Sections 126 to 132 were agreed to.

Section 133 provided that the occupier on whose requisition works for the supply of water were introduced in a house, should bear the expense of keeping such works in substantial repair.

The Hon'ble Baboo Doorga Churn Law moved the omission of the words "on whose requisition works for the supply of water shall have been introduced in any house." He thought those words were hardly necessary, and were calculated to defeat the object of the section. If it was obligatory on the owner to introduce water-works in his house for the convenience of the occupier, the occupier, whether the works were introduced at his requisition or not, ought to bear the expense of keeping them in repair.

The Hon'ble the Advocate-General would support the amendment. The words, as they stood, would only make the occupier on whose requisition the works were executed liable to pay for the repairs. He thought that every occupier should be bound to keep the water-works in repair.

The Hon'ble Mr. Hogg said it might happen that very soon after an occupier went into a house he might find the whole of the water-works out of repair, and might be called upon to put the whole of them into thorough repair. To do that would necessitate the breaking up of a large portion of the walls of the house, and it would be very hard upon the occupier to undergo such great expense. Besides, the owner received from the occupier interest at the rate of 12 per cent. for the money he expended in the construction of the water-works, if done on the requisition of the occupier; and in cases where the works were in existence at the time of the entry of the occupier, something would be added to the rent of the house on the ground that water had been laid on.

The Hon'ble Mr. Schalch observed that when the works were executed on the requisition of the occupier, they would be new, and would require little or no expenditure to keep them in repair during the tenancy of that occupier. In such a case there would be no hardship in requiring the occupier to keep the water-works in repair. But in other cases, when a tenant took a house which had water laid on, the fittings might have been put on ten years before; he would have to pay additional rent for water being laid on, and might afterwards find all the pipes corroded; and it would be very hard for him to have to repair them when he had no opportunity of examining them, and could not have known the condition in which they were. The water-works, after once they were laid on, became a part of the house, and the cost of repairing them should be borne by the landlord.

The Hon'ble Mr. Hogg explained that the intention of the section was that when works were put in at the requisition of the occupier he should repair them; in other cases it should be a matter of contract between the parties.

The Hon'ble Mr. Dampier thought the section should provide distinctly who should bear the expense of repairing the water-works. Leases were ordinarily executed with an agreement on the part of the owner to keep the house wind and water-tight. Such leases would not touch the question of keeping the water-works in repair. And if an occupier found the water-fittings out of repair, his state would be worse than if pipes had never been

laid at all bringing water to the house; for in that case he might insist under the Act on the owner putting up fittings to supply the house with water; whereas he would have no means of making the owner repair the fittings if out of order. MR. DAMPIER thought that unless there was a contract to the contrary, the owner should be bound to keep the water-works in repair.

On the motion of the HON'BLE MR. DAMPIER the section was then amended so as to stand thus:—

"Except in the case of a special agreement to the contrary, the owner of any house or land shall bear the expense of keeping all works connected with the supply of water to such house or land in substantial repair. Provided that nothing in this section shall affect the liabilities of parties under leases executed or made previous to the passing of the Act."

Sections 134 to 137 were agreed to.

Sections 138 to 143 provided for the preparation and passing of the police budget.

The HON'BLE BABOO KRISTODAS PAL moved that Sections 138 to 143 be omitted from the Bill. He said that these sections related to the police budget. The Select Committee, in considering these sections, had placed before them the views of the Government, as represented by the hon'ble member in charge of the Bill. They were informed that the Government was not now disposed to continue to the Justices the power of controlling the police in any way; and as far as the consideration of the police budget was concerned, the Justices therefore, although it was not stated in so many words, would be reduced to the position of "message bearers." It would be in this wise: the Commissioner of Police would send up the budget to the Justices, and the Justices would hand it up to Government; the Justices should raise the police-rate, and Government would disburse the money. This was practically the scope and object of the Bill as amended by a majority of the Select Committee. He did not know how far the position assumed by the hon'ble member in charge of the Bill had been influenced by Government, but he submitted that that position reflected upon the Justices as a body, and he was not aware that any cause had been given to Government for such a course. It was in 1867 that the police-rate was first imposed by the Government upon the people of Calcutta. Previous to that, the whole of the police charges had been borne by Government, who controlled the police and met its expenses. In 1865 BABOO KRISTODAS PAL believed, when Sir Charles Trevelyan was Finance Minister, the Government of India decided that towns in the country should be called upon to bear the greater portion of the police charges; and in the case of Calcutta, it was resolved that the Municipality should bear three-fourths and the Government one-fourth of the cost. That resolution of the Government of India was embodied in Act XI of 1867. With a view to give the rate-payers a voice in the police administration of the town, the Justices were vested with the power of considering and passing the police budget. From 1867 up to that time this system had been in operation, and he would appeal to the hon'ble member in charge of the Bill to say whether at any time there had been any undue interference by the Justices with the action of the Commissioner of Police or the Government in the administration of the police. It was

meet, he thought, that the Justices, as representatives of the rate-payers, should have a voice in the administration of the funds which were raised by them. That being the case, he did not see any good or valid reason why the power which had been exercised theretofore by the Justices without detriment to the police, should now be withdrawn. It was urged in Select Committee that there might arise some contingencies which might render the relations between the Justices and the Government anomalous, something in the womb of future which could not now be anticipated. But if the Government was anxious, as he believed it was, to extend a measure of self-government, it was a curious way of expressing its anxiety by withdrawing a power which the Justices had long possessed, and which they had never abused. He was sorry to see that his hon'ble colleague (Mr. Brookes) was not there that day to express the views of the European community; but from what he said in the Select Committee, BABOO KRISTODAS PAL believed that the views which Mr. Brookes expressed were shared by the non-official community generally. It would be painful to him, as well as to the other non-official members of the Council, if the question was made an issue between the Government and them; but he hoped that the Government would on further consideration admit the importance of the subject, and not take any hasty action in the matter. But, as he had said, the Justices had done nothing to forfeit the confidence which the present law reposed in them; on the contrary, the Justices, while criticising the police budget, and making suggestions now and then, had uniformly passed it in its integrity. He thought it was assuming too much to say that the power was likely to be abused, and that therefore it ought to be withdrawn. He might point out that since the maintenance of the police had devolved on the town, there had been a tendency to increased police expenditure; but he believed the hon'ble mover would admit that the Justices had in no way meddled. They were well aware that police arrangements ought not to be rashly interfered with, and that one man should, if practicable, rule over the police, and that that man ought to be the Commissioner of Police; and with that view, if they had any important suggestions to make in respect of police administration, they ought to go through their Chairman, who was Commissioner of Police, and they had done so. Having regard to these facts, and believing that it was much better that the Justices should be altogether relieved of all connection with the police than that they should have placed before them a mere shadow without the substance, he would propose that these sections be omitted, and that the old sections of the existing Act be restored.

The HON'BLE MR. HOGG said he could not accept the amendment. The object of Sections 138 to 143 of the Bill was, in fact, to give effect to the law as it stood. The Calcutta police was constituted under Act IV of 1866 of this Council, and by that Act was entirely under the control and orders of the Government. He thought it would be conceded by the Council that the police of the metropolis of India could not be placed under any other control than that of the Government of Bengal; and for the Justices to desire to have any voice in the direct administration of the affairs of the police, was to wish for more than could be conceded to them. When the

expenditure of the police was imposed on the Municipality, it was provided that the Commissioner of Police should submit to the Justices a budget of expenditure under Act XI of 1867; and by Section 5 of that Act it was left to the discretion of the Justices to pass or to reject or to modify and to submit the budget as passed or modified by them to the Lieutenant-Governor of Bengal. It would be clear to the Council that that section was entirely antagonistic to the principle upon which the police was constituted as laid down under Act IV of 1866; so much so that the late Advocate-General (Mr. Cowie) was of opinion that Section 5 of Act XI of 1867 was practically inoperative, as it set aside the principle of Act IV of 1866. It was true that the Justices up to this time had never endeavoured to interfere in the administration of the police, and had always accepted, with perhaps slight modifications, the budget the Commissioner of Police had submitted; but it was obvious that misunderstandings might possibly arise, and the Justices might claim to exercise the discretion which was apparently vested in them. In order to do away with the possibility of any such misunderstanding, it was proposed by the Bill that the Commissioner of Police should lay before the Justices year by year an estimate of expenditure on account of police, and that it should be the duty of the Justices to forward the budget to Government with any remarks which the Justices might think fit to offer. That gave to the Justices full opportunity for an expression of their opinion and remonstrance against any additional expenditure proposed by the Commissioner of Police; but left to the local Government to decide on the strength and cost of the police. That, he thought, was the proper principle that should be adopted by the legislature. It was precisely the same procedure as that which existed at Bombay and Madras. The Madras Act IX of 1867, Section 9, provided that after the date of the Act the Municipal Commissioners should pay into the Bank every month such sum as the local Government might direct for the maintenance of the police. If they turned to the Bombay Act, they found that under Section 86 of Act III of 1872, the Bombay Municipality were required similarly, under the orders of the Government, to pay into the Bank of Bombay such sum as the Government chose to direct. Those were two analagous cases, and he did not see why the Justices should claim greater power than the municipalities of Madras and Bombay. For these reasons he trusted the Council would adopt the provisions of the Bill as they stood.

The Hon'ble the Advocate-General said it appeared to him that no great hardship was imposed on the Justices by an alteration of the existing law. As far as he could make out, they had no control over the police. That was entirely under the Commissioner of Police, subject to the orders of the local Government. The only matter with which the Municipality had to deal was the imposition and collection of the police-rate. It was provided that the amount of the estimate passed should, after deducting therefrom such amount as might from time to time be allowed by the Government from the general revenues towards the maintenance of the police force, be paid to the Lieutenant-Governor by the Justices out of the annual proceeds of the police-rate. So that the Justices had to supply that amount out of the police-rate,

and not out of the general revenues of the Municipality. Then, could it be said that the mere effect of collecting the money ought to give them that controlling influence which the present law allowed them? Under the present law, the Municipality had the right of rejecting the budget altogether. In the event of the budget being rejected, it could not go up to Government at all. It appeared to him that they ought not to have the power of rejecting the budget altogether; they ought not to have the power of rejecting a budget on a subject on which they could have no proper information nor any sufficient knowledge, and he thought that the argument which sought to enforce the principle of the present law was somewhat specious. The police-rate was collected for the maintenance of the police, and held in trust; and he really did not see that the Justices should have any control over the objects for which it was collected unless they had some voice over the objects to which that fund was devoted. He thought that in this case there was no hardship imposed, and that the amendment in the Bill was in the right direction. It prevented a possible collision which might take place between the Government and the Municipality. It had been said, with great truth, that no instance could be shown in which the police budget had been rejected by the Justices. That circumstance proved clearly that the power of rejection was one which was not required, inasmuch as it had never been used; and further, that it was not likely to be used, except in some extraordinary cases. What would be the effect, suppose the power was used? It would, in the event of the rejection of the budget on the ground of excessive expenditure, be an animadversion on the conduct of the Commissioner of Police and the Government for having submitted such a police budget! Such a state of things was not desirable, and was never contemplated; and he thought that proper criticism by the Justices would be duly considered. As far as he could see, looking at the matter from a disinterested point of view,—for he had no sympathy one way or the other,—he thought the Justices had no right to complain if the arbitrary power of rejection was taken away. They could be heard now as loudly as before, and they might collect the police-rate, though they had no control over the expenditure of that rate. He would oppose the amendment on this ground, that beyond collecting the rate the Justices had no control; and the mere effect of collecting the rate did not entitle them to have a control in rejecting the budget.

The Hon'ble Baboo Kristodas Pal wished to say a few words in reply. While appreciating the feelings which had prompted the hon'ble and learned Advocate-General to address the Council, he regretted that he could not agree with him. But he seemed to have lost sight of the fact that when the police-rate was first imposed upon the town by Government, it was, if Baboo Kristodas Pal remembered it aright, distinctly declared that a share should be given to the people in the administration of the police; that, in fact, the people should be invited to take a part in that administration. That having been the object of the new police administration, the principle was recognized in the Act of 1867. That principle had been in operation for the last eight years, and it was admitted that it worked fairly. It was now

The Hon'ble the Advocate-General.

proposed to go back and make the Justices only tax-collectors. He would ask whether such a position—he meant the position assumed under the new sections—was consistent with the previous declarations of Government and its present professions for the extension of local self-government. Then the hon'ble and learned member had pointed out that the fact that the Justices had not exercised the power of interference with the budget showed that there was no necessity for it. Might it not be said that the knowledge of the circumstance that the budget of the Commissioner of Police would be sifted by the Justices might have influenced that officer to frame it in such a way as to disarm criticism, and that the present law had had that good moral effect upon him? Then it had been said that the withdrawal of the power would cause no hardship to the Justices. But undeservedly it would imply a want of confidence in the Justices. The hon'ble mover had pointed out that under Act IV of 1866 the police was entirely under the direct control of Government. He admitted it. Section 8 provided that the strength at which the police of Calcutta should be maintained should be fixed by the local Government, subject to the sanction of the Government of India; so that its ultimate control was vested in the Governor-General of India in Council, and not, as the hon'ble member had stated, in the Bengal Government. The final control being vested in the Government of India, it was suggested in Select Committee that, with a view to provide against such contingencies as had been apprehended, it might be enjoined that in case of any difference of opinion between the Justices and the Government of Bengal with reference to any item of police expenditure, the decision of the Government of India should be declared conclusive. But that amendment was not accepted by the hon'ble member in charge of the Bill. Baboo Kristodas Pal was still willing to propose such an amendment if the Council would accept it. He did not wish that there should be no supervision of Government over the police, or that the decision of the Justices should be final in case of any difference of opinion between the Commissioner of Police and the Justices or the local Government. He would follow the theory of the law laid down in Act IV of 1866, that the ultimate control of the police be vested in the Government of India; that the final decision should rest in all matters with that Government; and if the Council would accept such an amendment, he would be prepared to move it.

His Honor the President said—"I may say at once that I for one cannot in any respect accept the amendment which the hon'ble member has proposed. It would be wholly out of the question to place the Government of Bengal and the Justices in Calcutta as now constituted two parallel bodies who may have a difference of opinion, which difference should be submitted to the Government of India for decision.

As regards the general question, I desire to disclaim on the part of the Government of Bengal any intention whatever to take away from the Justices any substantial portion of the power which they now enjoy. The fact is, as stated by the hon'ble member in charge of the Bill, that the power of fixing the strength of the police has been by the section already quoted (Section 8 of Act IV of 1866) retained by the Government of Bengal, subject, of course, to the

sanction of the Government of India. The Council are aware that in all matters of finance and strength of establishments, there rests in the Government of India, in the Financial Department, the ultimate power of control. In all matters of finance such control is necessary in order that the finances may be kept together. That is as well the case in regard to the provincial services. There is no sort of expenditure, from the largest to the smallest, which is not liable to the ultimate control of the Government of India. In that respect I do not perceive that the expenditure on account of the Calcutta police in any way differs from any other expenditure, and in any way confers any higher power on the Government of Bengal. As I understand the question, it is, as stated by the hon'ble member in charge of the Bill, that there is just a possible conflict between the provisions of Act IV of 1866 and the provisions of Act XI of 1867. The fact is that the terms of Section 5 of Act XI of 1867 are quite unscientifically drawn. I say it with all deference to the legal gentlemen who drafted the Act of 1867. From a drafting point of view it may mean more or less, according to the interpretation which individuals may put upon it; but it is extremely doubtful whether Section 5 of the Act really interferes with Section 8 of Act IV of 1866. Act IV of 1866 gives the Government the power of fixing the strength of the police force. The Act of 1867 gives power to the Justices to pass or to reject or to modify the budget. The preparation of a budget is a mere financial process relating to an establishment otherwise fixed, and would ordinarily be little more than fixing the details of expenditure. There may be discussion on a budget as to whether for such and such a given strength it is necessary to provide such and such a sum; for instance whether a sum which was entered as five and a half lakhs of rupees should be fixed at five lakhs, or *vice versâ*, and so on. In such a discussion many important financial points would arise without, however, touching the fundamental point, namely the strength of the establishment. The process of preparing a budget would not ordinarily mean more than that. But looking to the ambiguity of the expression used in the Act, it is possible that some particular person, even some legal authority, may put a different construction upon that provision, and may say that the power of passing or rejecting the budget really means the power of interfering with the strength of the establishment. I believe, however, that that is not the correct ordinary financial acceptation of the term "passing a budget." But I feel sure that the legislature of that day, if they understood that the accepting or modifying of a budget meant a substantial alteration of the power given by the Act of 1866, would never have passed such a provision. I believe that what I have stated is the ordinary financial acceptation of the term passing or modifying a budget, which is a perfectly practical arrangement. That, I am convinced, is the real meaning of the legislature. I cannot conceive that the legislature had any other intention whatever. But looking to the importance of the matter and the possibility of a different, and perhaps embarrassing interpretation being put on this section, I cordially concur with what has fallen from the hon'ble member in charge of the Bill and the learned Advocate-General, that the present opportunity should be taken to put a good

His Honor the President.

interpretation on these two apparently conflicting enactments, and to enact an arrangement which should be workable and practical. For although I entirely accept what the Hon'ble Baboo Kristodas Pal has said as to the desire of the local Government to accord a reasonable amount of self-government to the Municipality, yet, with all deference to him, I must say at once that, however great concessions we may make in that direction, we cannot make the concession go to the extent of giving over to the Justices the power of regulating the strength and constitution of the police in the metropolis of Bengal. That is a very important power, and, under certain circumstances, may be of vital importance; and however great may be our confidence in the power of the Justices to regulate their municipal affairs, we cannot go so far as to give over to them such a very large amount of power as to fix and determine the strength of the force which is to keep the metropolis in order. I will therefore hope that the Council will see fit to pass the sections as they stand."

The motion was then put and negatived, and Sections 138 to 143 of the Bill were agreed to.

Sections 144 to 151 were agreed to.

Section 152 provided a penalty of Rs. 100 for neglecting to give information of births or deaths.

The Hon'ble Baboo Doorga Churn Law moved the substitution of Rs. 20 for Rs. 100. The penalty imposed was, in his opinion, too heavy. Considering the large number of ignorant classes that would have to be dealt with under this section, it would be a great hardship if any Magistrate took it into his head to levy the full penalty under the section, and he therefore thought that the maximum penalty should not exceed Rs. 20.

