable for the hon'ble member to proceed with the next amendment of which he had given notice, and which was—

"That in section 3 the following words be added:—

"The Justices may from time to time, as they may think fit, at a special meeting, alter the amount of annual fee, to be paid in respect of any jute warehouse for which a license has been heretofore granted."

The Justices, according to the present Act, would have that power with regard to licenses hereafter granted; but as that section would not, he was advised, have retrospective effect, it was necessary in section 3 to add words to the same effect as in section 6, as that would enable the Justices to revise the rate of fee when imposed on existing warehouses. He would therefore adopt the amendment of his hon'ble friend, adding to it the words "in accordance with the rates heretofore specified" after the words "amount of annual fee."

The Hon'ble Baboo Kristodas Pal then moved his amendment with the addition suggested by the Hon'ble Mr. Hogg.

The motion was agreed to.

Sections 4 and 5 were agreed to.

Section 6 having been read—

The Hon'ble Baboo Kristodas Pal said if the hon'ble member in charge of the Bill was willing to reduce the fee in the suburbs, he would move the next amendment standing in his name, namely that in the second paragraph of section 6, the words "and fifty," wherever they occurred, be omitted.

The Hon'ble Mr. Hogg said he saw no objection to this amendment, as the objection which applied to small warehouses in the town could not be urged with the same force as regards the suburbs, more especially as the Municipal Commissioners of the suburbs had asked to be allowed a latitude in granting licenses at fixed fees.

The Hon'ble Baboo Juggadanund Mookerjee thought a discretion should be given to the Municipal Commissioners of the suburbs, and if the amendment was carried, he believed it would be in accordance with their wishes.

The motion was agreed to.

Sections 7 and 8 were agreed to.

Section 9 having been read—

The Hon'ble Baboo Kristodas Pal moved that the following words be added to the section :—

"Provided that there shall be no double conviction in respect of the same matter both under this and the last preceding section."

His object in moving this amendment was that no two persons should be punished for the same offence. He thought it would be quite sufficient for the purposes of this law if one person were fined for the offence committed, whether he were the occupier of a warehouse, the owner, or any person who infringed the conditions under which the license was granted. This provision was rendered the more necessary by the section of the Bill which declared that where a warehouse was let out in portions, the owner should, for the purposes of the Act, be considered to be the occupier. In such cases the occupier might infringe the law, and the owner might have no control whatever over the occupier's actions. If, however, the Justices could fix the responsibility on the occupier of the particular portion of the premises in which the offence was committed, Baboo Kristodas Pal did not think it would be consistent with justice to proceed against the owner. But if the occupier could not be got at, it would be reasonable to prosecute the owner and punish him. Take another case; a coolie smoked, and he ought to be punished for the offence he committed. Baboo Kristodas Pal did not see why the owner of the warehouse should be punished for the commission of acts which were not strictly under his control. If there was any neglect on the part of the occupier or the owner, there was provision for the cancellation of his license. He believed the object of the Bill would be sufficiently attained if one person, either the owner or the occupier, or any other person convicted of infringement of the law, were punished; but to say that two persons should be punished for the same offence, was not a provision that could be considered sound and equitable.

The Hon'ble Mr. Hogg said he was not prepared to accept the amendment. He thought the hon'ble member had in a measure misapprehended the bearing of the section. It was not intended by either section 8 or section 9 to punish the owner. By section 8 the person punishable was distinctly stated to be the occupier, and the object was to guard the owner from the vexatious prosecutions to which he had hitherto been subject. According to the sections as they stood, the occupier was rendered liable to punishment and also the person who actually infringed the law. Mr. Hogg did not see that it was at all inconsistent that the occupier, who had the management of the property, should be held responsible for the primary control of the establishment under his charge, and that the person who had actually infringed the law in consequence of the lax management of the occupier, or in opposition to his direct orders, should also be liable to punishment. In that we followed the principle of

the Penal Code, where the person actually committing an offence and the abettor were both liable to be punished. A similar provision was to be found in the law for the prevention of gambling. Under that law the owner of the gaming-house was held liable for allowing gambling to go on in his house, and the persons engaged in the gambling were also liable to punishment. MR. HOGG therefore trusted the Council would not relieve the occupier from the very proper responsibility imposed upon him by this section. It was the responsibility of controlling his establishment in accordance with the law passed by this Council; nor should they relieve the person actually infringing the law from being liable to punishment for the offence committed by him. He thought that if his hon'ble friend had examined the sections carefully, he would have seen that it was not intended to impose a penalty on both the owner and the occupier, and he would then, in all probability, not have brought forward this amendment.

The HON'BLE BABOO KRISTODAS PAL said that, in reply to what had fallen from his hon'ble friend (Mr. Hogg), he would point to the concluding words of section 4 of the Bill, which were as follows:—

"If any jute warehouse is let out in portions, the person so letting it out and entitled to the rent shall, for the purposes of this Act, be deemed to be the occupier."

He had referred to cases coming under that provision. Here the owner was deemed to be the occupier; and as his hon'ble friend had observed that the owner had very little control over the occupier, the responsibility should not be fixed upon him; but where the occupier could not be got at, the owner ought certainly to be held liable. BABOO KRISTODAS PAL would not relax the provisions of the Bill in the slightest degree, but would only ask the Council to consider whether it was equitable to provide that more than one person should be punished for the same offence.

The motion was negatived, and the section agreed to as it stood.

Section 10 was agreed to.

On the motion of the HON'BLE MR. HOGG the following words were added to section 11, in order to guard against acts already done being interfered with by that section:—

"Except as in this Act expressly provided, nothing in this Act contained shall affect anything done under the Jute Warehouse and Fire-brigade Act, 1872."

The rest of the sections, the schedule, and the preamble and title, were agreed to.

On the motion of the HON'BLE MR. HOGG the following words were added to section 6:—

"For which a license has been heretofore, or for which a license may hereafter, be granted."

The HON'BLE MR. HOGG said that as this Bill had been some time before the Council and also before the public, he would, with His Honor the President's permission, move that the Bill be passed as it had been settled in Council that day.

His Honor the President said that as this Bill had been twice before the Select Committee, and as its terms had been very carefully considered by the Council, he thought there could be no objection to the Bill being passed that day, if it were the pleasure of the Council to do so.

The motion was carried and the Bill passed.

The Council was adjourned to Saturday, the 13th instant.

Saturday, the 13th March 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 H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syud Ashghar Ali Diler Jung, C.S.I.

PARTITION OF ESTATES.

The Hon'ble Mr. Dampier moved that the Bill to make better provision for the partition of estates paying revenue to Government in the Lower Provinces of the Presidency of Fort William in Bengal be read in Council. The Bill, he said, had been prepared in accordance with the permission given by the Council some weeks ago, and had been some days in the hands of hon'ble members. He did not for one moment say that it had been in the hands of the members for the number of days necessary for the careful consideration of its details. The nature of the Bill was such that he should be obliged to tax the time and attention of the Select Committee very much in regard to it. It was a Bill of details, and contained many intricate points which had been the subject of much discussion. He proposed, after the Bill should have been referred to a Select Committee, to call the special attention of those officers to it who were engaged in administering the butwarrah law and had had experience of its working, in order that they might give the benefit of their opinions to the Select Committee. The Committee would then give close attention to the clauses of the Bill, and he hoped by the end of the year to arrive at the end of the journey on which the revenue officers had been travelling for the last thirty years towards the amendment of the butwarrah procedure. It was impossible for him to attempt to explain clause by clause each of the changes in the existing law which was made by the Bill, so as to be intelligible to hon'ble members who were not familiar with the subject. He would therefore

merely point out the main features of the changes which were proposed to be made. He said on a former occasion that the two objects of the Bill would be to expedite the procedure and to give a definite expression of what the legislature really intended on the numerous points which had been the subject of doubt and litigation under the existing law.

Section 4 imposed two limitations on the right of applying for partition. The first of those limitations was that the applicant must be under engagement to the Government for the payment of revenue; a recusant proprietor who had refused to engage would not be entitled to apply for partition. That was one of the points which had been under the existing law the subject of difference of opinion. Then in the latter part of the same section it was provided that "no application for separation should be entertained the result of which would be to form one or more separate estates, each liable for an annual amount of land revenue less than ten rupees," unless the proprietor of such small share agreed to redeem his revenue. This provision was new, or rather it was a return, to a small extent, to the principle which was acted on years ago. It was found that estates in Tirhoot and other districts were being so divided and subdivided under the process of butwarrah, that in some cases the cost of the butwarrah was out of all proportion to the value of the estate. If the process was allowed to continue, these districts would be cut up into small holdings similar to those of the Sylhet district. There was so much public inconvenience and expense connected with this minute subdivision of estates that it was considered right to place a limit to the extent to which it might be carried, and in doing so a very low limit had been taken. Under the old law to which he referred, no estate could be created by subdivision against which the revenue demand would be less than five hundred rupees. But in framing this Bill he had kept much below that point; and the Bill imposed no restriction upon subdivision as long as no new estate was created against which the revenue demand would be less than ten rupees, and even then the prohibition was not absolute. Any one might have a partition of an estate of which the annual jumma was one rupee if only he would agree to redeem the revenue by a capitalized payment calculated at twenty-five years' purchase.

The fifth section was intended to meet a practical difficulty which had been often found to arise. A, the proprietor of an estate, alienated a specific portion of it to B, with the express condition that B should pay annually one hundred rupees out of the entire Government demand for which A's entire estate had been liable. The contract was clear enough in both its provisions, and B acquired a right to those lands and none other, and he undertook a liability to pay one hundred rupees a year, neither more nor less. Under the butwarrah law as it now stood, when, by the course of time and circumstances, the representatives either of the seller or the purchaser found it to be to their advantage to do so, they would come forward and claim a partition with the obvious object of getting the sudder jummas and the lands of the respective shares redistributed, so as to be in exactly the same relative proportion to one another in spite of the express conditions of the contract. Mr. Dampier himself believed that under such circumstances an applicant had no *locus standi*. He

himself should say to the applicant—"You have made a contract with stipulations in it which are such as to prevent the law being applied, and by doing that you have precluded yourself from taking advantage of the general permission which the law gives to divide estates." However, under the existing law doubts and questions were raised, and Section 5 was intended to make the matter clear. If a private contract stipulated for the payment of such an amount of jumma in respect of the interest transferred as the Government could not accept in view of the safety of the public revenue, then the parties to such contract and their representatives would forfeit their right to claim partition.

Then followed some procedure sections, of which the main object was to oblige persons to come forward with their objections promptly instead of hanging back till the last possible day. When the Deputy Collector or Collector was just about to close his proceedings and to send up the papers, in would come the agent of one of the parties and make objections, and then the whole thing had to be re-opened. Very often that was done with the sole object of causing delay.

