The Hon'ble MR. GHOSE moved that section 55 of the Bill be omitted. He said:—

"If my motion is carried, the result will be that section 210 of Act III of 1884 will stand, instead of the new section which is proposed to be substituted for it. Section 210 proceeds on the recognized and intelligible principle of interfering with private rights on the supreme ground of the public safety. Section 55 of the Bill, on the other hand, makes quite a new departure. It proposes to confer the most ample and plenary powers on Municipal Commissioners to interfere not only on the ground of the public interests being endangered, but in the supposed interest of the private owner himself. The interests of the public are amply safe-guarded by section 210 of the existing Act, coupled with section 242 as amended by section 65 of the Bill, the result of that amendment being that the owner is forbidden to let his house for hire if it is in an unsafe or unstable condition; while section 210 provides against any danger to the public. But the result of passing section 55 of the Bill will be this: that if a person has a house surrounded by a large compound, so that the condition of that house can by no possibility be a source of danger to the public or to passers by, and although the owner does not let the house for hire, but lives in it himself, still the Chairman or Vice-Chairman of the Municipality, if he happens not to be on very good terms with the owner of the house—and there is a great deal of party-feeling in the mufassal—it will be in the power of that official to inspect the premises, and having discovered, or pretended to discover, some crack in a wall of the house—and there are few houses, not excepting public buildings, and certainly not excepting the High Court, which have not some cracks in the walls—he will be at liberty to call upon the owner to pull down his house within seven days; and if he fails to carry out that order, then the Chairman or Vice-Chairman, under section 175 of the Act, may proceed to pull down the house, and hold the unfortunate owner responsible for the expense incurred in doing so. And when it is remembered that the order under this section is final and not open to appeal to any independent tribunal, the Council will, by passing section 55 of the Bill, place a most terrible engine of oppression in the hands of an unscrupulous Chairman or Vice-Chairman.

"Besides, if you once depart from the recognized principle of legislation in these matters, where are you to draw the line? If you give this power, are you

going to authorize the Commissioners to order their Health Officer to pay domiciliary visits in order to see that nobody takes any unwholesome food, or to order the Constable of the beat to see that every person takes a certain amount of healthful exercise, and retires to rest at a particular hour? I venture to think that interference with the rights of private property is only justifiable on the principle of safe-guarding the interests of the public, and, as might be expected, that is the principle upon which the law of England is based. The section of the Towns Improvement Clauses, Act of 1847 (section 75), which corresponds with this section, says:—

'If any building or wall, or anything affixed thereon, within the limits of the special Act, be deemed by the Surveyor of the Commissioners to be in a ruinous state, and dangerous to passengers or to the occupiers of the neighbouring buildings, such Surveyor shall immediately cause a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner of such building or wall, &c, &c.'

"Therefore, the only safe and sound principle of legislation in this direction is the principle of protecting the public from danger. I think no case has been made out for departing from that principle, and allowing Municipal Commissioners to interfere at their own sweet will with the rights of private owners of property. I therefore move the omission of section 55 of the Bill."

The Hon'ble MR. COLLIER said:—"I drafted the section, and it is as well I should say what I have to say in advance of the hon'ble member in charge of the Bill. The hon'ble mover of the amendment referred to section 75 of the Towns Improvement Clauses Act. You will observe that that Act goes further than this section which we propose to abolish. It gives the Commissioners power to take down a building which is dangerous to passengers and to the occupiers of neighbouring buildings. The inmates of dangerous buildings are dealt with in England under other Acts. There are three classes of persons to be protected in regard to dangerous buildings. These classes are the inmates of the building, the occupiers of neighbouring buildings, and passers-by, or the public generally. Section 210 gives no power to interfere when a building is dangerous to the inmates or to the occupiers of a neighbouring building. It may be about to fall on the heads of the inmates, or to bring down the neighbouring building, and yet the Commissioners are not to interfere. The Hon'ble the Legal Remembrancer will be able to inform you that there have been several cases in which references have been made

to him as to whether action could be taken under section 210 to prevent a house falling down on the head of the inmates. The answer in all such cases has been in the negative, section 210 only conferring powers to protect passers-by and the public. The hon'ble mover characterizes this section as a new departure. In the Calcutta Act, section 233 gives the Commissioners the powers which are proposed to be given by section 65 of this Bill. It provides that if any building be deemed by the Commissioners to be in a ruinous state, or likely to fall or to be in any way dangerous, they shall cause a hoard or fence to be put for the protection of passengers, and shall cause notice to be given to the owner and to the occupier, requiring them forthwith to take down, repair, or secure such building as the case shall require. It gives the Commissioners full discretion as to whether they are to require the owner or the occupier to take down the building or not. The same power is conferred in the Municipal Acts in other parts of India. In the City of Bombay Municipal Act, section 354 authorizes the Municipal Commissioners to compel a building to be taken down, for the protection of the inmates, or for the safety of the occupiers of neighbouring buildings, or to protect passers-by.