The Hon'ble Mr. Hogg observed that in the case of a poor person a fine of Rs. 100 would no doubt be very heavy; but in the case of a person who absolutely declined to conform to the provisions of the law, he certainly thought the maximum penalty would not be too heavy.

The Hon'ble the Advocate-General said he should support the amendment. He was for limiting discretion in every case as much as possible. Persons who were likely to be offenders under this section would not belong to the wealthy classes. The object should be to secure generally the objects of the section, and he thought a fine of Rs. 20 was sufficient.

The motion was carried, and the section as amended was agreed to.

Sections 153 to 168 were agreed to.

Section 169 provided that the gross proceeds of the lighting-rate should be applied to the purposes of lighting, "but the Justices may expend, out of the Municipal Fund, such further sums as may from time to time be requisite for the purchase, setting up, cleaning, and maintenance of lamps, lamp-posts, pipes, and other necessary apparatus."

The Hon'ble Baboo Kristodas Pal moved the omission of the words quoted. He had stated at the last sitting that the produce of the increased assessments had been so large that the Lighting-rate Fund was now self-supporting, and the Council ought therefore to take the opportunity afforded by this Bill to omit

the power given to the Justices to make contributions from the General Fund to the Lighting-rate Fund. If the lighting of the town depended upon the Lighting-rate Fund, then there would be economy practised in its administration; otherwise there might be extravagance.

The HON'BLE MR. HOGG said it was suggested in the Bill, as introduced, that the lighting-rate should be fixed at 2½ per cent. The hon'ble member objected to increase the rate, but thought that this power to make contributions from the General Fund should be given. But now, having obtained in Committee the alteration of the 2½ per cent. to 2 per cent., he proposed to omit the power to make contributions from the General Fund. His hon'ble friend should remember that the whole of the town was not at present lighted as it should be. True it was that all the chief public streets in the European portion of the town were lighted with gas, and although the chief streets in the native portion of the town were also so lighted, there were many lanes in that quarter which required better lighting. Under the Bill as it now stood, the Justices would only be entitled to levy a rate of 2 per cent. But as that would not be enough to provide for exceptional expenditure, it was proposed that charges on account of lamps, lamp-posts, and the like, might be paid by a grant from the Municipal Fund. He believed that the majority of the Justices were unwilling to exercise this power, but he thought the Council would do wisely in enabling the Justices to do so if they thought it advisable.

The HON'BLE BABOO KRISTODAS PAL said the hon'ble mover was correct in saying that BABOO KRISTODAS PAL had objected to the increase of the lighting-rate and consented to power being given to the Justices to make contributions from the General Fund, if necessity arose. But circumstances had since changed. There had been a large accession to the Lighting-rate Fund. Formerly one per cent. of lighting-rate produced one lakh of rupees, whereas it now yielded Rs. 1,18,000, so that the Justices would have an additional revenue of Rs. 36,000 from the two per cent rate. That was the reason why he thought it was not now necessary to give the Justices power to make contributions to the Lighting-rate Fund from the general revenues of the municipality.

The HON'BLE MR. HOGG observed that the proceeds of the lighting-rate just covered the current expenditure on account of lighting. The Justices had for a series of years annually sanctioned a grant of Rs. 20,000 to the General Fund, and that was without any exceptional expenditure for providing lamps, lamp-posts, &c.; so that if they desired to extend gas-lighting throughout the town, especially the northern portion of the town, the power to make contributions for such extensions should be given.

The motion was by leave withdrawn, and the section passed as it stood.

Sections 170 to 179 were agreed to.

Section 180 specified the conditions under which the Justices might declare private streets to be deemed public.

On the motion of the HON'BLE BABOO KRISTODAS PAL, the consent of three-fourths of the owners of houses in such streets was rendered necessary before the Justices could declare any such street to be public.

Sections 181 and 182 were agreed to.

Section 183 provided that the doors and ground-floor windows of houses were not to open outwards upon any street.

The Hon'ble Baboo Kristodas Pal moved an amendment, with the object of confining the operation of the section to doors and windows "hung or placed subsequent to the 1st June 1863," the date of the commencement of Act VI of 1863, the existing municipal law.

The Hon'ble Mr. Hogg said the section was drafted precisely as the existing law stood. The object was to compel the owners of houses, in which doors and windows opened on the street, to hang them so as to open inwards. The opening of such doors and windows outwards was unobjectionable before the foot-paths were constructed, as they opened over the drain, and did not obstruct traffic; but now it would not only obstruct the traffic on the foot-path, but become absolutely dangerous to the passers-by. In the interests of the public, he considered it absolutely necessary that the section should stand as it was.

The motion was by leave withdrawn, and the section passed as it stood.

Sections 184 and 185 were agreed to.

Section 186 provided for the removal of existing projections from houses, and the conditions under which compensation should be made in such cases.

The Hon'ble the Advocate-General drew attention to the portion of this section which provided that if the projection was lawfully made, the Justices should make reasonable compensation to any person who suffered damage by the removal; and if any dispute should arise touching the amount of such compensation, the same should be settled in the manner provided for the settlement of disputes, damages, and expenses. Suppose the dispute were whether the projection was lawful or unlawful; suppose the right of compensation was denied. There was no provision for the decision of the question whether the projection was lawful or unlawful, but only as to the amount of compensation.

The Hon'ble Mr. Hogg thought that under the section the question of a projection being lawful or unlawful would depend upon the date upon which the projection was erected: the section only applied to projections erected before 1st June 1863.

After some further conversation the section was amended, on the motion of the Hon'ble Mr. Dampier, by providing that the right to compensation as well as the amount of compensation should be the subject of settlement in the manner provided in the Bill.

Sections 187 to 209 were agreed to.

Section 210 provided that no latrine should be constructed within fifty feet of a tank.

The Hon'ble Baboo Kristodas Pal moved the addition to the section of the following proviso:—

"Provided that the Justices shall not withhold assent if any latrine, urinal, cesspool, house drain, or other receptacle, be constructed with masonry."

He said that this section, if allowed to pass without modification, was calculated to prove a source of great practical inconvenience to the native

community. It would lead to the demolition of all latrines in native houses situated in the vicinity of tanks. The object of the provision, he understood, was to prevent the percolation of fœcal matter into tanks by reason of the vicinity of latrines, urinals, and drains. But he contended that if they were constructed of masonry, there would be no danger of such percolation, and he hoped therefore the Council would consent to the amendment he proposed.

The HON'BLE MR. HOGG said he did not think it would be wise to adopt the amendment. As a fact, the matter would not be less offensive if it came from a pucca than from a kutcha latrine or drain. Having regard to the health of the town generally, he thought it would not be advisable to allow latrines to be constructed close to tanks used for the purpose of drinking or other domestic purposes.

HIS HONOR THE PRESIDENT asked whether it was not possible for percolation to go on through masonry by means of some chink or other. From experience in various parts of India, he believed there was nothing more dangerous than to have anything like a latrine in the vicinity of tanks or wells. That one thing was probably more frequently the cause of outbreaks of cholera than anything else. It was quite possible for percolation to go on even through masonry; water would find its way almost through anything. Though he quite concurred in the inconvenience described by the hon'ble member who moved the amendment, he entreated the native members of the Council to be extremely particular in legislating in regard to latrines in the proximity of tanks. The inconvenience spoken of was better than the risk of infection. Even where tanks in the vicinity of latrines were used only for washing and bathing purposes, he knew of cases of terrible disease breaking out, probably caused by that very thing; and if the provision of the section was good for kutcha latrines and drains, he thought it was almost equally necessary for pucca drains. Water would ooze through almost anything.

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

Section 211 was agreed to.

The Council was then adjourned to Saturday, the 27th instant.

Saturday, the 27th November 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble V. H. Schalch, C.S.I.,
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 Baboo Doorga Churn Law,
and
The Hon'ble Baboo Kristodas Pal.

CALCUTTA MUNICIPALITY.

His Honor the President said,—Before calling on hon'ble members to speak to the motions which stand in their respective names, I will ask the permission of the Council to make a very brief statement regarding my views on the subject of the future constitution of the municipality of Calcutta. The Council are doubtless aware that complaints of different sorts are made about the existing state of affairs in the municipality. I have not received any definite representations on the subject, and I cannot at all undertake to describe what the complaints are. I can only declare my general impression that complaints of some kind and sort are frequently made. Well, if these complaints shall be found to assume any definite form—that is, if any specific allegations shall be pointed out to me, or if any rate-payer or rate-payers shall come forward in their own names to make allegations, thereby incurring the responsibility which always attaches to gentlemen who put down their names to statements,—then I for one shall be in favor of immediately investigating, in a formal and official manner, such allegations. If I have power to make such inquiries in my executive capacity, I will do so; but if I were advised that I have not the power, then I should desire to apply to this Council to give me the power by legislation. I for one, on behalf of the Bengal Government, am perfectly ready to immediately inquire into any specific allegations which may be made; and I believe that the office-bearers of the Justices will be very glad that any specific allegations should be thus inquired into. I should rather suppose, though I cannot speak authoritatively on that point, that the Justices themselves will be glad that any specific allegations made by any rate-payers should be officially examined.

But apart from all such matters, there is the general question as to whether the constitution of the municipality is all that can be reasonably expected in the present state of affairs. Well, when I last adverted to this subject in March last, it was quite uncertain whether public opinion in this city called for any constitutional changes. Constitutional changes of this nature appeared to me to be matters on which the public opinion of this city should be consulted; and

inasmuch as there was no urgent call apparently from the rate-payers, or from the public, that there should be such changes, it did not appear necessary to me to make any direct movement on the part of the Government. But it appears to me that public opinion among the rate-payers is now manifesting some desire for constitutional changes. One distinguished Association of native gentlemen has made a representation on the subject, and another representation has been received by the Council this very morning, I believe, also advocating some constitutional changes. That being the case, it appears to me that the time has fairly arrived when I ought to state to this Council what is the nature of the changes to which I for one could assent. Of course, it is not for me to say what changes the Council shall sanction; that is for the Council to decide. But inasmuch as by law my assent would be required to such changes passing into law, it is as well that I should briefly submit to the Council a statement as to how far I for one could agree to go. So without in any way anticipating what decision the Council may be pleased to arrive at, I desire to state briefly the limits as above described. Now, I think that in the Bill we are now considering, Municipal Commissioners may be fairly substituted for the Justices. Whatever powers, rights, or property now vest in the Justices, would then vest in the Municipal Commissioners. Then, the question will be how such Municipal Commissioners shall be appointed. I for one always have been, and am still, in favor of the principle of election. I think it is most desirable that the rate-payers as a body should be accustomed to study their own municipal affairs, that they should take a lively interest in the checking of expenditure, and in reducing the necessary taxation to the lowest possible amount. Besides that, I am sanguine that our hon'ble native colleagues in this Council will bear me out when I say that it is good, morally good, for the natives of this country that they should be accustomed to incur that responsibility to their own judgment and conscience which is implied by the exercise of the franchise. The fact that every rate-payer, or a very large number of rate-payers, should have to say whether they will have this man or that to represent them, is in itself a good thing for them. Also, though I think there must be a certain limit placed by the Government on the powers of the Municipal Commissioners of such a place as this, still, with that qualification and that reservation, I am in favor of giving them as much self-government as may be safely possible. That being the case, I shall propose that a large portion—at least a large portion—of Municipal Commissioners should be elected. The town is divided, as hon'ble members well know, into eighteen divisions, called "thanas." For each thana one or more Municipal Commissioners should be elected by the suffrages of the rate-payers. Then, the question arises as to what shall be the qualifications of a voter. I think, for one, that such qualification should depend on the sum he pays yearly in the shape of rates. By "rates" I mean the four rates now imposed, namely the house-rate, the police-rate, the lighting-rate, and the water-rate. If a limit were taken of Rs. 50 per annum—that is to say, if it were decided that every man who paid Rs. 50 a year in the shape of rates (all four rates taken together,) should have a vote—that would give a constituency of about seven thousand voters. It may be thought that such a

His Honor the President.

constituency would not be large enough. If that were so, perhaps it would be sufficient to say that every man who paid Rs. 20 per year in the shape of rates should have a vote. The precise sum would depend on more inquiry than we can make at this moment. It will be a question of time and discussion, and I can hardly indicate the precise sum at this moment that should be made the limit of qualification, except that I am *sure* it ought not to be more than Rs. 50, and I *think* it ought not to be less than Rs. 20.

The next point should be what should be the number of Municipal Commissioners. Before I enter upon that point, there is one matter which I should like to notice. It is this. It will be undesirable to impose any restriction on the electors as to whom they should elect. They may simply choose whom they like, but to that general principle there may just be one exception. If hon'ble members will consider the point exactly, they will see that there are certain "thanas" in this town in which the property and intelligence belong mainly to Europeans, and there are certain thanas, most of them, in which these appertain to the natives; the natives are the persons who own property in these latter, and they represent the intelligence of that portion of the town. But there are certain thanas in which the Europeans chiefly reside. Now, unless some provision were made, it may happen that although all the residents of importance are Europeans, the numerical majority are natives, and it is possible that in every thana where Europeans congregate, native representatives may come to be elected. I think, therefore, it will be but fair to the peculiar position of European residents in this place that in such particular thanas where they reside, it should be laid down that one or both the representatives must be Europeans. There would be, as I believe, a certain limited number of thanas so situated. But with this exception, and in all the other thanas, I would be for leaving the choice of the electors as free as air.

Thus I come to the possible number of Municipal Commissioners. Well, after much reflection it appears to me that the best number I can suggest is sixty. Out of these at least forty, or two-thirds, should in my opinion be elected, and the remaining one-third be appointed by Government. But whether the proportion should be one-third or some less proportion than that, say, one-fourth, would depend on the decision that is arrived at as to whether certain thanas should be obliged to return European representatives. If that exception were not allowed, and if it were possible that all the representatives elected would be natives, then I think it would be necessary to give Government the power of appointing such European (official or non-official) gentlemen as it may see fit. In that case the number should be at least one-third to be appointed by the Government. But if, on the other hand, that exception were allowed, and a positive chance be given to the Europeans in the European quarter to be elected representatives, then I think it will be sufficient for the Government to have the power of appointing only one-fourth of the whole number. If Government have the power of appointing either one-third or one-fourth, then it would be able to select perhaps certain officials who, from their position in the town, are peculiarly qualified to be Commissioners, or certain European non-official gentlemen, or also certain native

gentlemen of rank and position. There may be native gentlemen who would be precluded by the usages of native society from seeking suffrages publicly, and yet may be most desirable persons to have on the municipal commission. Therefore the Government should have the power of nominating a limited number of such gentlemen.

The next question would be the period of office. It appears to me that the members appointed by the Government should be appointed for two years, just as the members of this Council are appointed for a period of two years. I believe there are sufficient precedents and analogies for this; but the elected members should, in my opinion, be elected for four years at least. I think it will be important to avoid the periodical excitement which would arise from a general election all over the town.

The last point would be the powers to be exercised by the Municipal Commissioners. Well, though I am, as I have already said, in favor of giving the Corporation as much power of self-government as may be safely possible, yet I certainly think that there are points in which the Government must retain the final authority. These points are the ordering of particular works of public utility to be executed, the levying or limiting of taxes, and the fixing of the strength of the police establishment. So, I submit, it will be necessary either to pass some general power compelling the Commissioners to obey any order they may receive from the Government, or, if that were thought to be too general—and I do not think that so wide a power need be insisted upon—then it would be sufficient to take certain particular points, such as those I have mentioned, the great works of public utility, the taxes, and the police, which may be specified as the points upon which the Municipal Commissioners must obey the orders they may receive from Government. I should suppose that such occasions would be extremely rare when Government would thus interpose. The Municipal Commissioners would order and carry out great works, would settle the taxes, would find money for paying the police establishment with the same regularity, and in the same manner, or something in the same manner, as the Justices have done for many years past. But still extreme cases may arise, and I think some of our learned colleagues will bear me out when I say that legislation must always cover extreme cases. It is indeed for extreme cases, rather than ordinary cases, that laws are enacted. If laws are to be enacted, we ought always to make our laws such that they will hold water when pressure is excited.

Such, then, is the statement I have to submit to the Council. I will end, as I began, by begging it may be understood that I do not bring these proposals before the Council at all in a dogmatic manner. I shall be quite willing, if the Council approves, to place these propositions in a definite shape; and if the Council will permit me, I will refer them to the Select Committee for consideration. But I hope that the statement I have made, which I have deemed it necessary to make at the present time, will not at all interrupt the Council in proceeding with the detailed sections of the Bill; because I submit that most of those sections will be needed, whether the powers of the Act are to be vested in Justices of the Peace or in Municipal Commissioners.

His Honor the President.

The HON'BLE MR. HOGG then moved that the Bill to consolidate and amend the law relating to the municipal affairs of Calcutta be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

On the motion of the HON'BLE MR. HOGG, the following words were added to Section 91, which authorised an appeal from any assessment to be made either to three Justices or to the Court of Small Causes:—

"In any case of an appeal to the Court of Small Causes under this section, the said Court may follow the procedure laid down in Sections three hundred and twenty-five and three hundred and twenty-six."

The HON'BLE MR. HOGG said he would now ask the Council to consider Part II of Chapter IV, commencing with Section 66. It would be in the recollection of the Council that at the first meeting of the Council at which the Bill was taken into consideration, the principle was adopted by the Council that the water-rate should in future not be paid, as at present, by the owner, but by the occupier, with permission to him to recover from the owner by way of deduction of rent one-fourth of the amount of the water-rate paid by the occupier. The chapter was allowed to stand over in order that the wording of the different sections might be so amended as to give effect to the principle passed by the Council. When he came to redraft the sections, considerable difficulty was found to exist in giving effect to the principle adopted by the Council. If we imposed the whole rate in the first instance on the occupier and levied it from him, it followed that all unoccupied houses would be exempt entirely from the water-rate. That would impose on the municipality very considerable loss, because at present they collected, whether a house was occupied or not, one-fourth of the rate which was supposed to be a contribution paid by the owner for the water used in the general conservancy of the town and in the watering of streets. Of course the difficulty might be met by providing that when a house was unoccupied, one-fourth of the rate should be levied from the owner. But he thought in practice that would create endless confusion. Bills would be constantly drawn in the name of the wrong person, and MR. HOGG did not think it advisable to have recourse to such an alternative provision. Therefore the only course would be for the Council to decide either that in the case of unoccupied houses no rate should be levied at all, or revert to the present system of levying the rate from the owner and allowing him to recover three-fourths from the occupier. He would therefore move that the Council revert to the existing arrangement and allow the water-rate to be levied as at present from the owner.