A material change made by the procedure sections was as to the position of the Ameen. Under the existing law the Ameen had a definite status: he was the recognized officer, with functions vested in him by law, and especially he had the function, after measuring the estate, of initiating and suggesting the mode of partition. It rested with the Ameen to suggest whether the boundary between the new estates should be made to run from north to south or from east to west, and to prepare the papers accordingly. This was a great and most dangerous power to leave in the hands of an officer of that class, and laid him open to almost irresistible temptation, for this point was often the point of contention and importance in the proceedings.

Under the present law all these and many other important functions were left to the Ameen; but under the Bill the Ameen was reduced to the status of a mere executive officer for the measurement of the land and preparation of the detailed papers in accordance with the orders of the Deputy Collector. The direction in which the estate should be divided, and other matters of importance, were to be initiated as well as settled by the Deputy Collector subject to the approval of the superior revenue authorities. The Deputy Collector would have to take as active a part in the conduct of the butwarrah as he now had to take in a settlement proceeding for the assessment of the Government revenue.

Section 16 laid down the procedure for parties making a separation amicably without the interference of the Deputy Collector, save so far as was necessary for the safety of the public revenue; and then there were a few sections providing for the decision of any point arising in the course of partition which the parties might wish to refer to arbitration.

Section 31 cleared up a doubt as to cases in which a person held neither a joint undivided share in a whole estate, nor certain specific lands only out of the estate, but a joint and undivided share in certain specific lands only. It had been the subject of discussion and litigation whether a person so circum-

stanced could apply for butwarrah: It seemed to MR. DAMPIER that there was no difficulty in carrying out such a butwarrah, and therefore he had provided a section laying down that the owner of such an interest should be entitled to partition.

Section 32 related to the case of what were known as mushtarak lands, where the proprietors of an estate, out of whom one or more applied for butwarrah, held certain lands in common with the proprietors of another estate, of which no butwarrah was contemplated or desired. It was now considered that, where there were such common lands, the fact of the proprietor of an estate not under butwarrah having an interest in such land was sufficient to bar the application for butwarrah of the other estate. That appeared to MR. DAMPIER and others to be an unnecessary restriction. At any rate, where a few fields only were held in common, it would be no great hardship on the proprietors of the estate who did not seek a butwarrah to be obliged to submit to a partition as regards those fields only.

Section 34 laid down a distinct procedure with regard to disputed boundaries. This and some other sections contained provisions barring persons (even third parties) for ever from asserting claims if they did not do so while the butwarrah was in progress. These provisions would require special attention from the Select Committee.

He might mention here that the Bill as now presented to the Council followed chiefly the draft made by Mr. Money two years ago, which again was founded on the North-Western Provinces' Butwarrah Act, passed about twelve years ago for the very purpose of remedying the defects and supplying the deficiencies of the Acts now in force in Bengal. That Bill was very carefully considered in the Council of the Governor-General, and passed for the North-Western Provinces only. As this Council had just then been constituted, the Governor-General's Council would not make its Bill applicable to Bengal, considering it more fit that the Local Council should deal with the matter as regards Bengal.

Section 35 also settled a point upon which there had been much discussion, as to how the tenure-holder would be affected if a butwarrah took place of an estate, one of the proprietors of which, while holding the estate in joint tenancy, had created a lasting tenure, such as a putnee or the like. Section 35 provided distinctly that such tenures would follow the share of the proprietor who had created them, and would be confined to the specific land assigned to the person who had created the tenure. The tenure-holder would have no right to interfere in the lands assigned to other shareholders.

Section 52 was also to meet a practical difficulty, where a butwarrah was found to be absolutely impracticable,—where there was a physical impossibility in carrying it out. Under the present law, a butwarrah proceeding once formally instituted could not be got rid of without the consent of all concerned. There was no procedure by which it could be struck off the file. The Section of the Bill provided that when such practical difficulties arose, a butwarrah might be struck off the file with the sanction of the Commissioner.

Section 61 vested the officer conducting the butwarrah with certain powers as regards pronouncing upon the title to lakhiraj tenures, and other questions,

which the Collector already exercised in the course of a settlement. It was absolutely necessary that a Collector should have these powers in butwarrah cases also, because at every turn some question might arise which it was absolutely necessary to decide before the butwarrah proceeding could be terminated.

With these remarks he moved that the Bill in its present state be read in Council.

The Hon'ble Baboo Kristodas Pal said he believed he did not exaggerate when he said that this was one of the most important Bills that had ever been laid before this Council. It was a complex subject, still more complicated by the cumbrous machinery of the law. A clear and interesting history of legislation on this subject was given by the hon'ble mover of the Bill when he asked for leave to introduce it. The partition law dated from 1793, the birth-year of the permanent settlement, and he might say of the reign of law in this country. Modifications were made in it from time to time, when the law was as it were consolidated by Regulation XIX of 1814. That law had not been since materially changed. Slight alterations were made in it by Act XX of 1836 and Act XI of 1838. Such had been the course of legislation on the subject. The working of the law had been most unsatisfactory. It had been most harassing, dilatory, and expensive. The difficulties of the work had arisen chiefly in connection with the apportionment of the Government revenue to different parts of the estate sought to be separated. It necessitated elaborate inquiries, and the Council knew well what a wide door it opened to chicanery, corruption, and extortion. Not only was money squandered away like water, but sometimes serious breaches of the peace were committed, and even blood was shed. Years and years would elapse, and yet the battle of partition would not come to an end. If the law ever helped the strong to prey over the weak, it did notably in this case: and, be it remembered, the fault did not lie with the executive, but with the law. So far back as in 1848 a most vigorous protest was made against the present state of the law, as stated by the hon'ble mover, by Mr. Forbes, the then Collector of Rajshahye, and since then the volume of official opinion against it had gone on increasing. Baboo Kristodas Pal therefore hailed with pleasure the proposed Bill to amend and simplify the law of partition, and he thought it could not be placed in better hands than in those of his hon'ble friend, who possessed a rare knowledge of the working of the revenue laws of Bengal.

A simplification of the law of partition would be in unison with the improved ideas of the people regarding the possession and management of property. Many were the social advantages of the joint-family system in vogue in this country; but the modern idea of individualism, fostered by western education and example, was sapping the foundation of that patriarchal state of society. There was now a spirit abroad that each should take care of himself; that each should employ his own talents, energies, and resources to the best advantage; and that each should enjoy the fruits of his own capital and labour. We did not feel called upon to discuss here the moral aspect of the question—whether the changed feeling would make men more selfish and tend to destroy

the many amiable virtues which the joint-family system undoubtedly engendered and fostered. But it could not be denied that society would greatly gain by the dissemination of a spirit of self-reliance and enterprise, which was a natural sequence of the idea of individualism, struggling for mastery over the native mind. The spread of this idea was a broad social fact, which nothing could gainsay and nothing could resist; and it was therefore meet that the legislature should second it by simplifying the law of partition.

The present Bill, as had been remarked by the hon'ble mover, was a Bill of details, a discussion of which would find a proper place in the sittings of the Select Committee. Too much care and attention could not be bestowed upon the settlement and elaboration of those details. Many important and complicated interests hinged upon the details of the Bill, and he was glad to receive the assurance of the hon'ble mover that it would not be passed in haste. This was only a preliminary stage of the measure, the object being to elicit public discussion of its provisions.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Mr. Schalch, the Hon'ble Mr. Reynolds, the Hon'ble Baboo Juggadanund Mookerjee, the Hon'ble Baboo Kristodas Pal and the mover, with instructions to report in six months.

The President directed that the Bill be published in the *Gazette* in English and in the vernacular.

MOFUSSIL MUNICIPALITIES.

The Hon'ble Mr. Dampier applied to the President to suspend the Rules for the conduct of business to enable him to move for leave to bring in a Bill to amend and consolidate the law relating to municipalities within the territories subject to the Lieutenant-Governor of Bengal.

His Honor the President having declared the Rules suspend—

The Hon'ble Mr. Dampier then moved for leave to bring in the above Bill, and in doing so, said he had just had to speak on a subject which was *terra incognita* to such hon'ble members as were not engaged in the revenue administration of the country. He now came to an old friend who was very well known to the Council. In 1868, in asking leave to introduce the District Towns' Bill, he had recapitulated the history of municipal legislation in Bengal from the earliest time; so that he need not inflict it upon the Council again. He would take up the status which existed in 1868. Two laws were then, practically speaking, in operation: one, the District Municipal Improvement Act III of 1864 of this Council, and the other the Chowkeedaree Act XX of 1856. The former of these laws was applicable, and was intended to be applied, only to such towns as were really in the first class of advancement, speaking from the Bengal point of view, such as sudder stations. The mode of taxation in such municipalities was an advanced one: it was a percentage on a careful valuation according to the probable sum for which each holding would let, and the whole organization of the Act was in the same key. Considerable powers were vested in the Municipal Commissioners, and it was

assumed that they would take great interest in, and be capable of managing, the affairs of their town. The other Municipal Act in currency at the time was XX of 1856. That was the Chowkeedaree Act. It did not affect to do more than to provide the means for paying and controlling an urban police, as contra-distinguished from a rural police, in such places as were just above the line of agricultural villages. Anything which deserved the name of a town required a special police organization superior to that which sufficed for country hamlets, and that was given by Act XX of 1856.

It provided a punchayet to assess the tax and look after the chowkeedars. The Act just recognized conservancy by saying that if there happened to be any surplus from the money raised, such surplus was to be used for conservancy. But it did not affect to provide for conservancy.

Thus in 1868 there was only a Municipal Act for first class advanced towns, and a Chowkeedaree Act for places which were just above the rank of agricultural villages.

But it was evident that between those two classes of places there lay a wide belt, embracing towns which were so far advanced that the Chowkeedaree Act did not meet their requirements, and which were yet not so far advanced that they could be created full-blown Municipalities under the District Municipal Improvement Act. Sir William Grey's Government determined on the introduction of a law to fill up this gap; and Mr. Dampier had the honor of introducing and carrying through the Council the Bill which became Act VI of 1868. By that Act the tax to be imposed was not upon a strict valuation of property, but it was the old rough mode of taxation,—the mode which had been familiar to the people for years, and which was in force under Act XX of 1856: namely a tax according to the circumstances and the property to be protected of the people liable to the tax. One of the great objects in framing this law was that its provisions should be elastic—that a town which was just a little more advanced than those to which Act XX of 1856 was applicable might be brought under the District Towns' Act as it was called, and in it the powers of the municipal body might be very much restricted by the Lieutenant-Governor under the authority which the Act conferred upon him. As the municipal body became educated in self-government, more able to manage for itself and to run alone, the Act enabled the executive Government to remove one restriction after another, and to give to it extended powers, until the town reached the first grade of those to which the District Towns' Act was applicable, and then the theory was that the town would be promoted over the line and be placed under the District Municipal Improvement Act, and would then become a full-blown Municipality.