"Nothing can be fuller than the language of the Bombay Act. Then in the City of Madras Municipal Act, section 298 provides that if any building is in any way dangerous either to the inmates, or to the occupiers of neighbouring buildings, or to passers-by and the public generally, similar action may be taken.

"Other Municipal Acts also contain practically the same provisions. The Central Provinces Municipal Act, the Punjab Municipal Act, and the British Burma Municipal Act, contain similar provisions, but I do not think it necessary to read them all. I have shown that the Calcutta, Madras and Bombay Municipal Acts contain precisely the same provisions in this case. The hon'ble mover's remark, therefore, that section 65 of the Bill represents a new departure is quite unfounded."

The Hon'ble Sir Charles Paul said:—"I do not know whether the hon'ble mover of the amendment has read section 210, the language of which appears more extensive than section 55 of the Bill. It provides that if any house, wall or structure shall be deemed by the Commissioners to be in a ruinous state *or in any way dangerous*, they may do such and such things."

The Hon'ble MR. GHOSE in reply said:—"My objection to this section is to the words 'dangerous to the inmates of such building.' I have no objection to the power given to interfere where the safety of the public or of passengers, or of neighbouring buildings is concerned, but I object to the Commissioners interfering with me as respects my own house, and saying to me when I am living in my own house, and there is absolutely no danger to the public, you must pull down your house. If it will commend itself to the learned Advocate-General, I would ask leave to alter the form of section 55 of the Bill by omitting the words 'inmates of such building,' and leave it to apply to the inmates of any other building."

The Hon'ble SIR CHARLES PAUL said:—"I certainly think that the inmates and servants of a building which appear to be dangerous should be protected. I prefer section 210 of the existing Act."

The Hon'ble THE PRESIDENT said:—"The hon'ble mover of the amendment spoke as if the only case that is intended to be provided, is the case of a person living in his own house, and he maintains that the owner has a perfect right to commit suicide and to slaughter the members of his own family and his servants; the Council will remember the cases of collapsed houses which occurred in Bombay, where the inmates had no connection with the proprietor of the house, save that they had to pay rent to him. We have as much right to protect the inmates of the house itself, as the passers-by on the road, from the collapse of the house. My feeling is, that the section we have in the Bill ought to stand."

The Motion was put and negatived.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in section 59 of the Bill, in section 218, the words "two hundred and six" be omitted. He said:—

"Under section 206, a house which has been burned down or taken down for the purpose of repair, such house projecting beyond the regular line of the road or drain, may be required to be set back to the regular line of the road or drain. The section does not provide any penalty for non-compliance with the requisition that may be issued in this behalf, and it is proposed to correct this alleged defect in the law by section 59 of the Bill. To

me this appears to be a very hard measure—when a house is burned down, it is a great misfortune to the owner; the Commissioners take advantage of his misfortune and call upon him to put the house back, and under this section he will be liable to a penalty for not doing so. This does not commend itself to my notion of the fitness of things. So far as one can judge, section 206 has been inserted in section 59 of the Bill to bring about legal symmetry, but it appears to me that it is attended with practical hardship. Having regard to the fact that no administrative inconvenience has been felt, I submit that my amendment should be accepted."

The Hon'ble MR. BOURDILLON said:—"I do not think the Council will be affected by the sentimental argument, which the hon'ble mover of the amendment has brought forward. It is not the intention of the Bill to enable Municipal Commissioners to aggravate the misfortune of a rate-payer whose house has been burned down by fining him for not carrying out orders to rebuild it. The intention is only to place the section on a par with similar sections in the same part (Part V) of the Act. The words 'section two hundred and six' were added of set purpose, because, as the hon'ble mover of the amendment has pointed out, no sanction is provided in section 218 for the disregard of an order passed under section 206. The only difference between that section and other sections of a similar character for a breach of the provisions of which a penalty is prescribed under section 218, is that when a house has to be rebuilt, the Commissioners may order it to be set back under section 206, and in this solitary case may offer compensation. In the other cases no compensation is required, but the mere fact that compensation is to be awarded under that section is obviously no ground for saying that the person who receives an order passed for the general good may be at liberty to set it at defiance."

The Hon'ble MR. BONNERJEE said:—"I do not quite understand the meaning of this section. It says that in section 218 of the Act, the words 'two hundred and six' shall be inserted: in other words, it provides a penalty for non-compliance with the requirements of section 206. That section authorises the Commissioners to insist that a person, whose house is burned down, should set it back to the line of adjoining buildings. Is it intended that a person, who has received direction from the Commissioners to set back his house, but who does not re-build at all, should be liable to the penalty? That certainly is the

grammatical construction as I read the proposed section and section 206 of the Act. Why should not this matter be left to be dealt with under the building regulations?"