The HON'BLE MR. DAMPIER would ask whether the hon'ble mover could give an idea of what the loss would be to the Justices if they were not to levy the water-rate from unoccupied houses, and whether he did not think the Justices would prefer to have the power of levying one-fourth of the rate from owners in the case of unoccupied houses, although its levy might be attended with a certain amount of difficulty, rather than the alternative of getting nothing from such houses.

The Hon'ble Mr. Hogg said he was not in a position to say what the loss would be, but he believed it would be very considerable. It would be clearly more to the advantage of the Justices to have a section giving them the power to collect one-fourth of the rate from the owner in the case of unoccupied houses, although its collection would be attended with a certain amount of difficulty. He did not, however, wish to press the point, but he thought it his duty to bring it to the notice of the Council.

The Hon'ble Baboo Kristodas Pal said he had hoped the hon'ble mover would be prepared to state the extent of loss which the Municipality would incur if the owner's rate of one-fourth were not recovered in the case of unoccupied houses. His own impression was that the loss would not be very great, and as the rate would be leviable in advance, he believed it would be much less than if it were recoverable in arrear.

The Hon'ble the Advocate-General observed that if the owner's rate was not levied on account of vacant houses, it would be necessary to define what occupation was. He had known instances where houses had been rated as occupied where some furniture had been kept in one room of the house.

The Hon'ble Mr Hogg's motion was then by leave withdrawn.

The revised Section 67 was agreed to.

The revised Section 68, which was the counterpart of Section 67 of the Bill, provided that, for the purposes of the house-rate, the owner of any land upon which a house was situate was to be deemed to be the owner of the house also.

The Hon'ble Baboo Kristodas Pal said he had given notice for the omission of this section. His objection was that it altered the present law. Under the existing law the rate for the land was realized from the owner, and the rate for the house which stood on the land was recoverable from the occupier or owner of the house. This section contemplated the levy of the whole rate for the land and house from the owner of the land, leaving him to recover the rate for the house from the owner or occupier of the house. He did not see the justice of this provision. The Municipality had a large establishment for the collection of the rates and taxes. It had also great facilities under the law for the realization of its dues; and if, notwithstanding those special powers and advantages, it was not able to realize its demand, surely it would not be just to throw the duty of the Municipality upon the owner of the land, who had to contend with great difficulties in the collection of his legitimate rent. The highest court in the country had decided that a hut was moveable but not removeable, and consequently the landlord could not seize a hut for rent, and in not a few cases feared the landlord would be saddled with the rate for which the occupier was liable. The present law was fair and equitable. It took from the landlord the tax due from him, and from the owner of the hut or house the tax due from him. He did not see any reason why the responsibility for the rate in the cases under comment should be shifted from the occupier to the owner, and he therefore moved that the section be omitted.

The HON'BLE MR. HOGG said he was unable to accept the motion to omit this section. In nearly every case, except *bustee* property, the owner of the land was also the owner of the house standing on it. It would give rise to endless confusion if the Municipality had to prepare two bills, one for the owner of the house and one for the owner of the land. The section was taken word for word, or almost so, from Section 7 of Act I of 1870 of this Council. That section applied, it was true, only to the water-rate, but it must be admitted that to make one law as regards the water-rate and another law as regards the collection of the other rates would be most unsatisfactory. The section only affected the owners of *bustee* property, and it seemed highly desirable that the landlord, when levying the rents for the huts which were constructed, not by him, but by his tenants, should also include in the rents sufficient to enable him to pay the rates on the huts erected by his permission on his land.

The HON'BLE THE ADVOCATE-GENERAL said it appeared to him that the objections of the hon'ble mover of the amendment were really unanswerable. He had put it on the ground of principle, that the person to whom the hut belonged should be the person chargeable with the tax. The hon'ble member in charge of the Bill said that such a procedure would produce confusion. The ADVOCATE-GENERAL did not think the Council should legislate simply for facilitating the collection of the taxes, but they were also to see that the party from whom the tax came was the party from whom it should come.

The HON'BLE BABOO KRISTODAS PAL said that in reply to what had fallen from the hon'ble mover, he would point out that the present practice was what he had recommended in moving the omission of the section, and it had been in operation since the Act of 1863 had come into force, that was to say, for the last twelve years; and if there had been any confusion, surely the Justices would have come up to this Council for an amendment of the law on this point when so many amending Acts had been passed. Then the hon'ble member said, that except in *bustees* the owner of the land was almost invariably the owner of the house which stood on it, and that it would be necessary to make out separate bills if the section as proposed to be amended by him were not adopted. Now, the Bill declared that the house-rate should be payable by the owners of houses and lands, and BABOO KRISTODAS PAL did not think that any alteration would be needed if the present Section 66 which had been passed came into force. The provision in the Act of 1870, as pointed out by the hon'ble mover, only applied to the water-rate, and when that law was passed the water-rate was payable by the owner. That principle had now been modified, and the provisions of Section 7 of Act I of 1870 would not apply to the present case. He would therefore urge that the section before the Council be omitted.

The motion was agreed to.

The revised Section 69, which enabled the owner of land in such cases to recover the house-rate from the owner of the house, was also omitted on the motion of the HON'BLE BABOO KRISTODAS PAL.

Section 70 provided for the remission of a portion of the house-rate when a house was vacant.

The Hon'ble Baboo Kristodas Pal said this section was the same as Section 68 of the old chapter, in regard to which he proposed the addition of the following words to the end of the first paragraph:—

"It shall be lawful for the Chairman to exempt any unoccupied land from assessment for the period of non-occupation for special reasons shown to his satisfaction, subject to the approval of a Committee of Justices."

Under the law, unoccupied houses and lands were chargeable with half the house-rate. It had, however, been the practice of the Justices for the last twelve years, and until a very recent date, not to levy any rate on account of unoccupied land during the period of its non-occupation. It was true that the law did allow the Justices to charge half rate, but they did not think it fair, and so they did not until recently levy it. Such being the case he was of opinion that this practice should be sanctioned by law. He need hardly point out that there were *bustee* lands in the northern portion of the town, the greater portion of which was unoccupied. If the rates were levied on the unoccupied portions of these lands, then the rates and taxes would almost swallow up the proceeds from the occupied portions thereof; and remembering that these *bustees* were in many cases the only means of livelihood of the owners, it would be hard if the law declared the unoccupied land to be chargeable with the half rate. He would propose that a discretion be given to the Chairman of the Justices to exempt any such land where he was satisfied that the imposition of the rate would be a hardship to the owner. He was confident that the discretion so given would be wisely exercised.

The Hon'ble Mr. Hogg said he was entirely opposed to the amendment. He thought they should affirm the principle either that unoccupied land should or should not be assessed. He could not understand on what ground the Chairman should be vested with discretion in the matter. Surely every owner of unoccupied land should be put on the same footing as regards the payment of municipal taxes, and no distinction should be made as to individual cases.

The Hon'ble Baboo Doorga Churn Law said that these lands remained unoccupied from no fault of the proprietors, because no benefit could be obtained from their remaining unoccupied. Many of these *bustee* lands had remained unoccupied for a very great length of time. The Municipality had in these cases been showing indulgence all along, and it would be a great hardship to the owners to bring these lands under assessment now.

The Hon'ble Mr. Hogg observed that for some time the Justices had been gradually bringing these unoccupied lands under assessment. They exempted nobody now.

His Honor the President observed that there was great force in what fell from the hon'ble mover of the Bill, that the Council must decide either that unoccupied lands should be made liable to the payment of rates or that they should not. If you allowed a discretion to the office-bearers of the Municipality, it put an unnecessarily invidious duty on them.

The Hon'ble Baboo Kristodas Pal admitted the force of the objection, and would therefore accept the principle of total exemption, as had

been the practice for the last twelve years. He would withdraw his amendment, and move that all unoccupied land be exempted from assessment.

The HON'BLE THE ADVOCATE-GENERAL did not see on what ground the motion was put. If an owner was excessively poor he ought not to be a proprietor of land. He could not make out why the owner of unoccupied land should not be taxed as well as the owner of an unoccupied house. There was no difference between a house and land, and he could find no principle on which the exemption could be claimed.

The HON'BLE BABOO KRISTODAS PAL said the reason for the proposed exemption was this, that *bustee* lands in many parts of the town were not wholly occupied. Large portions of these lands lay unoccupied from year's end to year's end. It was true that the demand for land was increasing, but for that class of land it could not be said to be increasing to any large extent. In fact, poor people now found it much cheaper to live in the suburbs than in the town. And as the land lay unoccupied from no fault of the owner, and as its assessment under the half-rate clause would press very severely upon the poor proprietor, it was the exceptional circumstances of this property that called for exemption. Natives, it was well known, did not like to part with land, particularly ancestral land, however unremunerative it might be, and however poor their circumstances, and it would be extremely hard if they were forced to sell it.

After some further conversation, the HON'BLE BABOO KRISTODAS PAL'S motion was negatived, and the section as it stood was agreed to.

The revised Sections 71 to 76 were agreed to.

The revised Section 77 provided as follows:—

"If any house is occupied by more than one person holding in severalty, or is of less assessed annual value than two hundred rupees, the Justices may impose the water, police, and lighting-rates upon the owner of such house, or upon the owner of the land on which such house is situated."

The HON'BLE BABOO KRISTODAS PAL said he had given notice of an amendment in the corresponding section of the Bill. The Council had accepted the principle that each class of rate-payer should pay his own dues to the Municipality, that was to say, that the occupier should pay the occupier's rate and the owner the owner's rate. Such being the case, he did not see with what consistency this section could be adopted, because it enabled the Justices to recover from the owner the police, water, and lighting-rates of a house of less annual value than Rs. 200. There was, it was true, a similar section in the present law, but it was justified on the ground that the rates were now payable in arrear. And as it was believed that the Municipality might suffer considerable loss in recovering small sums from small tenants, the law required the owner to recover these small sums from the occupier. The law having now been amended, and the occupier's rate being now made payable in advance, the liability to loss would be minimised, and he therefore thought it would be consistent to amend this section in conformity with the principle already accepted by the Council. With this object he would move the omission of the words "or is of less assessed annual value than two hundred rupees" and "or upon the owner of the land on which such house is situated."

The HON'BLE MR. HOGG said the object of the section in the existing law was to exempt the poorer classes from being unnecessarily harassed. It was thought desirable that the indigent classes who were unable to read or write should pay their rent and taxes to one person, viz., the landlord, and should not be called upon to pay the lighting, water, and police-rates to the Justices.

After some further conversation, the Council divided:—

Ayes—4.	*Noes*—5.
The Hon'ble Baboo Kristodas Pal.	The Hon'ble Baboo Juggadanund Mookerjee.
„ „ „ Doorga Churn Law.	„ „ Mr. Reynolds.
„ „ Mr. Dampier.	„ „ „ Hogg.
„ „ the Advocate-General.	„ „ „ Schalch.
	„ „ the President.

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

The revised Sections 78 to 80 were agreed to.

On the motion of the HON'BLE THE ADVOCATE-GENERAL verbal amendments were made in Section 186 regarding the payment of compensation for the removal of projections from houses when lawfully made.

In Section 208, regarding the inspection of drains, privies, and cess-pools, an amendment was made, on the motion of the HON'BLE MR. HOGG, providing that in the case of inspection in zenanas "notice in writing of not less than four hours" be given, instead of requiring that such inspection should be made "by the agency of women."

Sections 211 to 222 were agreed to.

Section 223 provided as follows:—

"If the Justices think that any privy or additional privy should be provided for any house or land, the owner of such house or land shall, within fourteen days after notice in that behalf by the Justices, cause such privy, together with the necessary pipes, drains, and water-supply, to be constructed in accordance with the requisition of such notice, and if such privy be not so constructed to the satisfaction of the Justices within such period, the Justices may cause such privy, together with the necessary pipes, drains, and water-supply, to be so constructed, and the expenses thereby incurred shall be paid by the owner."

The HON'BLE BABOO KRISTODAS PAL moved the omission in line five of the words "or land" and the insertion of the words "of such house" after "owner" at the end of the section. This section, he said, had been copied from the Bombay Municipal Act, but the circumstances of Calcutta were different. If the owner was made liable to provide a separate privy for each occupier on his land, he would be required to do what, under the present Act, he was not required to do, and what he in justice ought not to be made to do. The practice in this town was that the occupier rented the land of the owner and built his own hut and privy on it. By the proposed section the liability to build privies was laid upon the owner, which BABOO KRISTODAS PAL did not think was fair or just

The HON'BLE MR. HOGG said the question resolved itself into this, whether the owners of *bustee* property, who were in the habit of letting out their land to the poorest classes of the inhabitants of Calcutta, should be required to see that such arrangements were made in their *bustees* as to ensure reasonable

sanitary precautions. It was obvious that wherever privies had to be constructed in connection with the drainage scheme, it would entail considerable expenditure, for pipes had to be laid down in connection with the public sewers. It would not be fair to impose the cost of such improvements of a permanent character on tenants who were simply tenants-at-will liable to removal on a month's notice, or no notice at all. Therefore the section provided that the owners of *bustee* property should be required to construct at their own cost such permanent sanitary arrangements within their own land as should prevent the place from becoming a nuisance. To impose this duty on tenants-at-will, who could not remove the latrines when they relinquished the land, would seem obviously unjust, and would moreover be impossible, as they were too poor to carry out improvements of such a character.

The HON'BLE THE ADVOCATE-GENERAL said the section appeared to him to be very wide. Suppose, in the opinion of the Justices, the owner of each hut required a separate privy, the landlord might be called upon to construct as many privies as there were huts on his property.

The HON'BLE BABOO KRISTODAS PAL observed that under the existing law no hut could be erected in any *bustee* without the sanction of the Justices. The occupier was required to send in an application with a plan to the Justices, and the Justices were bound to see that proper sanitary arrangements were provided.

The HON'BLE MR. HOGG said he was unable to see how the section could be otherwise than broadly drawn. *Bustee* land was a most fruitful source of nuisance in Calcutta, and the chief cause of such nuisance was the total absence of all sanitary arrangements. It was therefore deemed advisable to give power to the Justices to insist on sanitary arrangements being provided by the owners of the land, who were generally wealthy persons. To impose that duty upon tenants-at-will, living from hand to mouth, seemed most inequitable.

HIS HONOR THE PRESIDENT remarked that nothing could exceed the insanitary condition of these particular places to which the hon'ble mover alluded. He had himself seen some of them, and it was almost incredible that such places should exist in a city like Calcutta. He had never seen anything like it in any other city in India.

The HON'BLE MR. DAMPIER said that the section as drawn included houses tenanted by wealthy occupants as well as huts tenanted by the poor—lessees as well as tenants-at-will. He admitted that there was a large class of huts, those in *bustees*, of which the tenants could not possibly find the necessary capital to provide proper sanitary arrangements, and upon whom it would not be fair to put the whole expense of constructing these permanent improvements. Would not the hon'ble mover be prepared to adopt some such arrangement as was provided in regard to the laying on of water-pipes in houses, that the capital should be found by the owner, and that he should be able to recover interest on the outlay during existing leases?

The HON'BLE MR. HOGG said he thought that proprietors should be held responsible for constructing such sanitary arrangements in their houses, whether

large or small, as were reasonable. Therefore it would not be fair to call upon the occupiers of houses to construct permanent improvements of that character. As the law stood, most of the proprietors of large houses had received notices, and did construct the necessary works, without calling upon their tenants to pay any portion of the cost, although it was not quite clear whether the Municipality could compel them to construct those works.

The HONB'LE THE ADVOCATE-GENERAL observed that by the interpretation clause the word "house" included a hut, and thence arose the main difficulty. He thought the subject should be divided into two parts, and separate provisions made in regard to houses and huts.

The HON'BLE BABOO KRISTODAS PAL'S amendment was negatived, and the section as it stood was agreed to.

Sections 224 to 233 were agreed to.

In Section 234, on the motion of the HON'BLE BABOO KRISTODAS PAL, "one month" was substituted for "eight days" as the period allowed for compliance with an order of the Justices to cleanse or fill up unwholesome tanks or marshy grounds, or drain off stagnant water.

Sections 235 to 248 were agreed to.

In section 249, relating to the removal of huts built without notice, amendments were made, on the motion of the HON'BLE BABOO KRISTODAS PAL, with a view to exempt the owner of the ground upon which the huts were erected from being called upon to take action under the section.

Section 250 was agreed to.

Section 251 provided as follows:—

"Whenever the Justices in meeting, other than an ordinary meeting, are satisfied, from inspection, or by report of competent persons, that any existing block of huts in the town is, by reason of the manner in which the huts are constructed or crowded together, or of the want of drainage and the impracticability of scavengering, attended with risk of disease, or prejudicial to the health of the inhabitants or the neighbourhood, they may cause a notice to be fixed to some conspicuous part of such block of huts, requiring the owners or occupiers thereof, or, at the option of the Justices, the owner of the land on which such huts are built, within a reasonable time, to be fixed by the Justices for that purpose, to cause such huts to be removed, and such roads and drains to be made and the low lands to be filled up, and to execute such other operations as the Justices may deem necessary for the avoidance of such risk.

"And in case such owners or occupiers of the land shall refuse or neglect to execute such operations within the time appointed, the Justices may cause such huts to be taken down, or such operations to be performed as the Justices may deem necessary to prevent such risk; and the expenses thereby incurred shall be paid by the owner of the land.

"If such huts be pulled down, the Justices shall cause the materials of each hut to be sold separately, if such sale can be effected, and the proceeds shall be paid to the owner of the hut, or if the owner be unknown, or the title disputed, shall be held in deposit by the Justices until the person interested therein shall obtain the order of a competent court for the payment of the same.

"The Court of Small Causes shall be deemed a competent court for that purpose."

The HON'BLE BABOO KRISTODAS PAL moved the following amendments:—

(1) to insert after "neighbourhood" the words "which shall be certified by at least three medical officers;"

The Hon'ble Mr. Hogg.

(2) to insert "main" before "drains";

(3) to omit from the end of the first paragraph the words "and to execute such other operations as the Justices may deem necessary for the avoidance of such risk."