He thought that the working of the District Towns' Act had not been unsuccessful: there had been no complaints against it save such as were inseparable from all Municipal Acts. One proof of its successful working might be gathered from the following figures :—In 1872 twenty-six towns were under the operation of the District Municipal Improvement Act, and forty-four places under the Chowkeedaree Act of 1856; while within the four years from the

passing of the District Towns' Act ninety-four towns had been brought under its operation.

While the District Towns' Act and the District Municipal Act were working side by side, they brought to light new requirements—Municipalities under the higher Act wanting to adopt something which their Act did not allow, but which they saw towns under the District Towns' Act enjoy; and towns, on the other hand, under the Act of 1868 wanting to adopt something which their Act did not admit, and which the District Municipal Improvement Act did provide. As an instance of the first, several Municipalities under the higher Act complained that the system of assessment on a strict valuation of property was not applicable to the circumstances of their rate-paying population, and pressed unequally upon them, and they thought it would be much better to have, as in the Towns' Act, an assessment upon the circumstances and the property to be protected of the persons to be taxed. Some of the towns under the Act of 1868, on the other hand, contained a number of carriages and horses: they naturally thought that such luxuries ought to be taxed for the benefit of the Municipality. But, unfortunately, as the law stood the tax on carriages and horses could not be introduced into towns under that Act, although it might be introduced into Municipalities under the Act of 1864.

Thus it became evident that what was required was to weld the two systems together into one, which should embrace all Municipalities, and leave each municipal body to select such provisions out of those which the law provided as were good for its own purposes, and to reject such as are not applicable to its own circumstances. He need scarcely remind the Council that in December 1871 Mr. Bernard presented a Bill so welding the existing laws together and providing one general law for all Municipalities. The Bill gathered up all municipal legislation into one, and provided for the repeal of no less than fourteen Acts scattered about the Statute Book. There were Acts for raising funds and keeping up the roads of this place; there were Acts for the sanitation of that place, and Acts for the better order and government of a third place, and so on. All these Acts were to be wiped out, and Mr. Bernard's Bill contained provisions in place of them all. Besides this mere consolidation into one system, Mr. Bernard's Bill provided for several improvements which were generally admitted to be necessary and desirable. For instance, there was a provision that municipal bodies might devote some of their funds to improving the water-supply; there was a provision enabling the Lieutenant-Governor to allow any Municipality to elect their own Commissioners, and the Commissioners to elect their own Vice-Chairman. Up to that time these privileges could only be given to towns under the Act of 1868, and not to Municipalities under the higher law. Hon'ble members were aware that the Bill provided also for certain other points. As the Bill he now introduced did not touch those points, he need not refer further to them. Some of the points in Mr. Bernard's Bill did not meet the approval of His Excellency the Governor-General, and the Bill was vetoed. His Excellency took the opportunity to mention that certain amendments might, with great advantage, be made in the law. Sir George Campbell subsequently addressed the Council on the

subject, and said he would leave to his successor the task of enacting a consolidated municipal law; and eventually a short amending Act was passed providing for those points only which were generally accepted as desirable.

The present Government had now determined to undertake the task of consolidating the existing municipal law. It would be the object of the Bill which MR. DAMPIER was about to introduce to avoid the general objection which was made to the vetoed Bill, on the ground that its general tendency was to increase municipal taxation. He should wish to guard himself against being understood to say that in no single instance would the population of any town have to pay more than it already paid; but the object of the Bill would not be to increase taxation. It would not be open to that general objection. The Bill would adopt those taxes only which were familiar to the country and in force in different places now. The scheme of the Bill was to make different provisions, out of which each Municipality should select for itself those which were considered good for it, and reject those which were considered not to be applicable to its circumstances. As regards the one principal tax which would provide most of the funds in the Municipalities, it was proposed to allow an alternative. Each Municipality might elect whether it would have the tax upon the value of holdings, as in the District Municipal Improvement Act, or the tax upon persons, according to the circumstances and property to be protected of those liable to the tax; and for each of these two taxes it was proposed to retain the maxima which the existing law now imposed.

In regard to other matters, the Bill would be, generally speaking, a consolidation and reproduction of existing provisions. No radical change would be made, for instance, in the relations of the municipal police and the general police of Bengal. Objection had been taken to the changes in this respect which the former Bill provided.

The opportunity would be taken to make amendments on points on which amendment was clearly required, but the general object would be to avoid novelty. His Honor's Government was fully aware of the delicacy of the subject of municipal legislation. It was aware that any step forward, however good it might be, was sure to meet with disfavour from the less intelligent part of the population to whom such measures would apply; and he believed he was expressing the policy of His Honor's Government rightly when he said that while it would discountenance and resist to the utmost anything like a retrogade movement in municipal government, feeling that even a real improvement and reform would certainly first be unpalatable to the less intelligent of those who would be affected by it, it would be particularly anxious that no step forward would be made without the real concurrence of the more intelligent and educated classes, and that the advantage to be gained by every step to be made in advance should be so thoroughly capable of proof as to secure the support of the more intelligent and thinking persons who were in the habit of giving their attention to these things.

With these remarks he would ask leave to bring in the Bill.

The motion was agreed to.

The Council was adjourned to Saturday, the 20th instant.

Saturday, the 20th March 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 H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syud Ashghar Ali Diler Jung, c.s.i.

REGISTRATION OF MAHOMEDAN MARRIAGES AND DIVORCES.

The Hon'ble Mr. Dampier moved that the Bill to provide for the voluntary registration of Mahomedan Marriages and Divorces be further considered in order to the settlement of the clauses. In explanation of these frequent amendments which he had to propose, he might mention that the Bill was one which had excited much interest amongst the Mahomedans, and was receiving much personal attention from His Honor the President. His Honor had taken the opportunity to consult the leading Mahomedan gentlemen of Calcutta. Moonshee Ameer Ali, who was well known to this Council, went up to Behar, and there ascertained personally the opinions of the chief Mahomedans in the parts which he visited; and the result of all these inquiries and examinations and discussions was to strike out here and there some new light, and to suggest amendments which really did not materially affect the Bill, but which would have the effect of allaying doubts and misgivings which were entertained by persons of different classes as to the effect of the Bill.

The Hon'ble Mr. Reynolds said, before the Council proceeded to the settlement of the clauses of the Bill, he would ask permission to make a few remarks on the Bill in its general provisions. Having been for some years in charge of a large district, in which about two-thirds of the people were Mahomedans, he could add his testimony to that of others who had spoken of the urgency and importance of a measure of this kind. In the district of which he spoke, and generally throughout Eastern Bengal, complaints of offences punishable under Chapter XX of the Indian Penal Code were lamentably frequent, and they were a class of cases with which a Magistrate very seldom felt himself able to deal in a satisfactory manner.

He did not say that all the complaints that were made of this kind were made in good faith. Some were brought out of enmity; others were made with the object of extorting money; and others by persons who, by their own misconduct, by neglect, or cruelty, or desertion, had justly forfeited the rights which

they sought to enforce. But when every allowance had been made for cases of this kind, there still remained a considerable residuum of genuine complaints, in which a real injury had been suffered and redress was really sought for; and MR. REYNOLDS felt bound to add that in many instances redress was not obtained.

The complaints were generally of two classes—either charges of bigamy, or charges under section 498 of the Penal Code, of enticing away or detaining a married woman with criminal intent.

The defences that were ordinarily set up were either a denial of the marriage, or a plea that a divorce had been pronounced. When the defence consisted of a denial of the marriage, it was a matter of great difficulty for the complainant to bring such proof of the marriage as would satisfy the Court. The evidence of his relations and friends who declared that they were present at the marriage was set aside as the testimony of interested witnesses, and he was called upon to produce independent evidence, which generally meant the evidence of the Moollah by whom the marriage had been performed.

It was not always that the parties could produce the Moollah before whom they were married, and when he was produced his evidence was very often unsatisfactory. He had to trust to his recollection in the matter, as he kept no registers, and he had no better testimony than his own statement of the fact of the marriage and the identity of the parties with those before the Court.

Evidence of that kind naturally broke down on cross-examination, and the Magistrate, harassed by contradictory evidence, felt bound to give the prisoner the benefit of the doubt and to dismiss the case, though he might perhaps feel some lurking uncertainty whether he was thus doing substantial justice. But in some cases the fact of the marriage was too notorious to be denied, and then a plea of a divorce having been pronounced was set up, and evidence was brought forward to support it. The complainant was not prepared with rebutting evidence, and the charge was dismissed.

These were real evils for which the Bill would provide a cheap and popular remedy. When a marriage had been registered under the Act (if the Bill should pass into an Act), it would not be open to the parties to deny the fact of the marriage; and with regard to divorces, if a divorce was not registered, the Magistrate would look with suspicion on the evidence adduced to support the plea of divorce, or would at all events be inclined to scrutinize it very carefully.

He was about to add that the Select Committee had, in his opinion, done wisely in maintaining the time-honoured title of "Kazi" as the designation of the registering officer, but he observed that the hon'ble member in charge of of the Bill had an amendment upon the paper providing that the designation of "Mahomedan Registrar" should be substituted for the term "Kazi." It was therefore premature for him to say anything upon that point until the Council had had an opportunity of hearing the arguments which would be brought forward in support of the amendment by the hon'ble member in charge of the Bill. He thought, further, that the Select Committee had done wisely in making the Bill permissive. That so important a contract as marriage

should be registered, and that the registration should be compulsory, might theoretically be advisable; but he believed it would be generally agreed that the country was not ripe for such legislation, and that it was prudent to make this, in the first instance at least, a voluntary measure. He was glad to be able to believe that the Mahomedan community generally had received the Bill with favour. He was aware that some objections had been made, but he thought that these had been made by persons who had only imperfectly acquainted themselves with the provisions and objects of the Bill. He was satisfied that in Eastern Bengal at any rate the measure would be generally acceptable, and he believed that its working would be extremely beneficial.

The HON'BLE NAWAB SYED ASHGAR ALI said that he observed with regret that Mahomedans of all classes, both Sunnis and Shiahs, were not very agreeable to the passing of this Bill. Some gentlemen felt objections to some of the clauses regarding which he saw that amendments were to be proposed. He had also heard that there was a memorial from certain inhabitants of Behar, asking for a delay of six months or so before the Bill was passed; and he thought that sufficient time should be allowed to enable Mahomedan gentlemen, both Sunnis and Shiahs, to make any representations that they might consider necessary. At the same time, it appeared to him that the Bill should not be confined to Bengal, as he observed it was proposed to do by an amendment on the paper, but should be made to extend to all the provinces under His Honor's administration. If the operation of the Bill were to be restricted, as was proposed to be done, to what was known as Bengal proper, the Council would not have the advantage of the opinions of the inhabitants of Behar. He thought, therefore, that the Bill should be left, as it was now, a general Bill; and he would also suggest to His Honor that a little time should be allowed for the consideration of the Bill, during which time he himself proposed to make all the inquiries he could, and prepare a report expressive of the views not only of the Mahomedans in Calcutta, but in other parts, to which he intended to proceed on the close of the sittings of the Council, and lay it before His Honor before the next session.