He said, perhaps it would be convenient to discuss this section with the section of which notice had been given by the hon'ble mover, because this section as well as the proposed new sections were all connected with the question of *bustee* improvement.

[The HON'BLE MR. HOGG thought it would be better if the section before the Council were discussed on its own merits, leaving out of consideration for the present the sections of which he had given notice.]

The HON'BLE BABOO KRISTODAS PAL continued:—This section, as at present worded, was very equivocal, because in the first place it was not clear how the circumstance of the liability of a particular locality to risk of disease, or its prejudicial effect upon the health of the inhabitants of the neighbourhood, was to be ascertained. He dared say it was contemplated that the Justices should be first advised by their Health Officer of the dangerous condition of a particular *bustee* before they served the notice mentioned in the section. But there was no provision in the section which required the Justices to take the opinion of that officer. As the works contemplated by the section would be very extensive and expensive, BABOO KRISTODAS PAL would recommend that in no case should any such works be ordered by the Justices without a certificate from three competent medical officers. He thought that in a matter like this, a matter of life and death, the opinion of three medical men ought to be had before any steps were taken under the section.

Then, as the section was worded, the owner of a *bustee* might be required to provide the whole of the drainage works that might be considered necessary. The Council were probably aware that a Committee of Justices had lately been appointed to report on the improvement of *bustees*, and they recommended that the main drains should be construeted by the proprietor of the land, and that the subsidiary house-drains by the owners and occupiers of the huts. But, as this section was framed, all the drainage works might have to be done by the owner at the direction of the Justices. He would therefore qualify that part of the section by the insertion of the word "main" before the word "drain." Then, in the last clause of the first paragraph, there was no definite instruction given as to what was to be done. It was left to the Justices to order any operation to be undertaken, and if the owner made default, the Justices were to carry out the operation, and the expenses were to be recovered from the owner by distress and sale. The term "operation" was very comprehensive, and also very indefinite, and such a wide discretion left to the Justices was liable to be abused, and calculated to operate harshly on owners.

The HON'BLE MR. HOGG said the section before the Council was almost word for word the same as Section 129 of Act VI of 1863, excepting that the sanction of the Government of Bengal had been left out, for the purpose of throwing the whole responsibility of putting the section in force upon the

Justices. Should the Justices be unable or unwilling to put the section into force, then the sections which he was about to propose would enable the Lieutenant-Governor to step in and take such action as he might think necessary to avoid the risk of disease. The hon'ble mover of the amendment knew that an endeavour was made to put the law into operation, and it was found that the provisions of the law were not sufficiently stringent to compel the owner to execute such works as the Health Officer and Engineer considered absolutely necessary for effecting proper sanitary arrangements. MR. HOGG thought it would not be wise to fetter the discretion of the Justices in any way; and he felt that in the exercise of their discretion they would be rather inclined to take somewhat mild, rather than too stringent, measures.

HIS HONOR THE PRESIDENT observed that the condition of these *bustees* was extremely bad. That really was hardly creditable to such a place as Calcutta. It was not worthy of the sanitation that ought to prevail here, and he would beg to explain to their hon'ble native colleagues that the spirit of the age seemed to have resolved that there should be proper sanitation in such great cities. And it was not in the power of even the Justices to fight against the inevitable tendency of the spirit of the age. These *bustees* would not practically be allowed to remain much longer in the condition in which they were now, and sooner or later the Executive Government would be compelled by the mere force of enlightened opinion, not only in this country, but in the whole world, to do something to improve the condition of these *bustees*. He made that remark in the hope that his hon'ble colleagues would give their best attention to the subject, and co-operate so as to enable the Government effectually to remedy the present state of things. It was most wonderful how in this fine city, with such great public works, there should be such discreditable places existing in it.

The HON'BLE BABOO KRISTODAS PAL'S 1st and 3rd amendments were then agreed to.

The 2nd amendment, for the insertion of the word "main" before the word "drains," was put and negatived.

The HON'BLE MR. HOGG said he would now beg the attention of the Council to the sections which he had prepared with the object of enabling the Lieutenant-Governor to take such action as he might think necessary on the report of the Sanitary Commissioner of Bengal, in case the Justices found that the provisions of Section 251 were not sufficient to enable them to carry out the improvements they considered necessary, or in case they might not be disposed to put the provisions of the law into force. In the sections he had drafted, he had placed the whole onus in the hands of the Lieutenant-Governor to cause the necessary works to be executed on the written report of the Sanitary Commissioner of Bengal for the purpose of removing risk of disease in any particular locality. As the question was a very important one, and as the Bill would need to be referred back to the Committee for other purposes, he would suggest that the sections now proposed by him be referred to the Committee with a view to their being carefully considered in Committee before being brought up for discussion in Council.

The Hon'ble Mr. Hogg.

The Hon'ble Baboo Kristodas Pal said he did not expect that these sections would be brought forward before the Council, because they had been thoroughly considered in Select Committee, and rejected by all the members of it, with the exception of the hon'ble mover. The Select Committee had arrived at that conclusion upon several cogent reasons, the chief of which Baboo Kristodas Pal would now state to the Council. In the first place the Committee thought that the Council would be dealing unfairly with the Justices to take the power, as it were, from their hands and place it in the hands of the Government, because, as far as they could see from the reports of the Justices, they had not been wanting in their exertions to give effect to the provisions of the law as it now stood. If the law was defective, it was not the fault of the Justices. Since the question was started six months ago, one or two *bustees* had been taken in hand by the Justices with the consent of the proprietors. Apart from that, the sections involved, he was constrained to say, a serious compromise of principle, because it gave the Government power to take land, as it were, without giving any compensation to the owners. A French philosopher once propounded the theory that property was theft. But these sections in effect proposed that the ownership of property was a crime which should be visited with confiscation.

They would empower the Government to deprive the owner of his estate for a time in order to carry out improvements which he might not have the means to carry out; and if the expenses of the improvement were not recovered from the proceeds of the estate within five years, the owner might be allowed a stipend from the income of the estate—for life it might be, for no specific time was mentioned—until the whole cost of the improvement was paid.

The Council having accepted Section 251, which gave power to the Justices to carry out the necessary improvements in *bustees* with a view to avoid risk of disease, he did not see why it was called upon to make further provision on the same subject. The section which the Council had just passed was broad and comprehensive enough. If the owner did not carry out the works enjoined by the Justices, they were empowered to do so, and to recover the cost from the owner. Thus a very wide discretion was vested in the Justices for the reclamation of *bustees*. And here he begged to state, for the information of the Council, that not only the native members of this Council, but of the Corporation, and the owners of *bustees* as well, were willing to co-operate with the Justices for the proper sanitation of the *bustees*. Since the present agitation had commenced at the instance of the hon'ble mover, who was Chairman of the Justices, the Council was aware that the Justices had come forward zealously and required the owners of certain *bustees* to carry out the necessary improvements. These improvements would cover in some cases from about five to six years' income of the estates concerned. One proprietor, who was a wealthy gentleman and who was in a position to meet heavy expenditure, had consented to the execution of the works by the Justices. Other owners were not so fortunately situated, and it was well worthy of consideration whether, in ordering improvements, due regard should not be had to economy. If some of the proprietors had not as yet responded to the call of the Justices, it was more

from want of means than from a spirit of obstructiveness. At the same time he should mention that, however unsightly and disagreeable these *bustee* localities might be, there was nothing to show that there was a greater rate of mortality in these *bustees* than in other parts of the town. We had had dismal pictures of varying merit from the pen of different writers of the state of these *bustees*, but not one of them had favored the public with any reliable statistics on the subject,—not even the Health Officer of the Justices. This defect was pointed out by the Army Sanitary Commission, who said:—

"For sanitary purposes, information beyond that afforded by the general city death-rate, even if this were trustworty, is absolutely necessary. The death-rates and also the disease rates must be localized. The officer of health has done the best in his power with the present data to localize the deaths (not the death-rates) of 68 groups of population, at one extremity of which stands Jora Bagan Street, to which 318 deaths are ascribed, while other groups give between 40 and 50 deaths. Facts of this class afford little real information, and it is to be hoped that in future reports the officer of health will be able to give not only the total death ratios to population of streets and localities, but also the ratio of deaths from endemic diseases From a comparison of such data the localities where expenditure for sanitary purposes is most required could be at once ascertained."

Baboo Kristodas Pal was constrained to say that what the Sanitary Commission had remarked was absolutely true. There was nothing to show what had been the rate of mortality in these *bustees*. There were no statistics whatever: consequently all that had been written and talked about of the unhealthiness of the *bustees* was mere speculation. There had been no sanitary inquiry, and that although the Justices had for twelve years had a responsible Health Officer. Judging from the general rate of mortality, in this town it might be said that it was less unhealthy than even English towns. Thus, in the United Kingdom, the death-rate was about 22½ per 1,000, in London 24, in Manchester 30, in Liverpool 38, and in Sunderland 37. He was lately reading the debates in the House of Commons upon Mr. Cross's Bill for the regulation of artizans' dwellings, and he found that the proposed legislation in England proceeded on a complete scientific inquiry. The fullest inquiry had been made about the mortality in the neighbourhood of poor men's dwellings, and how far it was traceable to the causes attributed, and then a remedy was applied. But here no such inquiry had been made.

Baboo Kristodas Pal would like to know what was the proportion of mortality in the *bustees* to the total death-rate of Calcutta. The sections proposed by the hon'ble mover left it absolutely to the discretion of the Government to call upon the Sanitary Commissioner to order particular works of improvement to be effected by the owner of a *bustee*, which if not done, the Government was to take the estate out of the owner's hands and place it under the management of the Justices, and then carry out the improvement. Now, what was the course to be followed in England in a similar case? He found that Mr. Cross, in introducing the Bill, made these remarks, and he believed the principle of the Bill had been substantially adopted since:—

"We think we cannot do better than provide that those who are to carry out the Act should be, in the city of London, the Corporation; in the rest of the Metropolis, the Metropolitan Board of Works; and in other large towns, the Town Councils, which are practically

the sanitary authority. Who, then, shall put the Act in motion? We proceed entirely on sanitary grounds. We don't wish them to make great street improvements for their own glorification. It is only sanitary purposes that we have in view—therefore we think the Act should be put in motion by the medical officer, who, by his own view or when called upon by a certain number of rate-payers, would be bound to report and certify whether in his opinion the place was an unhealthy district, whether disease prevailed there, and whether that was attributable to the badness of the houses. If he found it so, he would have to state that, in his opinion, it was an unhealthy district, and that an improvement scheme ought to be framed for it. That report would be forwarded to the local authority, being, in London, the Corporation; in the rest of the Metropolis, the Metropolitan Board of Works, and in large towns the Town Council. The local authorities would then take the matter into their consideration, and if satisfied of the truth of the report, and the practicability of applying a remedy, and of the sufficiency of their resources,—because we do not call on the Town Councils to ruin themselves,—they would pass a resolution that the district was an unhealthy area, for which an improvement scheme ought to be provided. The improvement scheme would be accompanied by maps, particulars, and estimates, defining the lands it was proposed to take with compulsory power, and providing for as many of the working classes as might be displaced in that area, either within the limits of the area or the vicinity thereof. In London that is a very essential matter. You cannot pull down a street in St. Giles' and send the people over to Battersea. If you displace the working class, you must lodge them in the vicinity of the locality, otherwise you make them paupers and deprive them of the means of subsistence.

"'*I don't suppose that any member will think that Town Councils should have the power of taking other people's property without compensation.*'"

If such a scheme were proposed, it would be both reasonable and equitable. Where the owner was not able to carry out the improvement, he should be offered the option of doing so or receiving compensation for his estate. Then the Justices or the Government might take over the *bustee* after paying compensation, and set an example to other owners; and if it proved remunerative, the example would be contagious. BABOO KRISTODAS PAL held that the sections were opposed to the principle of the legislation adopted in England. The principle of double government, acting through the Justices at one end and the Government at the other, would operate injuriously in practice; and as he believed that the sections already accepted by the Council were quite sufficient to meet the object aimed at, he would suggest that the sections drafted by the hon'ble mover should not be referred back to the Select Committee, as proposed by him.

The HON'BLE MR. HOGG said it was generally admitted that some action was necessary, as the law was not sufficiently strong to enable improvements to be made. The sections as drafted were open to the objection taken by the mover of the amendment, as they enabled the Government to step in and take action in cases where the Justices were not disposed to carry out improvements which should be adopted in particular localities. MR. HOGG was not pressing the Council to adopt the sections he had drafted. He was merely asking that they be referred to the Committee, in order that such objections as the hon'ble member might have might be considered. It was possible that the Committee might adopt alterations and amendments which would remove the objections he had.

The HON'BLE BABOO JUGGADANUND MOOKERJEE said he thought some stringent rules should be adopted to put a stop to these abuses in *bustees*. Every

one was aware of the state of the *bustees*, and their state was dangerous to any town, particularly to a town like Calcutta. The question was not whether the proprietor was inclined to make the improvement—he might be inclined to do so in half a century,—but why should his neighbours be put to inconvenience and have all these filthy things existing within a few yards of their residences? He therefore quite agreed that some stringent rules should be passed on the subject. Whether the rules framed were sufficient or reasonable, was a different question. The hon'ble mover proposed that they should be referred for consideration to the Select Committee, and BABOO JUGGADANUND MOOKERJEE was quite prepared to agree that they should be referred to the Select Committee, who would take the matter into consideration and frame rules suited to the circumstances of the town.

The HON'BLE BABOO DOORGA CHURN LAW said he thought Section 251, already passed, was stringent enough, and gave ample powers for the purpose, and he could not see what was the necessity of giving more extended powers to the Government. If the proposed sections were passed, there would be great hardship, and the result would be something which could not be foreseen. The very people in these *bustees* would be the first to cry against it. Most of them would have to leave the town, for they would not be able to pay the rent asked as a proper return for the outlay incurred by the owner, and the owners of these places would also be without adequate remuneration for the expense incurred.

The HON'BLE THE ADVOCATE-GENERAL observed that the wording of the sections proposed by the hon'ble mover went beyond the scope of Section 251. The sections as drawn would apply to an ill-drained house or block of houses, as well as to a *bustee;* and besides that, the sections were open to the broad objection taken, that they did not provide for the payment of compensation. If the Government were of opinion that a particular *bustee* was prejudicial to health, let them sweep it away, paying the owner adequate compensation. He thought there was no use in referring the sections to the Committee unless the hon'ble mover was prepared with a definite scheme.

The HON'BLE BABOO KRISTODAS PAL said, in reply to what fell from the HON'BLE BABOO JUGGADANUND MOOKERJEE, that he would read the following extract from the report of Dr. Lethby to the Commissioners of Sewers for London not many years ago:—

"I have been at much pains during the last three months to ascertain the precise conditions of the dwellings, the habits, and the diseases of the poor In this way 2,208 rooms have been most circumstantially inspected, and the general result is that nearly all of them are filthy or overcrowded, or imperfectly drained, or badly ventilated, or out of repair. In 1,989 of these rooms, all, in fact, that are at present inhabited, there are 5,791 inmates, belonging to 1,576 families; and, to say nothing of the too frequent occurrences of what may be regarded as a necessitous overcrowding, where the husband, the wife, and young family of four or five children are couped into a miserably small and ill-conditioned room, there are numerous instances where adults of both sexes, belonging to different families, are lodged in the same room, regardless of all the common decencies of life, and where from three to five adults, men and women, besides a train or two of children, are accustomed to herd together like brute beasts or savages, and where every human instinct of propriety and

decency is smothered. Like my predecessor, I have seen grown persons of both sexes sleeping in common with their parents, brothers and sisters and cousins and even the casual acquaintance of a day's tramp, occupying the same bed of filthy rags or straw; a woman suffering in travail, in the midst of males and females of different families that tenant the same room; where birth and death go hand in hand; where the child but newly born, the patient cast down with fever, and the corpse waiting for interment, have no separation from each other or from the rest of the inmates. Of the many cases to which I have alluded, there are some which have commanded my attention by reason of their unusual depravity,—cases in which from three to four adults of both sexes, with many children, were lodging in the same room, and often sleeping in the same bed. I have note of three or four localities where forty-eight men, seventy-three women, and fifty-nine children are living in thirty-four rooms. In one room there are two men, three women, and five children, and in another one man, four women, and two children; and when, about a fortnight since, I visited the back room on the ground floor of No. 5, I found it occupied by one man, two women, and two children, and in it was the dead body of a poor girl who had died in childbirth a few days before. The body was stretched out on the bare floor without shroud or coffin. There it lay in the midst of the living, and we may well ask how it can be otherwise than that the human heart should be dead to all the gentler feelings of our nature, when such sights as those are of common occurrence.

"So close and unwholesome is the atmosphere of some of these rooms, that I have endeavoured to ascertain, by chemical means, whether it does not contain some peculiar product of decomposition that gives to it its foul odour and its rare powers of engendering disease. I find it is not only deficient in the due proportion of oxygen, but contains three times the usual amount of carbonic acid, besides a quantity of aqueous vapour charged with alkaline matter that stinks abominably. This is doubtless the product of putrefaction, and of various fœtid and stagnant exhalations that pollute the air of the place. In many of my former reports, and in those of my predecessors, your attention has been drawn to this pestilential source of disease, and to the consequence of heaping human beings into such contracted localities; not merely that it perpetuates fever and the allied disorders, but because there stalks side by side with this pestilence a yet deadlier presence, blighting the moral existence of a rising population, rendering their hearts hopeless, their acts ruffianly and incestuous, and scattering, while society averts her eye, the retribute seeds of increase for crime, turbulence, and pauperism."

Baboo Kristodas Pal added that he did not mean to defend the condition of the *bustees* in Calcutta, but that sentimental exaggerations were always beside the truth.

His Honor the President said that when the hon'ble member read that extract from Dr. Lethby's report in retort to what had fallen from the hon'ble member on the right (Baboo Juggadanund Mookerjee), he did not seem to observe that there was this difference between the two—that we *admitted* the necessity for great improvement in the dwellings of the poor in various parts of England, whilst here it did not seem to be admitted that improvement was necessary and imperatively called for.

After some further conversation the further consideration of the proposed sections, and of the Bill, was postponed.

The Council was adjourned to Saturday, 4th December.

Saturday, the 4th December 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble V. H. Schalch, C.S.I.,
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 Baboo Doorga Churn Law,
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syud Ashghar Ali Diler Jung, C.S.I.

IRRIGATION.

The Hon'ble Mr. Dampier moved that the report of the Select Committee on the Bill to provide for irrigation in the provinces subject to the Lieutenant-Governor of Bengal, be taken into consideration in order to the settlement of its clauses.

The motion was agreed to.

The Hon'ble Mr. Dampier, in moving that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee, said that he might remind the Council that when the Bill was committed to the Select Committee, they consulted the Revenue and Canal Officers of Behar, Midnapore, and Orissa, who had experience in these matters. The Bill was then amended after consideration of their recommendations, and preliminarily reported upon to the Council. It was then published, and the Select Committee again received suggestions from the officers of the districts he had mentioned; and they had also had the benefit of the opinions of some of the Executive Irrigation and Canal Officers of other provinces. The Council were aware that the model they had to go upon was the "Northern India Canal and Drainage Act," the main principles of which were fully discussed in the Governor-General's Council; and it had been the object, where those principles had been once decided, to accept them for the purposes of the Bill, and only to depart from that Act in such points as were necessary to suit the circumstances of Lower Bengal. Many alterations had been made in Committee, and they had been explained somewhat fully in the report of the Select Committee. He would therefore only mention the general scope of the Parts of the Bill.

Part II of the Bill was the most important of all. The first section provided that whenever it appeared expedient to the Lieutenant-Governor that the water of any river or stream flowing in a natural channel, or of any lake or other natural collection of still water, should be applied or used by the Government for the purpose of any existing or projected canal, the Lieutenant-Governor might, by notification in the *Calcutta Gazette*, declare that the said

water should be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof; and the following sections provided the procedure for settling the compensation. As the compensation now in question was for damage done by water, which was not the subject of the Land Acquisition Act, the Council were not bound to follow that Act; but the Select Committee had, for uniformity's sake, adopted the compensation procedure of that Act as far as possible.

They had inserted Section 11, which followed the Northern India Canal Act, in laying down certain classes of damage on account of which no compensation might be claimed, and other classes of damage on account of which compensation might be paid.

In Section 12 the Committee had reduced the time (one year) within which claims might be advanced for compensation for damage done to six months, considering that period would be enough. In one material point only had the Select Committee departed from the procedure contained in the Land Acquisition Act. Under that Act, if no claimant appeared before the Collector to settle the compensation, a reference to the Court was imperative. In practice it had been found that when the claim was for a trifling amount of compensation, the claimants did not come in to the Collector to settle the amount, simply because it was not worth their while to come in; how much less worth their while was it for them to come in before the Court to whom a reference then became inevitable in order to settle the amount? To get over this practical inconvenience, the Committee had provided in the present Bill that when no party appeared before the Collector, he should make an explicit award as to the amount of compensation which he considered fair, and that he should give due notice to the parties concerned that he was prepared to pay such amount, and that unless any one interested appeared to dispute the award before the Court within six weeks, such award should become final, and that Government should be secured from any further claims on that account. As the Bill at present stood in regard to Sections 20 to 24, there was another point of difference as compared with the Land Acquisition Act. When these sections were drafted, it was believed that this Council could not confer upon the High Court appellate jurisdiction which it did not already possess; and in this view the sections had been framed so as to stop short of the provisions of the Land Acquisition Act, which allowed an appeal to the High Court in certain cases from the award of the special Court under the Act. Recently, however, the question had received legal ventilation; and the better opinion, which was shared in by the Acting Advocate-General, seemed now to be that the Council should not be doing anything *ultra vires* by following the Land Acquisition Act procedure through, the provisions of which gave an appeal to the High Court. He should therefore propose an amendment which should have that effect.

In Section 23 the Committee had introduced a clause which guarded the Government against having to pay any costs of a reference to the Court, where the reference was made simply and purely on account of the parties concerned not agreeing as to the shares of the compensation to which they were respectively

entitled. That was a matter entirely between the parties; but it had so happened that under the Land Acquisition Act some Courts had made the Collector pay part of the costs of such appeal, which obviously was not equitable: therefore in Section 23 it had been provided that the costs should be paid by the parties concerned, and not by the Collector.

Part III provided for entering upon and doing the necessary works for the maintenance and repairing of canals and flood embankments, for protecting such works from accident, and for repairing the effect of accidents. In this Part full provision was made for compensation for damage done to crops, trees, buildings, or any other property, by the Canal Officers when they entered upon any premises to examine the state of their works. The amount involved would be trifling, and therefore a summary procedure was provided. The Canal Officer would make a tender of the amount which he deemed fair to the parties concerned: if they were not satisfied, the case would be referred to the Collector, who would fix the amount subject to a final appeal to the Commissioner of the division.

The Committee had introduced a new Part into the Bill, enabling the Lieutenant-Governor to provide for the drainage of the irrigated tracts. This was not provided for in the Bill as originally introduced, but it was known that drainage was absolutely necessary for the health of the people, and such works must be carried on *pari passu* with irrigation. The sections provided that compensation should be given for the removal of obstructions which impeded the drainage of the country.

Part V referred to village channels, and had been introduced at the suggestion of the Collector of Midnapore. The subject of these channels was a novel one to village people in these provinces, and it was desirable that the Act should be so framed as to give a complete exposition of the system. The object was to encourage those whose lands might be benefited by irrigation, whether they were landholders or middlemen, or whether they were ryots, clubbing together to construct channels by which water might be led from canals to their own villages. Every assistance was given to them. These channels would confer so much public good that power had been given of taking over land under the Land Acquisition Act for the construction of them, and the assistance of Canal Officers was also given where the projectors of such channels required it. The owners of these channels would use the water for their own fields, and they would take rents from others, not being owners, who should take water through the channels. But although these channels would be private property, it was essential to keep them under the complete control of the Canal Officers. It was therefore provided that the Canal Officers might require the owners to keep their channels in efficient order, and it was also provided that the owners could not transfer their interest in these channels to other persons without the permission of the Canal Officer; and further, that on a second occurrence of failure on the part of the owner, after being called on to fulfil his obligations, the Canal Officer might insist on the owner giving up the channels into hands which would keep them in better order, the owner who was forced to give them up receiving compensation for the same.

The obligations of owners of channels were clearly laid down in Section 59. While the crops were on the ground, everything would depend on promptitude of action in respect of these village channels; and therefore Section 63 provided that if the sole owner of a channel died, the Canal Officer might step in and take possession of his channel until the legal representative of the old owner came forward. Until that time the Canal Officer would take charge of the channel and keep it in order for the benefit of those who were dependent on it for their water.

Section 72 provided that land acquired for a village channel could not be used for any other purpose without the consent of the Canal Officer previously obtained. The object was clear enough. A person who proposed to improve or make a village channel might get a Canal Officer to take up land under the Act. Having taken it up against the will of the owner of the land, of course the person who required it should be bound to put it to the use for which it was acquired, and not for other purposes.

In Part VI it was provided that written contracts should be absolutely necessary. There had been much discussion upon the point, and departmental officers apprehended difficulty from this condition. But the Government were willing, in deference to what was understood to be the wish of the people, to accept the inconvenience, and to insist that written contracts should be taken before any person was held answerable for the payment of rates upon the water which was supplied with the consent of the Canal Officer.

The last section of the Bill vested the Lieutenant-Governor with the power of prescribing rules for the working of the Act, and Section 76 laid down certain conditions with which these rules must comply. The section provided under what circumstances only the supply of water might be stopped by the Canal Officers without creating a claim for compensation on the part of those who had contracted for the receipt of a regular supply.

Part VII referred to the water-rates. Sections 79 and 80, the Council would see, were very important. When water was surreptitiously taken or wasted, if the person benefiting by the water so taken could be identified, or the person who actually committed the offence, those persons would be held liable for such charges as the Lieutenant-Governor under the rules might lay down. But if it was impossible to identify those who had benefited or those who actually committed the offence, then the Bill, following the Northern India Canals' Act, enforced a joint responsibility which was absolutely necessary for the proper working of an irrigation scheme. It provided that in such a case all those who ordinarily took their supply of water from the channel out of which the water had been surreptitiously taken or wasted, should be jointly responsible for the charges in respect of such water. In fact the persons who were interested in the channels and the preservation of the water, were hereby saddled with the obligation of being the responsible custodians of the channels. This provision was very fully discussed in the Governor-General's Council before it was adopted in the Northern India Act, and this was a case in which there was no local difference whatever between the Lower Provinces and Northern India. If the principle held good in one place, it held good in another.

Rates and charges under this Part were made recoverable either as rent or demands under Bengal Act VII of 1868.

Part VIII related to jurisdiction. It provided for the prompt and summary decision of certain disputes which, if not so settled, might lead to the loss of the crop on the ground. The procedure was that in such cases the Canal Officer, subject to an appeal to the Collector, should make an order which should have the effect of a decree of a Civil Court until it was upset by an order of the Civil Court.

Part IX related to offences and penalties.

Part X enabled the Lieutenant-Governor from time to time to make rules for the working of the Act; and here it had been necessary to give a very wide discretionary power to the Lieutenant-Governor, because irrigation schemes were a novelty in Bengal, and arrangements must be made tentatively and subject to modifications as experience might teach.

The motion was agreed to.

The consideration of Sections 1 to 5 was postponed.

Section 6 provided for the issue of a notification when the water of any river or stream was to be applied for the purpose of any existing or projected canal.

The Hon'ble Baboo Kristodas Pal moved the insertion of the words "not being private property" after the word "water" in line 6. He said he readily admitted that Government had been actuated by the most benevolent object in proposing this measure, and that the power with which this Bill invested the Government would doubtless be applied to the greatest advantage of the people. But this section, as it was worded, gave a wide latitude to Government, without at the same time giving due compensation to those who might fall within the scope of its action in case their private rights were trenched upon. This section authorised the Government to divert the course of any water channel, private or public; and reading the section with Section 11, it appeared that the exceptions which had been made in Section 11 for compensation would leave out a large class of private rights. Now public waterways were vested in the State as trustee for the general public; but there might be private waterways or channels constructed by private capitalists, or belonging to private individuals as part of private estates, over which the public necessarily had a right of way, but for the use of which private proprietors claimed tolls or other consideration. If such channels were closed or the water of the same were diverted or diminished, as Section 11 was worded, no compensation would be allowed. He might mention one or two cases. There was a channel, called the Kurratiya river, in Rungpore, which the Hon'ble Prosonno Coomar Tagore obtained an Act of the legislature to improve and to levy tolls on. The improvements which he effected did not of course answer, and the channel had not proved to be so useful as it was expected to be; but in this case if the Government wanted to interfere and divert the course of water it would be perfectly competent to do so. Under the law the proprietor would be entitled to no compensation for the obstruction or diversion of navigation. In the same way a private Company might open a canal in the interior, and if Government wished to divert the course of the water, it would be equally competent to do so, and the Company would be entitled to no compensation. If the compensation clause of the

section had been framed on an equitable basis, so as to meet such cases, BABOO KRISTODAS PAL would not have the slightest objection to it. But reading these two sections together, he thought it would be very hard upon proprietors if the Government had the absolute right and power to divert the course of any channel or river without at the same time giving due compensation to those who might suffer by its operation. Government would doubtless look to the greatest good of the greatest number; but at the same time, in pursuing that object, Government ought not to lose sight of the interests of those who might suffer by such proceedings. He would be prepared to withdraw the amendment, of which he had given notice, if the compensation clause were made comprehensive enough so as to cover the cases he had mentioned; otherwise he thought the power which this section gave to Government ought not to remain.

The HON'BLE MR. DAMPIER said, it seemed to him it would take but a few words to answer the objections which were raised by the hon'ble member who moved the amendment. The hon'ble member was afraid that channels which had been opened out by private individuals and companies for their benefit might be taken possession of and diverted from their courses. If the hon'ble member would look at Section 6 of the Bill, he would see that it applied to rivers or streams flowing in natural channels, or any lake or other natural collection of still water, and not to artificial courses which might be constructed by companies or private individuals.

Then the hon'ble member had referred to the case of the Kurratiya river. This was certainly a natural channel, and might be diverted under the Act; but there was an Act of the legislature which secured to the gentleman who made those improvements in it the right of imposing and collecting tolls thereon. He had that right, and of course that right would be recognized. Compensation might be awarded in respect of "any other substantial damage not falling within any of the clauses (*a*), (*b*), or (*c*), and caused by the exercise of the powers conferred by this Act." MR. DAMPIER thought that under the wording of this clause the loss of tolls by Baboo Prosonno Coomar Tagore or his representatives would certainly be within the scope of the words "any other substantial damage," which was capable of being estimated at the time of awarding compensation. They would therefore get full compensation.

The HON'BLE BABOO KRISTODAS PAL said that the hon'ble member was right in saying that Section 6 referred only to natural collections of water; still, with due deference to the opinion of the hon'ble member, he would submit that clause (*h*) of Section 11 would not probably apply to the cases he had mentioned, simply because clause (*c*) of Section 11 referred to the stoppage of navigation, or of the means of rafting timber or watering cattle. He would appeal to the hon'ble and learned Advocate-General as to what the effect of clause (*c*) read with clause (*h*) would be in such cases, and whether compensation would be allowed.

HIS HONOR THE PRESIDENT said he wished to point out that the amendment would seem to declare or imply that natural channels might become private property. To accept the hon'ble member's amendment would in effect be to admit the theory that natural channels might be private property. Now, that

was a thing which was never admitted in England. In the case which had been alluded to, the Kurratiya river had not become the private property of Baboo Prosonno Coomar Tagore, but he had the right of levying tolls upon it as a special case for certain improvements made by him; but it was not admitted that the river was his private property. His Honor thought he might safely challenge the hon'ble mover of the amendment to point out any case in which a natural channel became private property.

The Hon'ble Baboo Kristodas Pal said that many rivers were included in zemindari estates, in which the right of navigation undoubtedly belonged to the public, but the property in which belonged to the zemindars of those estates. Some of these rivers formed part and parcel of those estates, and the sunnuds bore sufficient evidence in support of his argument.

His Honor the President said that he did not think that any of the sunnuds or settlements gave the property in flowing rivers to zemindars of estates. They might possess the right of fishing, but he did not think that they ever gave the property in a natural river or stream which was flowing. The property in a stream or river, that was to say dried-up rivers, might be vested in a zemindar, but not the property in flowing rivers. The property in the bed or channel of a dead river might belong to a zemindar, but not in an actually flowing river, or so long as it was a natural channel. He ventured to say that the property in the water did not vest in any private party; at least such was the case in all other parts of India. He spoke with great confidence as regards all other parts of India, and he believed it was the fact in Bengal. The moment the water passed away and left the bed dry, then the claim of the zemindar arose.

The Hon'ble Baboo Kristodas Pal said that the public had a right of way over these rivers, but the late Advocate-General, Mr. Cowie, gave his opinion that the bed of the river was the property of the zemindar. He had also the right of fishery.

His Honor the President observed that, in reference to what the hon'ble member had last mentioned, there was a recent correspondence on the subject which made it clear that no private party should have the right of levying tolls.

The Hon'ble Mr. Dampier remarked that the Kurratiya river was the only one special instance in which this was provided for by a special Act of the legislature.

His Honor the President said he thought the hon'ble mover of the amendment would admit, in reference to what had fallen from the hon'ble mover of the Bill, that in the case he had mentioned there would be substantial damage done under clause (*h*) of Section 11. Baboo Prosonno Coomar Tagore had years ago acquired a lifelong right of levying tolls upon that river, and that right would be substantially damaged by taking up the river for a canal under clause (*c*), and that damage was capable of being estimated and ascertained,—that was to say, compensation for the loss of tolls.

The Hon'ble Mr. Dampier said that the right of levying tolls was specially conferred upon Baboo Prosonno Coomar Tagore by an Act of the legislature in consequence of certain improvements which he made, and he would exclude

His Honor the President.

that case if the Council wished. It would be observed that to give Baboo Prosonno Coomar Tagore any *locus standi* in collecting tolls, a special Act of the legislature had been passed, from which MR. DAMPIER would argue that wherever a special Act of the legislature did not confer such power none attached to private individuals. It seemed to him that the clauses barring compensation for loss of navigation applied to claims which might be advanced in respect of the loss of the right of way up and down the river, and not to such claims for loss of tolls on the traffic, provided such tolls were legally levied. Of course after what the hon'ble member had stated, it was not easy for MR. DAMPIER to say otherwise.

HIS HONOR THE PRESIDENT said that it was just possible that there was a way by which clause (*h*) could be otherwise worded than it had been. The point really arose from the fact of that gentleman having made a special agreement. He must, HIS HONOR presumed, have made a special agreement with Government, and his claim lay in the working out of that agreement. Of course, clause (*h*) was clearly made to cover any cases which were not provided for by special enactment. He presumed there was an agreement, and would suggest the insertion of the words "excluded by a concession of Government, or by legislative enactment." He was quite willing to provide for compensation being provided for in the case mentioned. In such cases the Council must be careful in putting in any general wording that would include other cases which they did not wish to include. If any private person acquired rights from Government by special enactment, then if those rights were interfered with, he should receive compensation. It had been denied that any rights could accrue on the part of parties to the possession of natural rivers. He thought it had been lately decided by the Government of India that the right of levying tolls on rivers had not been recognized.

The HON'BLE THE ADVOCATE-GENERAL said that it seemed to him clear that a zemindar who obstructed the passage of a river, would render himself liable to a charge. It was quite clear also that the water of a flowing river did not belong to the zemindar.

The HON'BLE MR. HOGG said, suppose a zemindar at his own cost many years ago diverted the course of the water in a river to a channel passing through his own property, surely the water so diverted would belong to him.

HIS HONOR THE PRESIDENT remarked that such a case was provided for in Section 11. They did not desire to interfere with rights which now belonged to proprietors, but merely to declare the object of the Government; and as a rule that principle had been steadily adopted. It was an important part of public policy that individual rights should be recognized.

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

Sections 7, 8, 9, and 10, were agreed to.

Section 11 having been read—

The HON'BLE BABOO KRISTODAS PAL moved the omission in clause (*b*) of the words "or drinking-water." The object of the amendment was, that should, by the diversion of a watercourse, or by the operation of any irrigation works,

the collection or quality of drinking-water be interfered with, and the convenience or health of the people thereby suffer, it was but meet and proper that compensation should be allowed to them, so that they might construct good drinking-water tanks in place of the water-supply they had before. He believed the Council would admit the justice of such a provision, and he submitted that that object might be met by the omission of the words "drinking-water." He was aware that the North-Western Provinces Act had that provision, but it did not necessarily follow that because that Act contained such a provision it ought to find a place in the Bengal Act, the justice of it being open to question. He would also propose a further amendment at the end of clause (*h*) of the same section in these terms:—

"Or may be ascertained within five years next after the date of notification under Section 6."