The motion was agreed to.

The HON'BLE MR. DAMPIER said the first amendment he had to propose was that throughout the Bill the words "Mahomedan Registrar" be substituted for the word "Kazi." In Select Committee he had been against the use of the term "Kazi" in the Bill, because he thought it was apt to lead to misapprehension. It was a term which, amongst the Mahomedans, was identified with very much larger functions than the limited duties assigned to the officer under this Bill, and therefore he thought that the alteration of the term "Kazi" to "Mahomedan Registrar" was advisable, as tending to prevent misapprehension. He was out-voted in Select Committee, and did not think the point of sufficient importance to moot again in Council. But His Honor the President's opinion being with him, he now ventured to propose the amendment to the Council.

HIS HONOR THE PRESIDENT said he would explain the reason for the substitution of the term "Mahomedan Registrar" for "Kazi." It was just

this, that in the first place the word "Kazi"—interpret it how you might, and restrict the meaning how you might—did bear a certain amount or degree of religious significance. Though his functions under the Act might be confined to those of a civil nature, yet there was something of a religious character in the very term "Kazi;" and His Honor need not tell the Council how very important it was to omit anything from the Bill which had a quasi-religious character. The Council were aware that there used to be the office of Kazi established by the law and practice of the country, and that the functions of the Kazi used to be somewhat of a religious character; and partly on that ground they were abolished by imperial legislation. Well, after such abolition, for a local Council to pass a Bill having that word in it, notwithstanding the restricted civil meaning attached to it, must bring their Bill into a certain collision with an imperial Act, and such a contingency might endanger the Bill being assented to. So, although they would be glad to meet the wishes of their Mahomedan friends by inserting the word "Kazi," he thought hon'ble members would see that when there were doubts, *first* as to the religious meaning of the word, and *secondly* of the possibility of our Bill conflicting with an imperial Act, as a matter of judgment and discretion, the members would perhaps consent to the omission of the word for fear that it might endanger ultimately the passing of the Bill.

The motion was agreed to.

The Hon'ble Mr. Dampier said the next amendment which he had to move was the result of the collection of opinions made in Behar. It was clear that the circumstances of Behar as regards the need for the Bill were directly opposed to those of Eastern Bengal. In Eastern Bengal this Bill was most cryingly required: in Behar it did not seem to be required at present, and, not being required, there was no reason for creating the disturbance of public opinion which its introduction would cause. Therefore it was proposed, instead of making the Bill at once applicable to all the provinces under the Government of Bengal, that it should be extended in the first instance to Bengal proper, a discretion being left to the Lieutenant-Governor to extend its provisions afterwards, when circumstances might make it desirable to do so, to the provinces of Behar and Orissa. The amendment Mr. Dampier had to move, therefore, was that the following words be prefixed to section 1—

"This Act extends in the first instance to the territories for the time being under the government of the Lieutenant-Governor of Bengal, except Behar and Orissa.

But the Lieutenant-Governor may, by notification in the *Calcutta Gazette*, extend it to Behar and Orissa."

The Hon'ble Nawab Syed Ashgar Ali said that his objection to the amendment was that, if the Bill were to be settled as applying only to Bengal, the Council would not, as he had before observed, have the advantage of learning what were the opinions and feelings of the people in Behar and Orissa. But if the Bill were made applicable to Bengal, Behar, and Orissa, and not only to Bengal, we should have the benefit of opinions from Mahomedans of all places, and there would be no necessity to go over the whole work again when it was considered advisable to extend the law to Behar and Orissa.

His Honor the President.

HIS HONOR THE PRESIDENT observed that the Council would have the opinion of the people of Behar and Orissa whether we extended the Bill at once to those provinces or not. Even if the amendment before the Council were adopted, the people of Behar and Orissa would have an opportunity of considering its provisions.

The HON'BLE MR. HOGG asked what were the grounds of objection to the Bill being extended to Behar? He thought the Council would be in a better position to vote upon this amendment if they were made acquainted with the grounds of objection contained in the memorial that had been referred to.

The HON'BLE MR. DAMPIER said he had not seen the memorial to which the hon'ble member referred. But the ground upon which it was proposed to except Behar and Orissa from the operation of the Bill immediately upon its passing, was that the practical difficulty which the Bill was intended to meet had not been met with in those provinces,—the difficulty of proving cases of breach of the marriage contract. The people of Behar in effect said—"Our circumstances do not require this Bill, and we would rather not have legislation upon this subject introduced at all." As to Orissa, he believed the matter had not been objected to formally; but the fact was that the want of such a measure had not been felt in Behar and Orissa.

The HON'BLE MR. HOGG observed that if there was no objection to the course proposed, he thought it would be satisfactory to the Council that the Behar memorial should be printed and circulated before this amendment was passed. The Council would then be in a better position to judge of the advisability of confining the operation of the Bill in the first instance to Bengal.

After some further discussion the further consideration of the amendment was postponed.

The HON'BLE MR. DAMPIER moved the introduction of the following amongst the interpretation clauses in section 1:—

"'Purdah nishin' means a woman who, according to the custom of the country, might reasonably object to appear in a public office."

He had been informed by several Mahomedan gentlemen that young married women, though not strictly speaking purdah nishins, would be extremely unwilling to appear at the Registrar's office. It was with that intention that he proposed to relax the interpretation of the term "purdah nishin." The amendment was obviously open to criticism, on the ground that under the proposed interpretation any woman might be allowed to appear by vakil instead of in person; but Mr. Dampier believed that no practical harm would accrue from the relaxation of the requirement that the woman should appear in person; the vakil would probably ordinarily be a relation, and he believed that an appearance by vakil would be quite as safe and as little open to abuse and false personation as if the woman herself appeared. If *mala fides* arose afterwards, the woman who attended personally was quite as likely to deny her identity as she was to deny the authority of the vakil who had represented her.

The HON'BLE MR. HOGG said the proposed interpretation would not only include a woman of rank, who, according to the custom of the country, might reasonably object to appear in public, but would include any young girl who might choose to

object to appear at a public office. He submitted that every young woman of whatever rank, would, according to the custom of the country, object to appear in a public office. He would suggest that the principle of the Registration Act should be followed, under which those who did not wish to appear at a public office might apply for the appointment of a Commission to effect the registration of the marriage.

The HON'BLE THE ACTING ADVOCATE-GENERAL said women who went to market and appeared in public before their neighbours would object to appear at a public office. If that was the intention, he certainly would object to the amendment, as the object intended to be secured was the identity of the person who happened to go before the Registrar to be married. He thought the subject should be further considered, as it was likely, if this amendment were adopted, that one of the great objects of the Bill might be frustrated.

The HON'BLE MR. DAMPIER explained that the object of the proposed interpretation was to relax the well-understood meaning of "purdah nishin." If you made the definition of the word tight, according to the ordinarily accepted meaning of the word, purdah women who did not like to appear at a public office would simply not go before the Registrar, and the voluntary provisions of the Act would not be taken advantage of. It had been strongly urged upon him by Mahomedan gentlemen that there were a great number of women who went about their household business to market and elsewhere, but would yet object to appear at a public office. If you did not allow these women to appear by vakil, they would not go through the expense of a Commission, and would not avail themselves of the provisions of the Act, and *the object of the Bill would be frustrated; whereas, if these women were* able to send their vakils to effect the registration, the thing would be done without objection, and the provisions of the Act would be made use of.

After some further discussion, the Council divided:—

Ayes—9.	*No*—1.
The Hon'ble Nawab Syed Ashgar Ali.	The Hon'ble the Acting Advocate-General.
The Hon'ble Baboo Kristodas Pal.	
The Hon'ble Baboo Jaggadanund Mookerjee.	
The Hon'ble Mr. Reynolds.	
The Hon'ble Mr. Hogg.	
The Hon'ble Mr. Dampier.	
The Hon'ble Mr Thompson.	
The Hon'ble Mr. Schalch	
His Honor the President	

The motion was therefore carried.

On the motion of the HON'BLE MR. DAMPIER, verbal amendments were made in section 10.

On the motion of the ACTING ADVOCATE-GENERAL, section 24, which provided that a Kazi should be, and be deemed to be, a public officer in the service of Government, was amended so as to stand thus:—

"Every Mahomedan Registrar shall be, and be deemed to be, a public officer, and his duties under this Act shall be deemed to be public duties."

On the motion of the HON'BLE MR. DAMPIER, the following clause was added to section 16:—

"In the town of Calcutta, every Mahomedan Registrar shall perform the duties of his office under the superintendence and control of the Inspector-General of Registration."

For the saving clause, section 25, the following was substituted, on the motion of the HON'BLE MR. DAMPIER:—

"Nothing in the Act contained shall be construed to—

(*a*) render invalid, merely by reason of its not having been registered, any Mahomedan marriage or divorce which would otherwise be valid;

(*b*) render valid, by reason of its having been registered, any Mahomedan marriage or divorce which would otherwise be invalid;

(*c*) authorize the attendance of any Mahomedan Registrar at the celebration of a marriage, except at the request of all the parties concerned;

(*d*) affect the religion or religious rites and usages of any of Her Majesty's subjects in India;

(*e*) prevent any person who is unable to write from putting his mark, instead of the signature required by this Act"

After the insertion of an inadvertent omission in schedule (*c*), the further consideration of the Bill was postponed.

IRRIGATION AND CANAL NAVIGATION.

The HON'BLE MR. DAMPIER moved that the Bill to provide for Irrigation and Canal Navigation in the Provinces subject to the Lieutenant-Governor of Bengal be read in Council. When he asked the permission of the Council to introduce a Bill regarding irrigation in Bengal, he said that the existing Acts applied to Orissa only, and that in Midnapore the works had been carried out without any Act applicable to those works. It was then intended that the Bill should be applicable only to Bengal proper and to Orissa, leaving Behar (in which it was proposed to work the irrigation on a somewhat different system) to be provided for by subsequent legislation. Since then, however, the requirements of Behar had been under consideration, and he hoped the Council would not object to the introduction of this Bill as one applicable to all the provinces under the Lieutenant-Governor's control. At present there was no Act to regulate the powers of officers of the department and the rights of individuals in that connection. The present Bill, which had been for some days in the hands of the members, followed generally the scheme of the irrigation and Canal Act of the North-Western Provinces which was passed by the Council of the Governor-General, and which MR. DAMPIER was informed had worked well. He had rejected some of the provisions of the North-Western Provinces' Act, because they were not applicable to Bengal, and were not required; and he had omitted others because this Council had not power to legislate as the Council of the Governor-General did on those points: for instance, the provisions of the North-Western Provinces' Act trenched upon some of the provisions of the Land Acquisition Act in regard to compensation. Such legislation was beyond the competence of this Council. He had provided in the Bill that compensation should always be given in accordance with the Land Acquisition Act. Then he had omitted the provisions imposing an owner's rate upon the zemindar,

which were in force in the North-Western Provinces, as the Government did not wish to extend them to Lower Bengal, and he had also omitted the provisions regarding forced labour, which were necessary where there was a sparse population, but were not required in Bengal.

The second Part of the Bill gave power to the Government to take up existing channels and to utilize them for purposes of irrigation, giving compensation under the Land Acquisition Act to those whose rights were affected. The third Part conferred upon canal officers certain powers as to surveys for canals and for keeping canals up when made. It also provided for payment of compensation for damage done. If the parties accepted the compensation offered, well and good; if not, the amount of compensation was to be settled under the Land Acquisition Act. This Part provided also for applications for water and for the construction of water-courses at the cost of private individuals who required them, according to the system in vogue in the North-Western Provinces. That was not the system hitherto in force in Orissa and Midnapore, but in Behar it was proposed to follow that system. This part also provided for subsidiary arrangements as to these water-courses. To get the full benefit of irrigation it was occasionally necessary to use compulsion in taking possession of rights of private individuals in favour of other private individuals. Sometimes it was necessary to interfere in a trifling degree with the rights of one individual for the purpose of securing to others very great benefits from the use of water. When that was done, the private rights which had been interfered with would be fully paid for. It would be observed that this Part required that provision should be made for the convenience of the public in crossing canals and channels at the expense of the Government, or of those for whose benefit the channels were kept up.

In the fourth Part of the Bill it was provided that the Lieutenant-Governor might make rules regarding the supply of canal water; but the Bill laid down certain conditions restrictive on the department as to the supply of water. The officers of the department could not, for instance, arbitrarily cut off the supply of water at their own discretion: the supply could only be withheld upon certain specified conditions stated in the Bill; and if the department failed to supply water under other circumstances, persons under contract for water were entitled to compensation.

The fifth Part provided that the rate at which water should be supplied should be fixed by the rules made by the Lieutenant-Governor, and provisions were made for the joint responsibility of the cultivators and those connected with the land for waste or the unauthorized use of water. These provisions were absolutely necessary, for sometimes it was impossible to find out by whose act the water was surreptitiously let out. It was easy, however, to find out whose land had benefited from the use of such water. The law imposed joint responsibility in that respect. In this Part it was also provided that canal officers might agree with a third person to collect the water-rate, and that the Government might require the zemindars to collect the rate from their ryots. This plan was not favoured in Midnapore: it was said that the ryots very much objected to it. In other parts it might be found acceptable and workable.

The Hon'ble Mr. Dampier.

As to the recovery of sums due, he had left the model of the North-Western Provinces' Act, and had retained the provisions of the existing Orissa Acts, which were more in detail.

The sixth Part provided rules for the navigation of canals and the realization of canal dues; and the ninth Part provided for the Lieutenant-Governor laying down subsidiary rules for the guidance of canal officers and the public in all matters connected with irrigation.

As soon as the Bill had been read and referred to a Select Committee, he proposed again to ask those officers who had practical experience on the working of the system hitherto in force, to give their opinions for the benefit of the Select Committee. With these remarks he begged to move that the Bill be read in Council.

The Hon'ble Baboo Kristodas Pal said the prosecution of irrigation works was a question of imperial policy, which did not fall within the scope of the deliberations of this Council. But past experience did not justify them to hope that financially these works were calculated to prove a great success. He perceived from the last Bengal Administration Report that the total outlay upon irrigation works, up to the 31st March 1874, was Rs. 3,15,18,966, and the total deficiency up to that date was Rs. 51,15,758; that was to say, Rs. 44,61,754 on account of interest, and Rs. 6,53,994 on account of current charges. These figures, he submitted, were the best evidence of the prospects of irrigation works in Bengal. He admitted that these works did good service in Midnapore and Behar in the drought of 1873-74, but even that service was very limited. He observed that this question was very ably and sensibly discussed in Sir George Campbell's Administration Report for 1872-73. Adverting to the outlay incurred, Sir George Campbell wrote :—

"It will be seen that the total expenditure will be enormous, while financially we have been most unfortunate. In Orissa the premature attempt to secure a large revenue ended disastrously, as explained in the last report, and caused much irritation and discord."

In Midnapore the works were more successful, but still not to the extent desired. As to that, Sir George Campbell said :—

"But unhappily all these prospects were darkened by a circumstance which the projectors of the canal do not appear to have taken into account, though it seems obvious enough. The supply of water in the river which feeds the canals failed in October and November, just when water was most wanted. Short rivers rising on the surface of dry uplands must fail when the rains fail. Though there was by no means so excessive a drought in Midnapore as in the rest of Bengal and Behar, the supply to the canal fell to 300 feet per second at the time when water was most necessary to the crops. This quantity will not suffice for much more than about 30,000 acres; so much was irrigated, but many applicants were sent away without water, and even to some of those to whom we had engaged to give it, a very short supply was available. It seems, then, that we cannot safely engage to irrigate very much more than 30,000 acres without the fear that we shall fail to do what we have undertaken to do in every dry season when the rains cease early. It is seldom that the water is an absolute necessity at any other time; and the serious question arises whether we can undertake to extend our irrigation subject to this risk, and how we are to distribute the supply when we have not enough for all.'

In Behar, as BABOO KRISTODAS PAL had already observed, the Soane Canal was of great benefit during the late drought, but even there the prospect was not all fair. Sir George Campbell remarked:—

"The Lieutenant-Governor believes that the Soane canals have really very much better prospects than the others, and that within certain limits their greater or less success is assured. Whether in ordinary years, when there is a full rain-supply, the people will consent to pay such rates as to render the canal remunerative, remains to be seen; but that the water will always be taken to a considerable extent, the Lieutenant-Governor has no doubt."

Sir George Campbell thus concluded:—

"Even if the Soane canals, kept within dry season limits, may eventually pay. it is Sir George Campbell's belief that almost all other canals which can be devised in those provinces will practically be of the nature of an insurance against bad years, rather than a profitable speculation in ordinary years. Can we impose an insurance rate on those who are benefited? Or is Government justified in spending great sums from the general revenues, not for profit, but to save life in years of failure? These are very perplexing questions. As regards the saving of life, the fever which has so often accompanied the canals must be taken into account. It may well be doubted whether the Ganges Canal most saves life or destroys it. Sir George Campbell had hoped that deltaic canals were free from this scourge, but he has lately seen that there are complaints of fever caused by the Godavery canals also."

Now, it would be seen from these extracts that, according to the late Lieutenant-Governor of Bengal, the prospects of irrigation in these provinces were very doubtful, and BABOO KRISTODAS PAL believed that all who knew the condition of the country and the requirements of the people would readily subscribe to that opinion. In Bengal in times past droughts used to occur at long intervals, but within the last ten years or so they had been more frequent. Since 1866, he could not say whether from atmospheric changes or what, drought had been more frequent in Bengal. Still it was a question of grave financial importance as to whether canals for irrigation should be multiplied and the general revenues burdened in the distant hope of meeting a drought which might occur once in eight or ten years.

He thought it proper to make these general remarks, as the Bill had been introduced with a preface that it was intended to extend these works to different parts of the country.

As regards the Bill itself, it was not clear whether the water-rate would be made compulsory or voluntary. He believed the hon'ble member intended that it should be voluntary; but as the Bill was framed, the point had not been made quite clear. For instance, there was no specific provision in the Bill that a contract should be made in all cases. On the contrary, section 27 implied that there might be no contract. It enjoined—

"In the absence of a written contract, or so far as any such contract does not extend, every supply of canal water shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the Lieutenant-Governor in respect thereof."

This implied that there might or might not be a contract in all cases; and where there was no contract, it seemed to him there might be much misunderstanding and dispute. The Canal Department had not been popular, and he was therefore of opinion that as little discretion should be left to the canal officers as possible. Then it appeared from clause 6 of section 25 that, if it

was not intended to make the water-rate directly compulsory, it was intended to make it indirectly compulsory. The section said:—

"If any of the rules and conditions prescribed by this section are not complied with, or if any water-course constructed or transferred under this Act is disused for three years continuously, the right of the applicant, or of his representative in interest, to occupy such land or water-course, shall cease absolutely."

In other words, although the occupant might pay for the construction and maintenance of the water-courses, still if he did not take the water for three years successively he was to be deprived of the use of the water-course: that was to say, it would be confiscated. Now this provision had a direct tendency to make the rate compulsory, or rather to force water upon the occupant.

Then with regard to the liability for the waste of water, the hon'ble member had explained that where the party who wasted the water could not be identified, all the persons interested in the water-course should be held jointly responsible (sections 29 and 30 of the Bill). It was a well-recognized principle of criminal law that if a person committed a breach of the law, he should be personally and individually held responsible; but BABOO KRISTODAS PAL could not understand on what principle of justice a body of persons was to be held responsible for an offence committed by an unknown person.

It would be intelligible if the persons whose lands benefited were held responsible; but it was clearly unintelligible that all persons, whether their lands were benefited or not, should be held responsible because the canal officers were unable to find out the real offender.

The next point was as to drainage. He found that under section 25 private individuals, if they obtained a supply of water through a water-course, were to provide for the drainage of the places where drainage channels existed. But there was nothing in the Bill to show that the drainage of the villages would be kept intact where the canals were constructed at the cost of Government. He thought that this was a most important point, which ought not to have been lost sight of in a Bill of this kind.

The next point was as to compensation. The hon'ble member had explained that he had diverged from the North-Western Provinces' Act, which he had made his model, in granting compensation under the Bill. But on reference to section 8, BABOO KRISTODAS PAL found that it provided as follows:—

"The Collector shall proceed to inquire into any such claim which may be made under the provisions of the Land Acquisition Act, 1870, as far as they may be applicable, and to determine the amount of compensation, if any, which should be given to the claimant."

It was not clear from this provision whether the whole machinery of the Land Acquisition Act would be availed of in cases coming under this section, or whether the determination of the Collector would be final. Then came the collection and realization of the water-rate. Under section 23 it would be at the discretion of the Government to farm out the collection of the water-rate to any person. But section 37 provided:—

"The Collector may require any zemindar or other person under engagement to pay the land revenue of any estate, to collect and pay any sums payable under this Act by a third party in respect of any land or water in such estate."