Now Section 11 provided that there should be no compensation allowed for the stoppage of water. But he submitted that in many cases the quality of the crops greatly depended upon the alluvial deposits left after a flood, and any substantial damage sustained by a change in the course of water would come under clause (*h*). But that clause also provided that such damage was capable of being ascertained and estimated at the time of awarding such compensation. Now compensation might be awarded within six months after the issue of a notification. That was far too short a time to ascertain the damage he referred to, and even one or two years would not be quite sufficient; and he thought it would not be unjust either to Government or to claimants if five years were allowed to run within which to estimate the damage which might be caused by the diminution of floods by the opening of new irrigation channels. He thought the damage might be fairly ascertained within that period, and compensation should be allowed accordingly. He would therefore recommend the insertion at the end of Section 11 of the paragraph he had just read. Then, again, HIS HONOR THE PRESIDENT had been pleased to remark that some provision should be made to cover such cases as those to which BABOO KRISTODAS PAL referred when discussing Section 6, and he hoped the hon'ble member in charge of the Bill would make some provision with a view to reconcile clause (*c*) of Section 11 with clause (*h*).

The HON'BLE MR. DAMPIER wished to say a word in reference to what had fallen from the hon'ble mover of the amendments. The hon'ble member was mistaken when he said that these words occurred in the Northern India Canal Act. It was a point which had been departed from in the Act. After discussion in Select Committee it was agreed to bring in the words "deterioration of drinking-water" as one of the cases which should not be open to claims for compensation. and the argument was this—that it was almost impossible to determine to whom Government should give compensation, as everybody in a village might come in separately and bring in a separate claim for compensation. That was why the Select Committee put in these words. But they were not in the Northern India Act. MR. DAMPIER must say that in his own judgment it was better to keep them in, because there was no use legislating for things which were impracticable. He would therefore oppose the insertion of the amendment.

The Hon'ble Baboo Kristodas Pal.

HIS HONOR THE PRESIDENT remarked that the object of the clause was to exclude from compensation claims which were of a very indefinite nature, and which might lead to troublesome litigation, the decision on which it would be almost impossible to foresee. Once you allowed parties to go into Court and litigate about the deterioration of water, it was impossible to say where the matter might end; and if Government became exposed to litigation of that nature, it would seriously interfere with their projects for constructing canals, which would embody undertakings of this benevolent nature. That was the principle upon which these Acts had been framed. He spoke this with confidence, because he was upon the Committee of the Northern India Canal Bill which framed this clause. So it did appear to him that the term "drinking-water" did come within the scope and intentions of that clause.

The HON'BLE THE ADVOCATE-GENERAL said that the matter required some consideration. He thought there was a great deal in what the hon'ble mover of the amendment said, and that it would be possible to conceive cases in which water had deteriorated in such a way as to be unfit for drinking purposes. He thought there should be some mode of providing water for villages, and although there should be no compensation given, some expedient should be resorted to for supplying what was taken away or had deteriorated. He submitted that this matter should stand over in order to consider what should be done. It appeared to have been left out of the Northern India Act.

HIS HONOR THE PRESIDENT said he thought he might explain, in reference to the case supposed by the hon'ble and learned Advocate-General, viz., that the water in certain villages had become brackish, or in a case where the river dried up and became otherwise injurious, that it would be the business of the Canal Department to provide some other water, which he thought they would be delighted to do. All that it would be necessary to do would be to cut a channel from the village, which was the very thing the Canal Department most desired to do for the purpose for which the canal was made. HIS HONOR would have no objection to putting in a proviso, if the Council wished, that in the event of water being deteriorated, the Canal Department should be bound to provide some other channel for a pure water-supply.

The HON'BLE BABOO KRISTODAS PAL said that if the Bill recognized that distinction, he had no objection to make.

HIS HONOR THE PRESIDENT remarked that the point was to retain those words, because nobody proposed to give compensation in money. The majority of the Council seemed to be of opinion that if the supply of water was injured, some other supply should be provided, and upon that they were agreed. He proposed for the consideration of the Council to retain the words "drinking-water," and to add to the section a proviso that if the water was injured, Government should be bound to provide some other water.

This was agreed to, and BABOO KRISTODAS PAL'S first amendment was then carried.

THE HON'BLE MR. DAMPIER said the second amendment of the hon'ble member was the addition in Section 11, clause (*h*), after the word "compensation,"

of the words "or may be ascertained within five years next after the date of the notification under Section 6." As the clause now stood, compensation might be given for substantial damage which was capable of being ascertained and estimated at the time of awarding such compensation. The hon'ble the mover of the amendment said that five years should be allowed to ascertain what loss had been caused, and he had instanced the case of benefit to cultivation from floods. In this the Select Committee had precisely followed what was arrived at after a great deal of discussion and consideration on the very point in the Northern India Canal Act. It was there agreed that no compensation should be given for the loss arising from floods which spread all over the country. The reason was that such loss could not be estimated. Here again it seemed to him that the damage was too indefinite for legislation. There might be drought and no floods in one year and such floods as to be injurious in another, and on the whole the application of a law allowing compensation for loss by floods would be impracticable. He should not like to leave open claims for compensation to be made any time within five years, and the Committee had contented themselves with providing that claims should be made within six months. The Northern India Bill allowed one year, and if the Council desired it, MR. DAMPIER was willing to go back to one year.

The HON'BLE BABOO KRISTODAS PAL said a case occurred lately in which it was proposed to divert the course of a water channel, and a notice was served upon a neighbouring zemindar to know whether he would have any objection to carry out the project; and at last the scheme proposed by the Canal Officer was disallowed by Government. Suppose such a case as that had been carried into effect, and lands not now subject to floods, and which would yield crops, should be almost devastated by floods, and great damage sustained. The question then arose, that it would not be easy to ascertain damages within six months.

HIS HONOR THE PRESIDENT said that the hon'ble the mover of the amendment would see that the case he mentioned was provided for by Section 12 of the Bill, which said that claims must be made within six months from the date of damage occurring. These gentlemen would come and say, "When these works were first made, we did not perceive that there was damage. We now perceive that there is damage, and we make our claim within six months." That was quite fair, hon'ble members would admit.

The HON'BLE THE ADVOCATE-GENERAL submitted that the Bill was for the good of the country at large, and in carrying out its general scheme objections ought not to be allowed to prevail on the possible chance of some unavoidable injustice being done by its otherwise salutary provisions. The principle seemed just to give fair compensation for any damage done.

HIS HONOR THE PRESIDENT expressed his entire concurrence with what had fallen from the learned Advocate-General. He thought Section 12 feasible, and a longer prolongation of the period most unadvisable.

The amendment was then put and negatived.

The Hon'ble Mr. Dampier.

The HON'BLE BABOO KRISTODAS PAL moved the introduction of the following words at the end of the section:—

"In addition to the amount of any compensation awarded under this section, the Collector shall, in consideration of the compulsory nature of the Acquisition Act, pay fifteen per centum on the value hereinbefore mentioned."

He observed that he had followed the principle recognized in the Land Acquisition Act on the subject, and he would submit that what was held to be good in the case of the Land Acquisition Act, ought to be equally good in connection with this Bill. He would therefore recommend that fifteen per cent. should be allowed by way of compensation in consideration of the compulsory nature of the acquisition. The Bill provided that where the market value could not be ascertained, twelve times the amount of the diminution of the annual net profits of the property should be reckoned. In addition to this he proposed that fifteen per cent. should be allowed as consideration for compulsory acquisition.

The HON'BLE MR. DAMPIER said he would observe, in the first instance, that the wording of the amendment could not possibly stand, because the compensation they were dealing with was for damage suffered and not for any acquisition of rights. They all knew that the principle referred to by the hon'ble member was adopted in the Land Acquisition Act; by that Act if you took away a man's property for public purposes you allowed him fifteen per cent. in addition to the market value; and MR. DAMPIER might mention a remarkable anomaly which had come out in working that provision of the Land Acquisition Act. When the Collector had agreed for the full price with the owner of the property, and when he was satisfied with the price offered him; and when the Collector made an award according to the amount which he had agreed to accept, even then, under this provision, the Collector must present the proprietor with fifteen per cent. more than the price agreed to as sufficient. That being the principle adopted in the Land Acquisition Act, it might be asked why that principle was not adopted in this Bill. On turning to the Northern India Canal Act of 1873, which was later than the Land Acquisition Act, it would be seen that no such provision was made. He did not know whether there was any argument on the subject, but he supposed that if reasons had been asked for, they would have been given in this way. That when land was taken up for public purposes, it would or might possibly be for the benefit of hundreds of others, and not so directly for that of the owner of the land, who had therefore a grievance in his land being taken in spite of him; but in the case of these irrigation works, the person who suffered the damage by deterioration of his property in one respect was one of those who would directly and immediately benefit by the irrigation of the lands.

The HON'BLE BABOO KRISTODAS PAL said he was sorry he could not subscribe to the arguments of the hon'ble member in charge of the Bill. He had pointed out that the Northern India Canal Act did not contain a provision of this description, though the Land Acquisition Act did, and that therefore the Council was not bound to adopt that principle in this Bill. Now, the general principle recognized by Government was that something more than the market value should be allowed to any person from whom any property was taken

away by a compulsory act of the Government for a public purpose. The hon'ble member had remarked that irrigation channels should benefit whole populations, but railways, BABOO KRISTODAS PAL thought, were equally beneficial. If a railway was opened out masses of people would benefit. If houses and lands were taken up for the purpose of opening out railways and constructing roads under the general Act, fifteen per cent. was allowed over and above the market value He did not see any reason why the same principle should not be adopted in reference to irrigation works. It was true that the Government of India did not follow that principle in the Northern India Act; but if the principle was just and righteous, he thought it ought to be followed, whether the Government of India had adopted it in one case or not.

The HON'BLE MR. DAMPIER said he might point out that, under the Land Acquisition Act, land might be taken up for fifty different purposes from which the owner of the land acquired would derive no benefit whatever, and not only for railroads and roads. Whereas under this particular Act land was taken up for the express purpose of improving the adjoining property of the persons who were put to some minor loss. He was certain to get some good in return. MR. DAMPIER for one thought that fifteen per cent. was entirely unnecessary even in the case of land acquired for public purposes generally. He thought that holders of landed property should, if required for the public good, give it up on receiving its value in cash, and not a premium besides.

HIS HONOR THE PRESIDENT said that it appeared to him that when fifteen per cent. was fixed as an extra compensation under the Land Acquisition Act, the principle of allowing such additional compensation was carried as far as it properly could be. It was all very well to ascertain the market value of land, but how could they ascertain the market value of damages? Damages were supposed to be in full liquidation of all just demands; then why place a percentage upon them?

The Council then divided:—

Ayes 4.	*Noes* 6.
The Hon'ble Nawab Syud Ashgar Ali Diler Jung.	The Hon'ble Mr. Reynolds.
„ „ Kristodas Pal.	„ „ Hogg.
„ „ Doorga Churn Law.	„ „ Dampier.
„ „ Juggadanund Mookerjee	„ the Advocate-General.
	„ Mr Schalch.
	His Honor the President.

So the motion was negatived, and the section as amended was agreed to.

Section 12 was agreed to.

Sections 13 to 19 were severally agreed to.

Section 20 having been read—

The HON'BLE MR. DAMPIER moved the omission in line six of the words "thirty-four inclusive and," and that in line seven the word "inclusive" be inserted after the word "thirty-seven." He said that he had mentioned in his opening speech that when the committee on the Bill sat, it was held that the Council had not the power of conferring appellate jurisdiction on the High Court in any matter in which that court had not already such

jurisdiction. Since then it had so happened that the matter had been a great deal ventilated and discussed in legal circles, and MR. DAMPIER believed that the better opinion was supposed to be that there was no objection to the Council giving the right of appeal to the High Court in those cases in which this Bill followed the procedure under the Land Acquisition Act. If the case was referred by the Collector to the district court under that Act, and the Judge of that court and the assessors of the court were agreed, their decision was final, if the amount awarded was below Rs. 5,000; but if the Judge was of one mind and the assessors differed from him, or if the award for the amount was over Rs. 5,000 under the Land Acquisition Act, an appeal lay to the High Court against the award of the court or of the Judge. Now the better legal opinion appeared to be that the Council could give the High Court similar appellate jurisdiction in compensation cases under this Act, and he had therefore proposed the amendment in Section 20, which would simply have the effect of putting these cases exactly as they stood in the Land Acquisition Act.

The motion was carried, and the section as amended was agreed to.

On the motion of the HON'BLE MR. DAMPIER, Section 21 was omitted.

Sections 22 and 23 were agreed to.

Section 24 having been read—

The HON'BLE MR. DAMPIER moved the omission of the second clause, beginning with "an appeal" and ending with "conclusive," and the substitution for it of the following clause—"An appeal shall lie from every such decision to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge."

The motion was carried, and the section as amended was agreed to.

Section 25 was agreed to.

The HON'BLE MR. DAMPIER moved the insertion of the words "or of the High Court" after the words "District Judge," in line 16 of Section 26.

The motion was carried, and the section as amended was agreed to.

Sections 27 to 29 were agreed to.

The HON'BLE MR. DAMPIER moved the omission in the last line of Section 30 of the words "with interest thereon" and the substitution of the words "and of any sum which he paid as expenses incurred in purchasing the same, and of any interest which might otherwise have accrued." He would explain why this was rendered necessary. Under the Land Acquisition Act money was invested in Government securities, and when it came to be paid out to the parties entitled, the question had arisen who was to pay for the cost of investing the money, and to bear any loss from a fall in the value of Government securities since the date of investment? Now it was considered that this charge ought to fall upon Government, and he had provided that when the amount awarded was vested in Government securities the person entitled to it should be bound eventually to accept the securities purchased in full satisfaction of his claims.

The motion was carried, and the section as amended was agreed to.

Sections 31 to 75 were agreed to.

Section 76 having been read—

The Hon'ble Baboo Kristodas Pal, in moving the omission of paragraph 4, clause (*a*), which ran as follows—"within periods fixed from time to time by the Canal Officer"—said, that if it was necessary to stop the water-supply at any time, Parts I and II would sufficiently meet the requirements of the case; that was to say, when such works were under repairs or when any additions were being made to them, in which cases the supply would be stopped, and no compensation would be allowed to the owner of the village channel. But clause 4 left it to the absolute discretion of the Canal Officer to stop the water-supply from time to time without any cause whatever. He thought this power would lead to great hardship and loss, and should be withheld. If there were any other causes under which the stoppage of the supply should not be compensated, they should be specified in the law, and not left to the discretion of the Canal Officer.

His Honor the President thought he might admit that the wording of the section was really too wide as regarded the authority of Canal Officers. Perhaps they gave rather an arbitrary authority. But cases did arise sometimes in which it was necessary to temporarily stop the water-supply, because questions sometimes arose in which lessees of water took a greater quantity than they were empowered under the Act, and allowed it to flow into neighbouring lands which they had not taken up. In fact it would amount to a simple waste of the water. Such cases had occurred, and it became necessary to cut off the supply until those questions were settled. Again there were other cases (special cases) arising, in which it might be necessary to cut off the water, and which cases would not come within paragraphs 1, 2, 3; so that it became desirable to confer upon the Canal Officer some additional power. Perhaps the hon'ble member would consent to retain clause 4 with the addition of the words "under rules to be framed by Government" after the words "subject to the sanction of Government."

The Hon'ble Mr. Dampier said that perhaps the hon'ble member would accept the following amendment:—

"Whenever and so long as it may be necessary to stop the supply in order to prevent the wastage or misuse of water."

The Hon'ble Baboo Kristodas Pal having withdrawn his amendment, the amendment moved by the Hon'ble Mr. Dampier was agreed to.

On the motion of the Hon'ble Baboo Kristodas Pal, the word "shall" was substituted for the word "may" in the same section. He submitted that if the supply had not been stopped for the reasons mentioned in the several clauses of the foregoing sections, then the claim to compensation should be held absolute, and the Collector should be required to give reasonable compensation for any loss which the occupier or owner might show.

The section as amended was then agreed to.

Sections 77 and 78 were agreed to.

Section 79 ran as follows:—

"If water supplied through a village channel be used in an unauthorised manner, and if the person by whose act or neglect such use has occurred cannot be identified,

the persons on whose land such water has flowed, if such land has derived benefit therefrom,

or if no land has derived benefit therefrom, all the persons chargeable in respect of the water supplied through such village channel in respect of the crop then on the ground,

shall be liable to the charges made for such use, as determined by the Lieutenant-Governor under Section 98."

The HON'BLE BABOO KRSITODAS PAL moved the omission of the section. He objected to the section because it was based upon an unsound principle. It sought to throw responsibility upon persons for acts done by others. He hoped that the hon'ble and learned Advocate-General would support him when he said that no man should be held responsible for any act committed by another. But this section provided that though another person might steal or waste water, persons living in the neighbourhood should be punished if the real offender could not be discovered. There was no distinction made between the innocent and the guilty. He was of opinion that the section should be thrown out.

The HON'BLE MR. DAMPIER said that the two sections ought to go together. They involved a matter of principle. They were very fully discussed in the Council of the Governor-General, and the conclusion arrived at was that it was absolutely necessary to enforce the joint responsibility in cases in which the person benefiting or the actual wrong doer could not be identified. Frequent complaints had been made by the Irrigation Department of the wastage of water; and a general benefit was conferred on the holders of land in any neighbourhood by water being brought into canals for their benefit. The owners of village channels undertook the charge of them for their own benefit and the benefit of their tenants and others. They made themselves responsible for keeping in order the outlets through which the water was given out. Now, if water was wasted or taken surreptitiously, every attempt would be made to identify those people who had benefited by the taking of the water, or the people who had actually committed the offence. If they could be identified—if the owners of land exercised a proper control and vigilance and could identify the persons who were to blame—then the penalty would fall upon those persons only. Those who undertook the charge of the village channels were the people to whom the canal department had a right to look to prevent water being taken away, and if they failed in acting up to their responsibility then only would the penalty fall on them. That was the principle upon which the Northern India Act proceeded, and upon that principle the present Bill was framed. That was absolutely necessary, and without such a section water might be taken and enormous expenditure might be thrown upon the general public for the benefit of the few.