The hon'ble mover had not given any reason why he wished to throw this new obligation upon the zemindar. There were many reasons why this obligation should not be imposed upon him. In the first place it was liable to be abused in the hands of an unscrupulous zemindar; in the second place, where the zemindar might not be exacting, and might fail to realize the rate from the ryots in due time, his whole estate would be held liable to sale as for an arrear of revenue: so the zemindar who would be charged with the liability for no benefit of his own was threatened, as it were, with the sale of his own estate for the debt of third parties.

This was scarcely fair or just. It was true that the collection of the road cess had been imposed upon the zemindar, but the object was not only to facilitate the collection, but also to prevent the fiscal agency from coming into direct contact with the ryots for the collection of the cess, and thus to obviate the annoyance, irritation, and oppression which generally resulted from this process. But the canal officers formed a distinct department, and they would more or less come into contact with the ryots; and he did not therefore see why the zemindars should be compelled to collect the rate for the Canal Department. The provisions of section 33, which declared that the collection of the rates might be farmed out, appeared to be quite sufficient. If a zemindar wished to take a farm of this kind, he would be quite welcome to do so, and it would be quite unobjectionable to employ his agency in such case. But he was not satisfied that any good reason existed for compelling the zemindar to collect the rate. In the interests of both the zemindars and the ryots, he thought that this section should be omitted.

Then, again, in regard to the mode of realization of the water-rate, it was provided in the first place that where the water-rate and other charges were to be collected by the Government, the same should be recovered as arrears of revenue. In the second place, where the rates were to be realized by a farmer, they were to be realized as a demand under Act VII of 1868; but where they were to be realized by the zemindar, they were to be realized as rents payable to him. As Baboo Kristodas Pal remarked at a previous sitting of the Council, he thought the less the legislature made the land liable for any and every demand imposed upon it, the better, so long as there were other valuable goods available for the realization of the dues of Government. If the immoveable property of the person liable to the water-rate was not sufficient to satisfy the demand, it would then be just and equitable to seize the land and sell it, but not otherwise. This objection was certainly obviated with respect to farmers under section 33, for in their case the water-rate was to be recovered as a demand within the meaning of Act VII of 1868. The farmer would thus have a facility in realizing the rate, but the zemindar must collect it as rent; and the Council were well aware what this meant. If the ryots did not pay, the zemindar must sue them in the civil court, and undergo the expense, trouble, and harassment of a wearisome litigation, and in the meantime pay in the amount from his own pocket.

The Hon'ble Baboo Kristodas Pal.

Then, with regard to jurisdiction under Part VII, it would appear that the jurisdiction of the Civil Court would be taken away with regard to the supply of water. The section provided that—

"Except where hereinotherwise provided, all claims against Government in respect of anything done under this Act may be tried by the Civil Courts; but no such Court shall in any case pass an order as to the supply of canal water to any crop sown or growing at the time of such order."

This was circumscribing the jurisdiction of the Civil Court to the detriment of those who availed themselves of the Act. Then another question arose. The Council were aware that canals sometimes overflowed in the rains and did great damage to the crops. There was nothing in the Bill to show that in such cases those who might sustain damage from the overflow of water would have a claim against the Canal Department, and that the Civil Court would have jurisdiction in such cases. He did not know whether this section as it was worded would not bar the institution of such suits.

With regard to navigable canals, he had only to remark in conclusion that while the Bill provided penalties for the infringement of the rules, and made provision for the protection of canals, it nowhere provided that due facilities should be afforded for navigation. It imposed no obligation upon the Canal Department to provide facilities for navigation, though it authorized them to collect tolls and rents and to levy penalties.

The Hon'ble Mr. Dampier said he had only to say in reply that not one of the criticisms which the hon'ble member had addressed to the Council applied to any provision which appeared for the first time in this Bill. All the provisions on which the hon'ble member had remarked were borrowed either from the North-Western Provinces' law, which, as Mr. Dampier had said, had been found to work well, or from the existing Orissa law. The plan upon which he had prepared this Bill had been to take these two sets of laws as his models. Anything which palpably was not applicable or desirable for Bengal, was either struck out or modified. But any provisions which were open to a difference of opinion, he had retained with the object of securing the attention of the Select Committee to them, and of their discussing and seeing how far they were or were not applicable to the circumstances of Bengal. The Select Committee would, no doubt, consider the matter carefully with the assistance of the suggestions which they would receive from officers who were acquainted with the practical working of the department, and very probably the Bill would be presented by the Select Committee in a considerably altered and improved shape.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Mr. Schalch, the Hon'ble Baboo Kristodas Pal, and the Mover, with instructions to report in six months.

The Council was adjourned to Thursday, the 25th instant.

Thursday, the 25th March 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 H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bhahdoor,
The Hon'ble Baboo Kristodas Paul,
and
The Hon'ble Nawab Syud Ashghar Ali Diler Jung, C.S.I.

REGISTRATION OF MAHOMEDAN MARRIAGES AND DIVORCES.

The Hon'ble Mr. Dampier moved that the Bill to provide for the voluntary Registration of Mahomedan Marriages and Divorces be further considered in order to the settlement of its clauses. As far as he was aware, only one clause remained to be considered, that of which the consideration was deferred at the last meeting of the Council. It was a proposal that at the commencement of section 1 the following words be inserted:—

"This Act extends, in the first instance, to the territories for the time being under the government of the Lieutenant-Governor of Bengal, except Behar and Orissa:

"But the Lieutenant-Governor may, by notification in the *Calcutta Gazette*, extend it to Behar and Orissa."

The Hon'ble Nawab Syed Ashgar Ali said he had received copies of three memorials on the subject of this Bill since the last meeting of the Council: one, a memorial of certain Mahomedans of Bengal and Behar, one from Arrah, and one from certain inhabitants of Chinsurah and Hooghly; also a memorandum by Moonshee Ameer Ali, and a petition from a Kazi of Tirhoot. He would refrain from speaking on the motion before the Council until such time as three other memorials from some Mahomedan gentlemen of Sarun, Monghyr, and Tirhoot, which he was informed were about to be sent in, had been received. [His Honor the President intimated that he had just received those petitions.] There were other memorials besides these, which he understood were to be presented to the Council from Mahomedan gentlemen in other places; and until they had been presented, he would refrain from speaking on the subject. He would, however, in accordance with the wishes which had been expressed to him by certain Persian gentlemen resident in Calcutta, move as an amendment that the further consideration of the Bill be postponed for a period of from two to six months, in order to enable them to prepare and present their memorials, which were not yet ready.

His Honor the President said that the memorials to which reference had just been made were an additional one from the Behar Province, which was

very much the same as the one which had already been circulated to the Council; one from Monghyr, and another from Tirhoot. Two of these memorials were accompanied by an English translation, and the other was without any translation. There were two petitions signed by residents of Behar, one of which was accompanied by a translation, and the other was not so accompanied; but he believed that they were almost identical, so that the one translation would answer for both of them. Then there was one memorial from Tirhoot in English, and one from Monghyr, which apparently had no translation. The Behar and Tirhoot memorials were accompanied by translations, but the Monghyr one was not. These memorials were all, he believed, exactly to the same effect as those which had been presented to the Council. He believed they were framed under some misapprehension, as they expressly stated that the Bill would interfere with their religious institutions, when it was well known that the Bill distinctly provided that it was not to do so.

The HON'BLE MR. DAMPIER said he believed that the Government and the Council had already as fully before them the means of knowing what was the feeling regarding this Bill as they would have six months or twelve months hence, and therefore he did not think that any further delay would put them in a better position than that in which they now were.

The HON'BLE MR. HOGG said he somewhat dissented from the remark which had just been made, that the Council had before them all possible information they were likely to be possessed of after a postponement of six months. The Council were in somewhat an awkward position. When permission was asked to introduce this Bill, the hon'ble member on his left, who sat in the Council somewhat in the position of a representative of the Mahomedan community, supported the introduction of the Bill, and said that the Bill was one which would receive the approbation of the Mahomedans of Bengal, and so doubtless the Members of the Council (certainly MR. HOGG himself) were not prepared to offer any opposition to the Bill. This was particularly the case as regards himself, he not being acquainted with the feelings of the Mahomedans in Eastern Bengal, never having served in those districts. Now, when the Bill was in an advanced stage, we found the hon'ble member himself opposing the progress of the Bill, and saying that it was opposed to the views of the Mahomedan community generally, and particularly by those in Behar and Orissa. He could understand the Magistrates of the districts in Eastern Bengal coming forward and asking the Government in the Legislative Department to pass a Bill compelling the registration of marriages and divorces. But certainly, in the absence of the arguments upon which the request was based, he was unable to understand upon what grounds they thought a permissive Bill, if not supported by the Mahomedan population of Eastern Bengal, would have the effect they desired it to attain. The letters from the Magistrates of the districts in Eastern Bengal had not been placed before the Council; but perhaps the hon'ble member in charge of the Bill might favour the Council with information as to how a permissive Bill was likely to work the end desired by the Magistrate of Furreedpore and the other Eastern districts.

The Hon'ble Mr. Dampier said he really did not know that he could explain anything more than what had already been laid before the Council in the earlier stages of the Bill. Certainly for the purposes for which the Magistrates wanted the Bill, a compulsory Bill would have been more effective. That might be granted. But then came another consideration; and certainly the conclusion he came to was that the attempt to pass a compulsory Bill through the Council, and to get that Bill assented to in higher quarters, would be futile. The attempt was made some years ago. A Bill for compulsory registration was introduced by Syed Azumooddeen, but it was dropped at once because, as Mr. Dampier understood, there was such an outcry against it on the part of the Mahomedan community. The objection they felt to a compulsory Bill was that it would be an interference with their religion. He for one should disapprove of such a measure, because it would raise something more like a reasonable opposition from the Mahomedan community than the opposition which was now raised. The opposition which was now made seemed to him founded upon a misunderstanding of the scope of the Bill, and really did not apply to it. Still he would always rather give in to a prejudice, even though he himself considered it an unreasonable one, if he had no object in acting against it, than fly in the face of those who entertained it. It was believed that in Eastern Bengal, where the shoe pinched, the people would avail themselves of a permissive Bill, and a permissive Bill would go further towards attaining the object in view than no Bill at all.

The Hon'ble Mr. Rivers Thompson said he understood that the question before the Council was (on the motion of the hon'ble member opposite) that the Bill be postponed for six months for further consideration. He was quite prepared to oppose that motion and support the hon'ble member in charge of the Bill in wishing that the Bill should now be proceeded with. The Council were aware how in other places different methods were adopted to oppose a Bill by moving for its postponement on various grounds; but this was the very first time in his experience that opportunity was taken of opposing a Bill in this Council by the presentation of petitions and remonstrances at the eleventh hour, when the Bill was ready to pass; and such a course was especially unreasonable with reference to a Bill which had been before the public and the Council for nearly eighteen months. It was quite clear, if the Bill was to be postponed on such representations, that there was scarcely any Bill that could be passed. In large provinces like these it was very easy to get up petitions; it was very easy to put forward objections on the ground of religious interference, which was a very difficult argument to deal with in a Council constituted like this; but when these were brought forward almost on the day on which the Bill was to be passed, he did not think that there was justification for such a proceeding. And considering that the present Bill was purely permissive, and that it was needed for the benefit of the Mahomedan community in the Eastern Districts, he did not think that because the people of Behar objected to it and did not want to use it, the proposal for the postponement of the Bill was one which should be entertained.