The HON'BLE THE ADVOCATE-GENERAL said that he thought the section of the Bill was necessary, and it was on the ground of necessity alone that such a provision ought to be passed. Having regard to the fact that persons who supplied themselves with water watched the operation of each other with great jealousy; having regard to the fact that water-supply was a constant source of litigation—he had very little doubt that in any case where water was

improperly used the offender would soon be detected, and if this class of persons only used due vigilance, it would be easy to find out who had wasted the water. If that was so, he did not think there would be much hardship.

His Honor the President said that there was no doubt that those who were interested in any water-course were perfectly ready to detect any misuse of water, and able to prevent it if they were so minded. He could assure the hon'ble mover of the amendment that in cases where water-courses were misused, those persons who made use of the water became extremely clever in preventing any abuse if they chose to do so. They had done so in many cases, and their vigilance was very creditable to them. They were thoroughly able to prevent anyone from taking more than was his due, and if they only chose to exercise the same vigilance on behalf of the Government, he was sure they would have no difficulty in fairly doing their best to act up to the provisions of this section.

The motion was negatived, and the section was agreed to.

The next amendment, that the following Section 80 be omitted, then fell to the ground in consequence of the preceding amendment having been lost.

Sections 81 to 90 were agreed to.

On the motion of the Hon'ble Mr. Dampier verbal amendments were made in section 91.

Sections 92 to 95 were agreed to.

The Hon'ble Mr. Dampier then moved the insertion of the following section after Section 95, taken from the Northern India Canal Bill:—

"Any person in charge of or employed upon any canal or drainage-work may remove from the lands or buildings belonging thereto, or may take into custody without a warrant, and take forthwith before a Magistrate or to the nearest police station, to be dealt with according to law, any person who within his view commits any of the following offences:—

"(1.) Wilfully damages or obstructs any canal or drainage-work.

"(2.) Without proper authority interferes with the supply or flow of water in or from any canal or drainage-work, or in any river or stream, so as to endanger, damage, or render less useful any canal or drainage-work."

He said that he wished to introduce this section which gave power to arrest without a warrant, and to remove any person trespassing into the canal premises, and to arrest him in certain cases.

The Hon'ble Baboo Kristodas Pal said that it was such an important section that he should suggest that the consideration of it should stand over.

His Honor the President remarked that it merely made the canal people police. It came to the same thing.

The Hon'ble the Advocate-General said that the section was quite clear, and he could quite understand the objection of his hon'ble friend (Baboo Kristodas Pal) which probably arose out of the supposed conduct of the police in this country.

His Honor the President remarked, for the information of his native colleagues in Council, that the canal authorities were far less likely to be oppressive than the ordinary police. The police officers had many objects in dealing with the people, whereas the canal officers were the suppliers of water,

for which they wanted the people to be customers, and had every inducement to be on good terms with them. They were in the position of dealers in water, and they wanted the people to be customers.

After some conversation, the motion was agreed to.

The remaining sections of the Bill, together with the schedule, preamble, and title, were then agreed to.

CALCUTTA MUNICIPALITY.

His Honor the President inquired whether hon'ble members would agree that the substance of the proposals which he had the honor to make at the last meeting of the Council on the constitution of the municipality be drafted into shape and immediately referred to the Select Committee. He believed that was the pleasure of the Council, but he found that no formal motion had been made at the last meeting. And if hon'ble members would agree to a reference being made, then he should put it into form, so that it should be recorded on the proceedings of the Council. [The members unanimously expressed their approval that that should be done.] The President then put the motion that the question be referred to the Select Committee for free discussion and opinion. He said he had not seen anything up to the present which seemed opposed substantially to what he submitted to the Council. He should accordingly draft what he had proposed, and submit it to the Select Committee, and see what they would make of it there, and the Council could then knead it into form.

The motion was agreed to.

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

Saturday, the 11th December 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble V. H. Schalch, C.S.I.,
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble Stuart Hogg,
The Hon'ble H. J. Reynolds,
The Hon'ble H. Bell,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor.
The Hon'ble Baboo Doorga Churn Law.
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syed Ashgar Ali, Diler Jung, C.S.I.

IRRIGATION.

The Hon'ble Mr. Reynolds said that, in the absence of the Hon'ble Mr. Dampier, it devolved upon him to move the amendments, which stood in the name of the hon'ble member, in the Bill to provide for Irrigation in the provinces subject to the Lieutenant-Governor of Bengal. He would therefore move that the Bill be further considered in order to the settlement of its clauses.

The motion was agreed to.

The Hon'ble Mr. Reynolds said the first amendment he had to propose was in Section 3 (clause VI), line 1 :—

For the words "Court means the principal Civil Court of a district," substitute "Court means, in the Regulation Provinces, a principal Civil Court of original jurisdiction, and in the Non-Regulation Provinces the Court of a Commissioner of a Division."

The amendment was agreed to.

The Hon'ble Mr. Reynolds said he had now to propose the insertion of a clause after clause (*h*) of Section 11, to the following effect:—

"Notwithstanding anything contained in clause (*c*), compensation may be awarded in respect of the loss of any tolls which were lawfully levied on any river or channel at the time of the issue of the notification mentioned in Section 6"

He said that the Bill, as it now stood, provided that no compensation should be awarded in respect of any damage caused by the stoppage of navigation; and at the last meeting of the Council it was agreed that the wording of the section, as it stood, should be extended so as to include claims for compensation in respect of such cases as the Kurratiya River in the district of Rungpore. It seemed a reasonable clause, and he begged the Council would accept it.

The motion was agreed to.

On the motion of the Hon'ble Mr. Reynolds, the word "such" was omitted, and the words "under this section" after the word "compensation" inserted in Section 11, last clause but one, line 1.

The Hon'ble Mr. Reynolds then moved the insertion of the following section after Section 11 :—

"11*a*. If any supply of drinking-water is substantially deteriorated or diminished by any works undertaken in accordance with a declaration made by the Lieutenant-Governor under Section 6, the Canal Officer shall be bound to provide within convenient distance an adequate supply of good drinking-water in lieu of that so deteriorated or diminished, and no person shall be entitled to claim any further compensation in respect of the said deterioration or diminution"

He said it would be in the recollection of the Council that on the discussion of the question as to compensation for damage caused by the deterioration of drinking-water, it was determined that the words "drinking-water," as they originally stood, should be omitted. He believed the principle was accepted by hon'ble members that provision should be made for cases in which there was a loss of drinking-water. He therefore proposed to do so by the section he had moved.

The Hon'ble Baboo Doorga Churn Law objected to the words "substantially deteriorated," and suggested the substitution therefor of the words "so as to be unfit for drinking purposes."

The Hon'ble the Advocate-General pointed out that the suggested wording would leave the matter more vague than before.

His Honor the President said he thought the object of the hon'ble member would be better met by the word "substantial" than by the words "unfit for drinking purposes." Water might be rendered substantially damaged without being unfit for drinking purposes.

The amendment proposed by the HON'BLE BABOO DOORGA CHURN LAW was then withdrawn, and the new section agreed to.

The HON'BLE THE ADVOCATE-GENERAL then moved the omission of paragraph 5, in Section 11, which ran thus:—

"And no compensation shall be awarded for any damage sustained by the person interested which, if caused by a private person, would not render such person liable to a suit."

He said that that clause did not occur in the Act passed by the Governor-General's Council, upon which substantially the provisions of the Bill were based. It was originally inserted for the purpose of carrying out the legal principle established by the courts in England under the Land Consolidation Act, where lands were said to be injuriously affected and which gave a person a right of action. It was thought better at the time to put that principle in a legal form, but on further reflection he found that inasmuch as the Act specified the cases for which compensation should be allowed and those in which it should not be allowed, it might possibly, instead of elucidating matters, obscure them; and that it might conflict with clause (*d*), which referred to the stoppage or diminution of the supply of water through any natural channel.

The HON'BLE MR. REYNOLDS said he had no desire to oppose the amendment. The words were not in the Northern India Act, and there appeared to be some ground for saying that their operation would conflict with the other sections of the Bill. He was prepared to agree to the amendment.

The motion was agreed to.

On the motion of the HON'BLE MR. REYNOLDS, the following omissions were made in Section 25: In line 9 the words "under Section 20," and in line 10 after the word "twenty," the word "one."

In Section 38, in lines 6 and 7, for the words "whose decision shall be final," the following words were substituted:—

"Provided that such appeal be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days of the decision appealed against.

"If no such appeal be preferred, the decision of the Collector, or, if such appeal be preferred, the decision of the Commissioner, shall be final and conclusive."

Verbal alterations were then made, on the motion of the HON'BLE MR. REYNOLDS, in Sections 48, 49, 50, 53, 54, 59, 63, and 91.

HIS HONOR THE PRESIDENT said that he might say that this Bill was one which was worthy of being passed by the Council. It really embodied all that was valuable and useful in the similar Bill which had been previously passed by the Supreme Council for the Northern Provinces and the Punjab. Besides that, this Bill contained fresh provisions which were found by local experience to be suited to the various provinces of this Government, and it had been carefully considered by the Select Committee and also very carefully discussed by the Council at a sitting held a week ago; and inasmuch as these most useful works were in progress both in Orissa and Bengal, it was most desirable that public officers and the people should have a clear law for their guidance. And if it should please the Council to pass the Bill now, HIS HONOR, speaking for the Local Government, would be glad of it.

On the motion of the HON'BLE MR. REYNOLDS, the Bill was then passed.

CALCUTTA MUNICIPALITY.

THE Hon'ble Mr. Hogg moved that the Bill to consolidate and amend the law relating to the municipal affairs of Calcutta be further considered in order to the settlement of its clauses.

The motion was agreed to.

The HON'BLE MR. HOGG would ask the Council to go back to Section 72 of the amended Bill. The amendments which he was about to move had been circulated a week back, and what he had to suggest was the omission of the last clauses in Sections 72 and 73, and the insertion of the following new section after Section 73:—

"73*a*. No refund of rates shall be made under the two last preceding sections unless the same is applied for within six months from the date of cessation of occupation of the house or land on account of which the refund is applied for."

The object was simply to prevent complications which might arise under the Bill if the period was omitted.

The motion was agreed to.

The HON'BLE MR. HOGG asked the Council to refer to the next amendment which stood in his name as the new Section 76*a*, which ran as follows:—

"76*a*. Whenever any house or land has been unoccupied during an entire quarter, the owner of the said house or land shall pay to the Justices one-fourth of the sum which would have been payable as water-rate by the occupier if such house or land had been occupied.

"The sum payable by the owner under this section shall be payable on the first of April, the first of July, the first of October, and the first of January, for the quarters immediately preceding those dates."

He proposed the section with the object of meeting the decision which had been arrived at by the Council in regard to the payment of the water-rate by owners of houses in the event of houses remaining unoccupied for the whole of one quarter. The Council had already decided that the whole of the water-rate was to be collected, not, as at present, from the owners of property, but from occupiers, leaving the occupier to recover, by means of deduction from the rents, one-fourth of the rate paid by him as occupier. Seeing that the occupier was called upon to pay one-quarter whether the house was occupied or not, it became necessary to provide power for the Justices to enable them to recover one-quarter of the rate from owners of property in the event of the house remaining unoccupied for the whole of one quarter.

The motion was agreed to.

On the motion of the HON'BLE MR. HOGG some verbal amendments were adopted in Section 66, which were rendered necessary by the alterations previously made.

Section 251, relating to improvements in *bustees*, having been read—

The HON'BLE MR HOGG said that when this part was last considered in Council, it was decided that the section which gave power to the Justices to carry out improvements and sanitary arrangements among existing bustees should be somewhat less vague than was provided for by Section 251 of the Bill; and it was further suggested by the Hon'ble the President of the Council that in giving that power to the Justices it would be desirable to enable the

Government, in the event of the Justices refusing or not giving effect to the provisions of the section, to take measures with the view of giving effect to them.

As the matter was fully discussed the last time the Bill was before the Council, he presumed no further remarks on the question were called for from him. He would now ask the Council to refer to Section 251*a*: they would find that it was now proposed to give the Justices power to propose such alterations. In the new section he had now provided, he proposed to omit the words "such other alterations as the Justices might consider necessary," and to confine the powers of the Justices to the construction of roads, drains, and sewers, and the filling up of low lands with a view to the removal of disease. He had also in the section given effect to the amendment carried on the motion of the hon'ble member on his left (Baboo Kristodas Pal) to prevent Justices taking action against huts, unless they were inspected and reported upon by two medical officers. According to the sections as they now stood modified, should the Justices be of opinion that these bustees required improvement, they would have to call upon two medical officers to submit a written report to the Justices in meeting regarding the condition of such places. It would then be the duty of these officers to send in a report in writing on the sanitary condition of the blocks of huts, and further to specify the improvements in the way of the construction of roads, drains, and sewers, and the filling up of low lands which they considered absolutely necessary for the removal of risk of disease arising out of the insanitary state of the block of huts. That was the condition proposed in Section 251. He then followed it by a section which provided that if the local Government were of opinion that the Justices had failed to give effect to the provisions of Section 251, it should be within the power of the Local Government to cause such block or block of huts to be inspected by the Sanitary Commissioner for Bengal, who should make a report in writing to the Local Government on the sanitary condition of the locality; and in the event of his reporting that the sanitary condition of the locality was such as to be attended with risk of disease to the inhabitants or the neighbourhood, should specify the huts which should be removed, the roads, drains, and sewers which should be constructed, and the low lands which should be filled up, with a view to the removal of such risk of disease.

The Government could then call upon the Justices to give effect to the provisions contained in the section; and if the Justices again failed to attend to what the Local Government considered absolutely necessary for the improvement of the sanitary arrangements of the huts, then only would it be in the power of the Local Government to take action in the matter. This was provided for in the following clause:—

"If the Justices make default in carrying out the said order of the Local Government, the Local Government may appoint some officer to perform the same, and such officer may exercise all the powers conferred upon the Justices by the last preceding section, and the expenses incurred in that behalf by such officer shall be paid by the owner of the land."

These sections, as far as MR. HOGG was able to understand the wishes of the Council, gave effect to the opinion which was generally expressed as to

narrowing the powers of the Justices and enabling the Local Government to step in, in the event of the Justices failing to carry out their duty, and then only after the Government had requested the Justices to take action in the matter. He trusted, therefore, that the sections would meet with the approval of the Council. With these remarks he begged to move that Sections 251 and 251*a* be inserted in the Bill, in lieu of the present Section 251.

THE HON'BLE THE ADVOCATE-GENERAL said his hon'ble friend the mover of the amendment seemed to think that the Government should not take the initiative. Suppose the Justices did not wish to take measures in this direction., In such a case the Government ought to be entitled to initiate proceedings of a character so necessary to health. There was nothing in the section which compelled them to do so.

The section, the Advocate-General thought, ought to run thus:—"Whenever the Local Government was satisfied that any block of huts was in an unsatisfactory state," and then empower the Government to call upon the Justices to do what was needful in case they failed to take action in the matter.

The HON'BLE MR. HOGG said he would then propose to insert the words "in case the Justices omitted to take action under the last preceding section," then the Local Government should have the power of directing or taking such steps as may be deemed necessary.

The HON'BLE BABOO KRISTODAS PAL said that the sections as amended was certainly less open to objection than those which had been brought forward before. But in endeavouring to make the provision of the law definite, the hon'ble member in charge of the Bill had introduced certain works which, perhaps he knew better than anybody else in the town, could not be carried out in practice. He alluded to the filling up of low lands. This question was over and over discussed by the Justices, and the hon'ble member had himself admitted that the operation would involve an amount of expenditure which many proprietors would not be able to meet; and not only that, but it would not be practicable to get the earth necessary to fill up low lands with which the *bustees* abounded. Then, again, as the section was worded, BABOO KRISTODAS PAL understood it to mean that works which might be specified by the medical officers must be carried out by the Justices, and that they were not to exercise any discretion in the matter. Suppose the medical officers recommended that a road 18 feet broad should be constructed. [The Hon'ble Mr. Hogg:—"all or *any* of the works."] But the Justices would have no discretion to modify any of the recommendations of the medical officers. He was of opinion that the Justices should have a proper discretion in regard to the carrying out of the works, that was to say, to modify, if necessary, the proposals of the medical officers.

Then, again, clause 3 referred to the removal of huts. The occupiers were the persons who ought to remove huts, but the section also gave power to the Justices requiring either the occupier or owner to remove huts. The expenditure which would be thus entailed would fall upon the owners, and it was anything but fair that the proprietor should be made to bear the expenditure which would be incurred in the operation. Perhaps tenants might claim compensation for the removal of huts.

Then he came to the power proposed to be given to the Government to carry out such works, should the Justices omit to take action or neglect to carry out the law. He could well appreciate the anxiety with which Government contemplated the improvement of bustees, particularly when so much had been written and talked about sanitation by sanitary authorities in England. He submitted that it had not been proved that the Justices had been wanting in duty to give effect to the law. It had been admitted by the hon'ble member in charge of the Bill that the law as it now stood needed revision by reason of its indefiniteness. It was now proposed to give definite and sufficient powers to the Justices. If the Justices had deserved the confidence of the Government and the public in carrying out all other improvements in the town, he did not see why they should be restricted in this matter. About six months ago, the Chairman of the Justices energetically moved in carrying out improvement of the bustees; and he believed the Hon'ble member would admit that the Justices heartily seconded him. So far as the works undertaken had gone, the Justices, as far as he was aware, had placed no obstacles in the way, though there had been difference of opinion in matters of detail; but on the general principle there had been perfect unanimity of opinion. Some of the owners had also shown a good spirit, and made advances to carry out improvements suggested by the Justices. Now, seeing that even in England it had been found necessary to guard the power of the sanitary authorities with all manner of restrictions, he did not think it was fair that there should be introduced a sort of double Government in the sanitary administration of Calcutta. If it had been the fact that the Justices did not take due action, or had failed in performing their duties, then it might be proper and reasonable to arm the Government with the powers desired. But, as he had observed, the Justices had not in any way neglected their duty, and it would be showing a want of confidence in them to introduce the new principle.