It appeared to him that the opposition generally to the introduction of the Bill had arisen from parts of Behar. It was not certain—at any rate it was not clearly established—that that opposition prevailed throughout the province of Behar; but there might be parts of the Behar districts, and of some districts in Bengal, in which objections existed to the introduction of the measure. It seemed to him, therefore, that the form in which the section before the Council should be enacted would be improved by adopting the form which we had in another Act of the Council—in other Acts he might say—as regards the general manner of the introduction of the Act, as it left the power in the hands of the Executive Government as to when and where a particular Act should be applied;—not that the operation of the Act should be excluded from large provinces or particular divisions of the country till it had been extended thereto, but that it should be in the power of the Government, by a notification in the *Gazette*, to extend it to any districts, and sometimes more minutely to sub-divisions of districts. That, he thought, would be a better form in which to put the amendment proposed by the hon'ble mover of the Bill, and therefore he would move that the following words be introduced at the commencement of Section 1 :—

"This Act shall commence and take effect in those districts in the provinces subject to the Lieutenant-Governor of Bengal to which the said Lieutenant-Governor shall extend it by an order published in the *Calcutta Gazette*; and thereupon this Act shall commence and take effect in the districts named in such order on the day which shall be in such order provided for the commencement thereof."

By this means it would be competent to the Lieutenant-Governor, if he found that the Act should be introduced in a district like Mozufferpore, to extend it to that district without introducing it in other parts of Behar, in the same way as the Act might be extended to a particular district or districts of Bengal without introducing it in the rest of the province; and a further advantage of the amendment he proposed was that it would leave the decision of the question to the Government, who, in a matter like this, were best able to ascertain by reference to their local officers the need for the introduction of the Act and the general feeling of the people in regard to it.

The question that the further consideration of the Bill be postponed for a period of from two to six months was put and negatived.

The Hon'ble Mr. Thompson's amendment was then agreed to.

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

Saturday, the 3rd April 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 H. L. Dampier,
The Hon'ble Stuart Hogg,
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 Syud Ashghar Ali Diler Jung, c.s.i.

CALCUTTA MUNICIPALITY.

The Hon'ble Mr. Hogg said, when he asked leave to introduce the Bill which had now been circulated to hon'ble members, he pointed out that the law which governed the Municipality of Calcutta was contained in a number of Acts, passed from the date of the passing of Act VI of 1863 down to the present time. Owing to the multiplicity of the Acts, and also from some of the provisions of the Acts not being altogether at one with each other, there was considerable difficulty, he stated, in ascertaining what the law was in many points. He therefore, on these grounds, suggested the expediency of consolidating the Municipal law of Calcutta; and at the same time he stated that although he had no intention of proposing any radical change in the law or constitution of the Municipality, yet he thought it would be advisable to avail themselves of this opportunity to amend the law in some respects in which it had been found not to work efficiently. The Bill now in the hands of the Council purported to consolidate ten Acts, commencing with Act VI of 1863 and ending with Act I of 1872, thus containing the whole Municipal law, with the exception of the Acts relating to markets. As the question of the management of markets was not immediately connected with the municipal administration of the affairs of the city, he thought perhaps it would be wise to leave the law upon that subject untouched. He had therefore not introduced in the Bill any provisions for the control of markets, until the Select Committee, to whom this Bill would be referred, considered whether it would not be advisable to leave the law in regard to the matter in its present state.

He now proposed to draw the attention of the Council to all the essential alterations which were proposed in the Bill which was now before the Council. By section 16 he proposed that the Justices should be empowered to make rules for pensions or gratuities to be granted and paid out of the municipal funds to their servants, and to repeal and alter such rules, subject to the control and approval of the local Government.

By section 25 he proposed that the number which constituted the quorum for a special general meeting of the Justices should be reduced from twenty-five to fifteen. The reason for this alteration was that the Justices often found it, especially in the hot weather, difficult to muster so large a number of Justices as twenty-five for the transaction of business, and consequently meetings had often to be adjourned.

Section 56 stated the rates which the Justices were empowered to impose upon the inhabitants of the town. The land-rate, that was the house-rate, had been left untouched; and as to the water-rate, he proposed that the maximum should be fixed at six, instead of five per cent. The reason for this alteration was that at present the Justices had it under consideration to extend the water-supply of the city. At present the maximum rate of five per cent. was levied from the owners of property in the town, the owner realizing three-fourths of the rate from the tenant of his property. The whole of this rate was now expended in meeting the current expenditure, including the interest and sinking fund for the repayment of the capital raised for these works. If, therefore, these works had to be extended—and he believed it was generally anticipated by all persons that a further supply of water would be required—it was absolutely necessary, now that these Municipal Acts were to be amended, that the Council should enable the Justices to impose additional taxation for the purpose of paying interest upon such additional capital as might be found necessary to increase the water-works.

The lighting-rate also was proposed to be raised from two to two and a half per cent. The grounds for this proposal were as follows. Act VI of 1863 proceeded upon the principle that all current expenses connected with the lighting of the town should be paid, not by the owners, but by the occupiers of property. Carrying out that principle, it was enacted that the cost of the lighting of the town should not exceed the gross proceeds of the lighting rate. But the Justices were permitted by the existing law to make a grant from the general fund for the purpose of maintaining lamps in an efficient state of repair. The rate of two per cent. was found not to be sufficient to cover the cost of lighting, and year by year there was an annual deficit of some Rs. 20,000. The Justices, to meet this, with the view of carrying out the letter, although somewhat in opposition to the spirit of the law, made a grant, year by year, from the general fund for the maintenance of the lamps, and that was carried to the credit of the lighting-rate, and thereby the deficit of Rs. 20,000 was made up. It followed, therefore, that that was paid, not, as intended by the Act, by the occupiers of property, but by the owners. He had therefore thought it better to provide that the maximum lighting-rate should be two and a half per cent: if that were not done, the Council would possibly think fit to modify the existing law, to enable the Justices to make grants from time to time from the general municipal fund to supplement the deficit from the lighting-rate. He would here note that the concluding clause of section 56 said that it should be in the option of the Justices, in lieu of any of the rates, to impose upon any land a fixed annual rate not exceeding four rupees for every cottah. That was a clerical error. The clause was intended to provide that it should be in the option of

the Justices, in lieu of the annual land-rate, &c.• It was not intended that the Justices should have a discretion to impose a rate of four rupees per cottah in lieu of any other rate but the land or house-rate.

By section 73 he had enabled the Justices to impose an assessment upon the town for a maximum period of three years, or for any less period that they might think fit. He thought it wise to do that, as at present considerable inconvenience was felt by the Justices being compelled to rate all property for three years, no discretion being left to them as to declaring an assessment for any less period.

In section 100 considerable modifications were proposed in connection with the supply of water to the town. At present the law required the Justices for fifteen hours out of the twenty-four to provide a supply of water at a pressure sufficient to enable premises at a height of fifty feet to be freely supplied with water. For the remaining hours of the twenty-four, they were compelled to keep up a pressure of not less than ten feet. The Justices had always endeavoured to carry out the provisions of the Act, but under existing arrangements it was found to be practically impossible. The modification which he had proposed in the Bill was to compel the Justices from time to time, with the sanction of the Lieutenant-Governor, to declare at what hours water should be delivered at high pressure; and during the remaining hours of the day that the water should be supplied at a pressure of ten feet,—sufficient to supply the stand-posts. Of course it must be conceded that it would be a great convenience to the public generally that water should be supplied at high pressure throughout the day. However, he did not think that any practical inconvenience would be felt by the inhabitants of Calcutta if, during certain hours of the day only, water was delivered to the top of their houses at high pressure. They would know at what hours pressure would be put on, and they would then be able either to store the water in tanks or adopt any measures they thought fit to supply themselves with such a quantity of water as they would require for the remaining hours of the day. He had not proposed that the Justices should be compelled to supply any water to the stand-posts during the night. Practically, it was not requisite to do so, except for extinguishing fires. If the Justices were compelled to supply water to the stand-posts during the night, it would be found impossible to fill the reservoir from which the town was supplied during the day; and last year it became a question whether we should fill the reservoir or keep the stand-posts charged with water, as required by the Act. The Justices had adopted the former arrangement, and now did not, as a rule, keep the stand-posts charged with water at night. This was an infringement of the Act, but it was found practically impossible, without imposing great inconvenience upon the people, to give effect to the provisions of the existing law. As water was only required during the night for the purpose of extinguishing fires, the proposal he had made would not in any way cut off the supply for that purpose. The furnaces at the pumping-stations were always kept at work, and when a fire occurred, as there was telegraphic communication between the police-office and the pumping-stations, pressure could be put on before the fire-engines could arrive at the place where the fire had occurred.

The Hon'ble Mr. Hogg.

There was another important modification of the law which he proposed in section 114, in connection with the police budget. At present the Justices, by Act XI of 1867, were compelled to pay the cost of the police, minus such contribution as the Government might from time to time think fit to grant. Under the existing law the budget must be submitted by the Commissioner of Police to the Justices, and the Justices had the power to modify and amend it in any way they thought proper. That, however, was entirely opposed to the provisions of the Police Act; and the late Advocate-General, Mr. Cowie, was distinctly of opinion that the provisions of Act XI of 1867, in so far as they gave the Justices control over the expenditure of the police, were simply a dead letter, and could not be enforced. The late Lieutenant-Governor, Sir George Campbell, was of opinion that when the Municipal Acts were amended, the opportunity should be taken to correct the discrepancies between the Police Act IV of 1866, and Act XI of 1867. He thought it would be conceded by hon'ble members that it would not be expedient to allow the Justices to decide the strength of the police to be maintained for the metropolis of India. That surely was a question to be left entirely to the local Government. By all means let the budget be submitted to the Justices: let them criticise it and make such remarks as they might think proper, and those remarks should be submitted to the local Government; and it should rest with the local Government either to accept the suggestions of the Justices or pass the budget as prepared by the Commissioner of Police; and he thought, after the budget had been passed by the local Government, it should be compulsory upon the Justices to provide for the cost of the police as sanctioned by the local Government. With the view of giving effect to that procedure, Act XI of 1867 had been repealed, and the sections in Chapter VIII of the Bill had been introduced.