The Hon'ble the Advocate-General said that the power which it was intended to confer upon Government by the new section was absolutely necessary. It might be perfectly true that the Justices had done all their work in an entirely satisfactory manner, yet it was obviously for the benefit of the town of Calcutta that these nuisances should be removed, and that they should be removed with a strong hand. It therefore appeared to him that all the power which could be brought to bear for getting rid of these nuisances or effecting a reform in these matters should be vested either in the Government or the Justices. The power proposed to be vested in the Justices would not be the least reflection upon the corporation, for if by some chance or by want of funds or other causes they professed themselves unable to carry out these works, he did not see why the Government should not call their attention to them, and, if they failed to do anything, carry out the works. This principle was followed in Section 251*a*. Therefore, so far from this power being in any way in the nature of a supposed animadversion upon the conduct of the Justices, it simply afforded greater protection to the community, which suffered from the existence of these nuisances.

The Hon'ble Mr. Reynolds proposed the omission of the words "other than an ordinary meeting" in the second line of Section 251. He did not see any

reason why a special meeting should be called for the purpose of considering these questions.

The HON'BLE MR. HOGG said that if the hon'ble member would refer to Section 26 of the Bill, he would find that an ordinary meeting consisted of six Justices. He thought it was desirable that when any important work was taken in hand, it should come before a meeting which should be composed of not less than nine Justices. That was the principle adopted in Select Committee, and one which might be very well accepted by the Council.

HIS HONOR THE PRESIDENT had one word to say in regard to what had fallen from the hon'ble and learned Advocate-General as to the last clause of Section 251*a*, which said that the expenses incurred on that behalf by such works should be paid by the owners of land. Well, now there was no limit to expenditure. How was the owner to improve if he refused to pay, or how could the expenses be recoverable? Would it not be desirable to make some condition which would make that clear, in order to allay apprehension on the part of the proprietors of these bustees? Every man liked to know the possible limit of charge. A case might arise in this wise:—Supposing there was a very small block which constituted the sole property of the owner, and when the expenses came to be settled the owner said he was unable to pay. This would be a somewhat improbable case.

THE HON'BLE MR. HOGG explained that there was a sufficient protection given to owners of property. These places were to be inspected by two medical officers, and the Government, too, before any action was taken.

HIS HONOR THE PRESIDENT thought that it was a fair charge upon the owner of property. He believed as a matter of fact that most of these blocks were large ones, and held as valuable property by rich native gentlemen; but there might be possibly some exceptions to them, and he presumed provision might be made to cover all such exceptions. There would then be this difficulty, that it might happen that a very objectionable neighbour might be part owner, and if a limited area was inserted in the Bill, the Justices would not be able to deal with these blocks at all.

THE HON'BLE MR. HOGG said that as in certain cases very heavy expenditure would fall upon owners, he would not object to strike out the word "sewers" in Section 251.

The HON'BLE THE ADVOCATE-GENERAL said he thought that as the hon'ble the mover of the Bill did not object to striking out the word "sewer," the provision would meet most of the cases in which the owner of the property to be improved was a poor man; and he suggested that the amount expended should be recoverable by instalments.

THE HON'BLE MR. BELL said that it seemed to him very injudicious to lay down any particular limit of expenditure, and unless they had some definite information on the question, he thought it would be wrong for the Council to fix any such limit. In the case mentioned by the hon'ble member opposite, it was but fair to suppose that the works would be carried out by the Justices as economically as possible, and without entailing any particular hardship upon private individuals.

There was one remark made by the hon'ble member opposite (Baboo Kristodas Pal) with which, however, he quite concurred, and to which he should like to call the attention of the Council for one moment. The hon'ble member suggested that the Justices should have a discretion in carrying out the works suggested by the medical officers. This seemed a reasonable suggestion. It might be that the Justices might not choose to carry out any works suggested by the medical officers. They might have plans of their own, which, in a sanitary point of view, would prove equally efficacious and more economical at the same time. If the works the Justices did carry out were not sufficient, it would of course be open to the Local Government, under Section 251*a*, to insist upon the work being properly done. He certainly thought it was a question for consideration as to whether it was necessary to restrict the Municipality to carrying out works suggested by the medical officers, or whether it should not have the power of inaugurating works on their own motion. As he read the section, the Justices must confine themselves to carry out works suggested by the medical officer.

THE HON'BLE MR. HOGG desired to point out to the hon'ble member who last spoke that these works were very limited in their nature. The first point was that the medical officers had to declare that there was actual risk of disease owing to the insanitary condition of the block. Having come to that decision, it then became the duty of the medical officers to decide what huts should be removed, or what roads, drains, or sewers should be constructed, or low lands filled up. These were the only works which fell within the scope of the section which it would be within the power of the medical officers to suggest to the Municipality; and certainly if the medical officers were agreed in their advice to the municipality, he thought it should be left to those officers to decide what works were absolutely necessary to remove the risk which they declared actually existed. He was not therefore prepared to accept the proposal that the Justices should be allowed to set aside the opinion of the medical officers as regards the works to be carried out; but he was quite prepared to adopt what the hon'ble and learned Advocate-General suggested, and to give the Justices power to carry out any special works. That seemed to him to meet all the objections raised by his hon'ble friend on the left (Baboo Kristodas Pal).

THE HON'BLE MR. BELL said that when he made the suggestion he did not notice the words as they stood. He thought the hon'ble member in charge of the Bill had quite met the objection that had been urged.

THE HON'BLE BABOO KRISTODAS PAL said he might mention one case which occurred only last week, and which was in the recollection of the hon'ble member in charge of the Bill. There was a tank in a bye-lane in Dhurrumtollah which the Health Officer considered most injurious to health. Now, the Chairman of the Justices had inspected the tank, and did not consider it to be so injurious. The Health Officer recommended that the tank should be at once filled up. The Chairman was of opinion that similar tanks were in existence in other parts of the town, and if this particular tank was filled up, the other tanks should also be filled up. The Justices concurred with the Chairman, and did not adopt the recommendation of the Health Officer. Now, common sense

might suggest that certain things could not be carried out immediately or absolutely, and yet the medical officers might be of a different opinion; and as the section was worded, the Justices would be bound to carry out all the works proposed by them.

His Honor the President said it appeared to him that the Council had better retain the word "sewers;" but perhaps the retention of it would render the works too expensive in the case of large blocks.

The Hon'ble Mr. Hogg proposed the insertion at the end of the clause of the words "or any portion thereof," and at the end of clause 3 the words "and it shall be within the power of the Justices, in case of poverty, to limit the construction to any portion of such works." He thought this would meet all cases.

The amendments were then put and agreed to, and the amended Sections 251 and 251*a* were carried.

The Hon'ble Mr. Hogg then moved the introduction of the following words after Section 258:—

"Provided that no such license be granted by the Justices for the use of any place situated in the Suburbs as a slaughter-house without the permission in writing of the Municipal Commissioners of the Suburbs, except such place has been used as a slaughter-house before the passing of the Act; and provided further that all fees levied by the Justices for licenses to use places situated in the Suburbs as slaughter-houses be paid by the Justices to the Municipal Commissioners of the Suburbs."

The motion was agreed to.

The Hon'ble Mr. Reynolds moved the insertion of the following words at the end of Section 258:—

"Provided that no license shall be necessary for any slaughter-house which exists or may be erected with the permission of Government upon land being Government property."

The Hon'ble Mr. Hogg said he regretted he was unable to accept the amendment proposed by the Hon'ble Mr. Reynolds, and he would detain hon'ble members of Council for a few minutes to explain the circumstances which led to the question of the inspection of slaughter-houses, and the reasons for which present legislation was sought for. So far back as 1864 a commission was appointed under the orders of Government, consisting of Messrs. Schalch, Wells, and Horace Cockerell, whose duty was to inspect and report upon the existing slaughter-houses in the suburbs, and to suggest what arrangements would be necessary with a view to provide the town and the suburbs with suitable places for the slaughter of cattle. The committee appointed by Government condemned in very strong terms all the slaughter-houses in the suburbs, declaring that it was absolutely necessary for providing a proper supply of meat that a slaughter-house should be constructed in the immediate vicinity of the main sewer, and also within reasonable distance of a full and pure supply of water. The suburban municipality, in whose jurisdiction the slaughter-house was proposed to be built, were unable to undertake the work. Government then looked to the Justices in Calcutta to carry out the suggested improvements. Their funds were in a more flourishing condition than those of the sister municipality, and the Justices undertook the work on the understanding arrived at between the Suburban Commissioners and the Calcutta

Municipality, and with the assent of Government, that no slaughter-house should be constructed in the suburbs to compete with the slaughter-house the Justices were willing to construct from municipal funds; and it was further arranged that all existing slaughter-houses in the suburbs should be absolutely closed, including the one at Kidderpore. The question then arose whether the Military authorities—that was, the Commissariat—should slaughter cattle at the new slaughter-house the Justices were about to construct. The Commissariat authorities were opposed to the arrangements, but the Committee, however, were very decidedly of opinion that the Kidderpore slaughter-house, along with other nuisances of the same class, should be closed, and that the Commissariat Department should be compelled to have their cattle slaughtered at the new slaughter-house to be constructed by the Justices.

The recommendations of the Committee then went up to Government with a protest from the Commissariat Department. The local Government agreed with the recommendation of the Committee that the Commissariat should slaughter their cattle at the municipal slaughter-house. The question was then referred to the Military authorities with the Government of India, and they also were of a like opinion. Consequently orders were issued for the closing of the institution at Kidderpore, and that all slaughtering, both for the town and suburbs, should be carried on at the Justices' new slaughter-house. Under that clear understanding the Justices spent nearly three lakhs of rupees, not to carry out any improvements which they had themselves initiated, but with a view merely to acting up to the express wishes of the Government of Bengal and the Government of India. Well, when the slaughter-house was constructed, very great difficulty was found in closing the old slaughter-houses in the suburbs, and special legislation was resorted to. The Act passed was not found sufficient, and subsequently they were closed, as being public nuisances, under the Criminal Procedure Code. Owing to the one at Kidderpore in the possession of the Military authorities being generally used by them, the Justices were unable to proceed against them, and it was allowed to continue an admitted nuisance for the last ten years merely because it had the support of the Military authorities; and the Military authorities, notwithstanding the decision arrived at by the Governments of India and Bengal, would not use, and had not used, the slaughter-house made for the use of the public. Now, Mr. Hogg believed, owing to the action of His Excellency the Commander-in-Chief, the slaughter-house at Kidderpore was to be closed, and the Military authorities had suggested that another one should be constructed at Hastings. The matter was placed before the Justices so long back as July 1874, who recapitulated the whole facts of the case, and the report wound up by saying that the Justices had no desire to stand in the way of the wishes of Government.

After the matter had been discussed, the Justices informed the Government that the conditions laid down by Government had been acceded to by them, and that in reference to the proposed building at Hastings, they were prepared to grant a license, provided the Military authorities could satisfy them that its sanitary arrangements were such as would meet the conditions laid down in that letter, and that a private independent supply of water, apart

from the Calcutta supply, was provided for its conservancy arrangements. The only parties that had a right to object to the present arrangements were the Suburban Municipality. They, however, entered into an agreement between themselves and the Calcutta Municipality, and they were now perfectly satisfied, and only stipulated that since the Justices had by legislative enactment deprived them of the right to issue licenses, they should have a reasonable amount paid to them yearly, and that amount was fixed by them at Rs. 1,000. But it was true the Chairman of that Municipality suggested that the amount to be paid should be open to revision after five years. However, MR. HOGG had not thought it desirable or necessary to accede to that proposal, seeing that Rs. 1,000 annually was ample payment, and seeing that the Justices' slaughter-house being situated in the suburbs, they had to pay the usual house and other rates levied in the suburbs to the Commissioners. The Suburban Commissioners being satisfied, the Council was now asked to make exceptional legislation in favour of Government. He did not see why Government should object to let itself be governed by the rules laid down by themselves. No doubt if Government could satisfy the Justices that they desired to construct a slaughter-house upon proper sanitary conditions, supplying it with water, the Justices would be very ready to grant a license for the construction of a building at Kidderpore or elsewhere. But he did not think that the Council should, simply because the property belonged to Government, declare by legislation that Government should be entitled to use a building as a slaughter-house on land belonging to Government within the suburbs, and, as he understood also, within the town of Calcutta. He would further submit that although there had been no legal binding agreement between the Calcutta Justices and the Suburban Commissioners and Government in respect of the number of slaughter-houses, yet there was a distinct understanding arrived at in 1864 on the requisition of Government, and upon that requisition the Calcutta Justices had expended, from monies derived from the rate-payers, nearly three lakhs of rupees; and it seemed to him, therefore, that this Council should hesitate before deciding upon exceptional legislation which would virtually set aside an agreement arrived at in 1865. For these reasons he was unable to accept the amendment.

The HON'BLE MR. REYNOLDS wished to point out that the proposed establishment would not be a new slaughter-house, but only the erection of a new one in place of the old, with certain improvements. He was quite aware of the conditions made by the Justices in 1874, but he was not aware of the acceptance of those conditions by Government.

The HON'BLE MR. HOGG said that they had been officially accepted by Government.

The HON'BLE BABOO KRISTODAS PAL entirely concurred with the hon'ble member in charge of the Bill in the view he had taken as to the question which arose on the amendment. If hon'ble members would read the correspondence which passed between the Justices and the Government, and which resulted in the establishment of the Tengrah slaughter-house, they would find that the work was undertaken by the Justices at the instance of Government,

and for the benefit of the general community in the town and suburbs. It would, he thought, taking the view which his hon'ble friend had taken, be a sort of breach of faith on the part of the Government to deprive the Justices now of the revenues derived from the slaughter-house by authorizing the erection of one on Government land without getting a license from the Justices.

It was urged, in favour of the amendment, that the Kidderpore market would draw its supply of meat from the proposed slaughter-house. Now, if the interests of the Kidderpore market were to be consulted in preference to those of the town, he submitted that Government would be showing an undue preference to the former. Besides, so far as he could understand the hon'ble member in charge of the Bill, the Commissariat slaughter-house at Kidderpore was included in the report of 1864, and if it had not been done away with, it was simply because the Military authorities did not defer to the orders of Government. The Justices were strong enough to suppress private slaughter-houses throughout the suburbs, but were powerless against the Military authorities. Now again it was proposed to make an exceptional case of the Kidderpore market because the Government was interested in it. BABOO KRISTODAS PAL thought that the only party which had a legitimate interest in the matter was the Suburban Municipality; and as a compromise had been effected between the two Municipalities by a division of the license fees, he did not see any reason why the Government should put in a claim for the erection of a slaughter-house on their own account.

The HON'BLE the ADVOCATE-GENERAL said that some years back the subject of slaughter-houses was discussed in this Council, and a law was passed in respect of them. It was declared that existing slaughter-houses in the suburbs were objectionable, that they were nuisances and ought to be removed, and one place constructed and adapted for all parties. He could well remember the time when private persons complained very bitterly of the resolution which had been arrived at. The principle referred to being once established, he could not see how that principle was to be broken in upon simply on the ground that it was convenient to Kidderpore that a slaughter-house should exist there. The same remark applied to every other market in Calcutta. It had also been said that it was not proposed to erect a new slaughter-house. He took it that if you left one place and went to another, it was making a new slaughter-house. If any exceptional and special grounds had been set forward before the Council for the proposed amendment, he would have been prepared to deal with the question. Beyond the reduction of some Rs 300 in the shape of rents, there was no loss. The loss of revenue would not be great, inasmuch as that market would be supplied in the same way as the other markets were. He therefore thought they ought not to make any sort of exception in favour of a particular case, and it would not be right on the part of the Council to carry out by legislation a measure which would tend to the injury of the Justices. On these grounds he objected to the amendment.

THE HON'BLE MR. REYNOLDS said that the sense of the Council being against the amendment, he would withdraw it.

The section as amended was then agreed to.

THE HON'BLE MR. HOGG moved at the end of Section 259 to add the following words :—

"Provided that the Justices shall annually pay rupees one thousand to the Municipal Commissioners of the Suburbs by way of license fee for the slaughter-house established by the Justices at Tengrah."

This would meet the objection which had been placed before the Council by the Suburban Municipality. They had addressed the Council, and their representations were in the hands of hon'ble members. They urged that it would be unfair to deprive them of an income which they previously enjoyed from licensing slaughter-houses in the suburbs. He consulted with the Municipal Commissioners regarding their objections, and the amendment he now proposed to introduce would, he believed, meet all the objections the Suburban Commissioners had.

The motion was agreed to.

Sections 260 to 266 were severally agreed to.

The HON'BLE MR. HOGG moved the omission of the words "under the section" in line 32 of Section 267.

The motion was carried, and the section as amended agreed to.

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the words "not being firewood exposed for retail sale" after the words "moved" in clause (j), of Section 268, but the motion was negatived.

The section as it stood was then agreed to.

Sections 269 to 290 were severally agreed to.

On the motion of the HON'BLE BABOO KRISTODAS PAL, the words "within a year" were inserted after the word "conviction" in line 1 of Section 291, and the section as amended was agreed to.

Section 292 was agreed to.

The HON'BLE BABOO KRISTODAS PAL moved the omission of Section 293, but the motion, on being put, was negatived, and the section as it stood was agreed to.

Sections 294 to 320 were agreed to

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the words "who shall not be a servant of the Justices" after the word "informer" in line 5 of Section 321, but the sense of the Council being against it, the motion was withdrawn.

The section as it stood was agreed to.

Sections 322 to 324 were agreed to.

THE HON'BLE THE ADVOCATE-GENERAL moved the substitution of the words "which is to be determined by" for the words "referred to" in line 1 of Section 325.

The motion was carried, and the section as amended was agreed to.

Sections 326 to 334 were severally agreed to.

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the words 'duly registered" after the word "post" in paragraph 3, line 3 of Section 335.

The motion was carried, and the section as amended was agreed to.

Sections 336 to 338 were severally agreed to.

The HON'BLE BABOO KRISTODAS PAL moved the addition of the following proviso at the end of Section 339 :—

"Provided that the owner who makes such default shall be called upon to show cause why he will not execute the work required to be executed by him."

The HON'BLE MR. HOGG objected to the addition of the proviso, on the ground that it was not in the interests of the rate-payers.

The motion was by leave withdrawn, and the section was agreed to.

Sections 340 to 347 were agreed to.

Schedules 1 to 9 were agreed to.

The postponed Sections 1, 2, and 3, and the preamble and title, were agreed to.

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