There were no other material alterations of the law which called for any remarks, and he therefore begged to move that the Bill to consolidate and amend the law relating to the Municipal affairs of Calcutta be read in Council.

The Hon'ble Mr. Schalch said, the hon'ble mover of the Bill had so clearly stated the necessity for consolidating the various Acts which were in force in the Municipality of Calcutta, that it was unnecessary any further to dilate upon that subject. He would merely mention that he thought any person who had to wade through those numerous Acts, and compare those Acts one with another, would acknowledge the necessity for consolidation. He thought they might congratulate themselves that the work had been undertaken by a gentleman of such experience, as their hon'ble colleague had experience in the office of Chairman of the Justices for several years. The Bill, as had been observed, had been chiefly confined to the consolidation of the present law, and he thought that in following that course the hon'ble mover had acted very wisely. He had left it open to the Select Committee to introduce any amendments or alterations that might come before them, and that might be found necessary. There were, however, one or two matters referred to in the Bill to which Mr. Schalch would request the attention of the Council.

The first of these was as to the necessity of increasing the lighting-rate. Many portions of the town were still lit in a primitive mode by oil lamps, and the residents of these portions desired to have gas introduced; but unless the lighting-rate was increased, there would be no prospect of that object being met.

The alterations proposed in the water-rate were somewhat more important, and he would take this opportunity of observing that when he held the appointment which the hon'ble mover of the Bill had now been holding for some years, it fell to his lot to press upon the Justices the adoption of the present scheme of water-supply. The Native Justices, not having had experience of such a system, and looking to the enormous expense of nearly half a million, which the introduction of such supply would entail, very naturally were opposed to the measure. Well, he must say that they fought the question fairly and openly, and when conquered they at once accepted the measure and showed no factious opposition to its introduction. At first it was feared that the native feeling, arising from religious sentiment, against the use of the water was so strong, that not much benefit would be derived from it. However, the question was submitted to the opinion of learned gentlemen of their own religion, and their decision was that there really existed no religious objection to the use of the water. And he believed that now in the native portion of the town water had been very freely introduced in their houses, and even the most orthodox did not object to its use. The consequence had been that the demand for water was much greater than was expected; and although the supply now was seven and a half millions of gallons per day, which was rather in excess of the six millions which the water-works were originally intended to supply, yet that quantity was found insufficient, not only for the purposes of the town itself, but to meet the wishes of the inhabitants of the suburbs of the town, who were most desirous, for a fair consideration, to enjoy the inestimable benefit which would be afforded them of a pure and wholesome supply of water. Besides which, there was no doubt that under the present supply system the waste of water was enormous. The consequence would be either that the waste must be largely reduced, or the works must be largely extended, or a union of the two measures must be adopted. The proposal, therefore, of raising the rate by one per cent. was a very moderate one. But it would be observed that the provisions of the section which his hon'ble friend had mentioned (section 100, he thought,) were very different indeed from those of the present law. Under the present law the Justices were bound to supply, during the day, water under a pressure of fifty feet, and during the night under a pressure of ten feet. Under the proposal now made, the pressure, and the time during which it was to be kept on, would be dependent upon the pleasure of the Justices under the sanction of the Lieutenant-Governor. The practical effect of this would be that instead of a constant supply under high pressure, we would have an intermittent supply placed under no restriction but the will of the Justices under the sanction of the Lieutenant-Governor. A severe conflict was now raging in England between the advocates of the two systems. The advocates of the intermittent system appealed to the great waste of water which was said to occur under the

constant supply system, and urged that the advantages afforded by a constant supply system were more than counterbalanced by the waste and the cost attending it as compared to the intermittent system. Amongst some interesting papers which he had read, which were brought before the British Association at Belfast, was a report relating to the water-supply of the town of Liverpool, where the high pressure system was introduced. It was alleged that the waste of water was not greater than it would be under the intermittent system. He trusted, therefore, that the Select Committee, before determining that the constant supply system, with all its great advantages, should be set aside for the intermittent system, would carefully consider the subject, and see if it was possible, under proper arrangements, to prevent the wastage to continue; and if it should be unfortunately found that the expense attending the constant supply system be too great, they should take care that sufficient conditions were imposed upon the Justices to afford a proper supply, and that it should not be left so entirely to their will as would be under the section as it was at present drawn.

There was another question in regard to the water-supply which he would bring to the notice of the Council. The same rate on the house assessment was enforced in the cases of houses which received their supply through manual labour from the street hydrants, and in houses where the water was laid on; and it applied equally to houses fully occupied, and where the consumption of water was considerable, and to houses maintained as shops or offices, where the demand for water was very much less. It seemed to him that the great source of waste was in the houses in which water was laid on. The owner or occupier of the house had to pay the same rate, whatever might be the amount of water he used. It was therefore a matter of very little concern to him personally what the waste of water was, and he was therefore careless whether or not the taps turned were needlessly turned, and what quantity of water was wasted. If, however, he had to pay for any quantity taken in excess of a certain quantity, the principle of self-interest would be brought into play, and he would exercise greater care. MR. SCHALCH thought it should be a matter for consideration whether some arrangement could not be made by which a house supply could be tested; and if any quantity in excess of that carried by the rate paid were used, an excess rate might be charged. Of course such an arrangement would necessitate the use of water-metres, and it was, he believed, not a very certain matter that good and effective water-metres could be introduced, and the cost of the metre and of its repair might be very great. The use of metres was enforced by the Gas Company, and he did not think that a proposition to allow gas to be used except through a metre would be permitted. He was quite sure that any cost that would be incurred would be much more than recovered by the amount of wastage which would be saved, and by the additional charge which might then be imposed for water used in excess.

There was another subject to which he wished to draw attention, and that was the question of assessments. In the statement of objects and reasons it was declared—

"The Bill does not propose to deal with the question of allowing an appeal from assessments made by the Justices. Such a proposal must necessarily raise questions as to

the tribunal to which the appeals should be made, and the form of procedure that should be provided for regulating the conduct of such appeals It is thought better, therefore, to leave the determination of this question for the consideration of a Select Committee"

Presuming that the subject would receive the consideration of the Select Committee, he would beg to offer a few remarks for their consideration. The Port Commissioners, a body with which he had the honor to be connected, lately had their premises brought under assessment. The assessment was fixed by the Town Assessor at Rs. 2,25,000. This the Port Commissioners thought excessive, and an appeal was preferred to the Justices, who reduced the assessment to Rs. 2,03,880. The practical difficulty attending the assessment arose from the circumstance that the premises were not rented, but occupied by the Commissioners themselves, and therefore the Justices had to determine the proper rent. The practical result was that the rent on which the assessment was calculated actually resulted in twelve per cent. of the cost of the construction of the buildings. Some of the hon'ble gentlemen in that Council were owners of house property, and he thought they would be very glad to get a clear eight per cent. upon the cost of a building, and that twelve per cent. was a very large and unnecessarily severe assessment. He would not attempt to go into the merits of the Port Commissioners' case: he merely stated the fact that the assessment resulted in giving a rental of twelve per cent. upon the cost of construction. Not being satisfied with that result, the Port Commissioners were desirous of taking the matter afresh before some independent tribunal, but on consulting the Advocate-General they found that there was no tribunal before which they could bring the matter in appeal, and that the decision of the Justices was final. Since that appeal was preferred, there had been considerable vexation and dissatisfaction created in the town by the way in which the assessment had been carried out. The matter was lately brought before the Justices in meeting, and the Justices resolved that, with a view to prevent assessments being carried to an excessive amount, the Bench or Court of Appeal which was to hear such assessments should be composed of Justices other than the executive officers of the Municipality. With every intention of keeping the assessments within a fair rental by an appeal to a Board so constituted, he did not think it would be satisfactory to the rate-payers to find their appeals decided by the Justices themselves, who would be considered to be judges in their own cases. It would be much more satisfactory if the reference was made to an independent tribunal, as under the Bombay Act. He found that under the Bombay Act assessments were conducted by the Municipal Commissioner, an official who was, in some respects, in the same position as the Chairman of the Justices here, exercising full authority in all executive matters, but an appeal could be preferred to the Court of Petty Sessions. Now in Calcutta they were not blessed with a Court of Petty Sessions, but they had a Small Cause Court and a High Court, and he saw no reason why appeals should not lie from assessments of the Justices to the Small Cause Court or the High Court, according to the value of the property involved. As to the question of procedure, he did not think any difficulty would be found in applying the procedure now in force in either of those Courts in suits which were brought

before them, or in altering it so as to meet the case of an appeal from the assessments of the Justices; and he was quite sure that such an appeal would be satisfactory not only to the rate-payer, but would also relieve the Justices from a very disagreeable task.

Before quitting this subject, he would remark upon the principle which had been laid down in the existing law for assessments. As a principle, the assessment was to be made upon the annual value of houses and premises. The annual value was, under Act VI of 1863, taken to be the estimated gross annual rent at which the houses, buildings, and lands, liable to the rate, might be let, or might reasonably be expected to let, from year to year. In the case of land or property held on a lease, the lease, as a general rule, was accepted as setting forth the fair annual rent of the premises; and unless it could be shown that there were special circumstances which would render that testimony invalid, the assessment was made upon the rent specified in the lease. In the case of newly constructed houses not upon lease, and in the very numerous cases of houses occupied by their owners and not leased, it was a very difficult matter indeed to ascertain what the annual value was. In many parts of the town there were streets occupied entirely by owners, and it was very difficult to get a house let on lease with which to compare, which would show the fair annual value. He would therefore throw out, for the consideration of the Select Committee, whether it would not be desirable to give an option to the Justices, in such cases where the houses were not let, and it could not be easily ascertained what the annual letting value might be, to permit them to assess the value at a rate which should bear a certain proportion, say from five to eight per cent., of the cost of the construction of the house and the value of the land upon which the house was constructed. Such a provision would, he thought, be equally equitable to the rate-payers and to the Justices. It would be acceptable to the rate-payers because it would fix a limit beyond which their property could not be assessed, and it would be acceptable to the Justices because it would enable them to have the means of ascertaining the maximum rate at which they could assess, in many cases in which the assessment was very difficult.

The hon'ble mover of the Bill had observed that it would be open to the Select Committee to import any improvements or amendments which they thought advisable into the Bill, although they had not now been imported into it, and amongst these he mentioned one which was rather important, namely the constitution of the Municipal body. MR. SCHALCH would be the very last person to say that the town had not been immensely benefited by the administration of the Justices within the last twelve years—since they were appointed. No one could look round and see the vast improvements in the repair of streets, in conservancy, and, above all in the water-works, without acknowledging that these works had resulted in great advantage to the town. At the same time, there was little doubt that there were certain defects connected with the constitution of the Municipality which were felt, and which it would be advisable to take the present opportunity to remedy. Without going into much detail, he might