The Hon'ble MR. COLLIER said:—"I wish to point out that the order to be made by the Commissioners under section 106, will be an order to the owner of the house that if he does rebuild it, he must build it at a certain distance from the road. They will not order him to rebuild the house, and his not rebuilding it would not be an offence, but if he rebuilds it in a different position from that indicated in the order, that will be an action which it is intended to punish."

The Hon'ble MR. GHOSE said:—"I desire to point out that section 206 deals with the case of a house which, having existed before the Act is introduced into the municipality, the Commissioners desire to take advantage of the owner's misfortune to do what but for that misfortune they would have no power to do. Section 206 of Act III of 1884 is not coupled with any penalty, but I do not think that was an oversight, but was deliberately done, because in the latter part of the section it is provided that the Commissioners may pay reasonable compensation to the owner of the house if any damage is caused. Therefore the Legislature did not look upon the owner in this case as a wrong-doer, but simply empowered the Commissioners to take advantage of the opportunity to widen the road; consequently in this class of cases there is no reason why a penalty should be attached."

The Hon'ble SIR CHARLES PAUL said:—"There really must be some misconception of the meaning of section 206. It merely provides that where a house is burned down or taken down to be rebuilt, the border line of the house shall be set back. Section 59 of the Bill merely provides for an omission. Why should a penalty be provided for omitting to remove a projection or encroachment under section 204, and not for neglecting to put back a house to the line of road when it is going to be rebuilt? The one is as necessary as the other."

The Hon'ble THE PRESIDENT said:—"I understand that the only objection made to the inclusion of section 206 is that in section 59 there is already a provision in the law, and therefore there is no necessity for inserting that section. Where section 175 of the Act is in force, it provides that the Commissioners

may execute the work themselves. That obviously does not apply to the case under consideration: the Commissioners could not rebuild the house for the owner. The requisition is not that he should build, but if he does build he must comply with the requisition. The building regulations to which the Hon'ble MR. BONNERJEE refers, are only in force in about forty municipalities in the whole of Bengal. Sections 236—244 therefore we cannot fall back upon. It is obviously necessary that if the Commissioners do issue a requisition, there should be some power to enable them to carry it out, and therefore I think this amendment should be rejected, and the words 'section two hundred and six' should remain in section 59 of the Bill."

The Motion was put and negatived.

The Hon'ble MR. WOMACK moved that in the second line of sub-section (*3*) of section 237, after the word "house" the following words be added:—"any alteration from the plan submitted be made, by which." He said:—

"The object I have in view in proposing this amendment is not the protection of the owner of any property or house which is being erected or re-erected from penalty on account of any wilful breach of the building regulations, but the prevention of an injustice being imposed upon him in being compelled to alter a building which is erected in accordance with plans which have been approved by the Commissioners. It occasionally happens that plans are submitted and sanctioned which contain some breach of the building regulations. I submit that it is the duty of the Executive to thoroughly examine the plan before giving permission to build. Provided the plans and specifications are not departed from, I hold that the Commissioners have no right to cause any alteration of the building to be made afterwards, or any portion of it to be pulled down."

The Hon'ble MR. BOURDILLON said:—"This amendment does not seem to be a very important one, or to raise any question of principle. It will have the effect certainly, as pointed out by the hon'ble member, of protecting from interference persons who have commenced in good faith to build according to a plan wrongly sanctioned by the Commissioners. It is conceivable, however, that not only by departing from the sanctioned plan, but also by deviations from the sanctioned materials and so forth, the orders of the Commissioners

may be disregarded, and, if the amendment is carried, the Commissioners will be authorized to step in and interfere in only one class of cases. It is for the Council to determine whether they will confine the power of the Commissioners to one class of cases, or not."

The Hon'ble MR. ALLEN said:—"I think the amendment is somewhat in a wrong place. The new section 237 gives power to make rules in certain matters, and sub-section (*3*) provides that if any rule is violated, the Commissioners may require the building to be altered or pulled down. There is nothing about a plan in the section."

The Hon'ble THE PRESIDENT said:—"I think I may venture to say on behalf of the Council that the intention of the hon'ble mover of the amendment is to provide that when a building plan is sanctioned and the building is erected in accordance with that plan, it should not be open to the Commissioners afterwards to say that the plan was in violation of the rules; but I think the Hon'ble the Legal Remembrancer is right in saying that the place in which it is proposed to introduce the amendment is not the right place, the first reference to a plan being in section 238. I propose at the next meeting that we should adopt this amendment and introduce it in a place most suitable for carrying out the intention of the hon'ble member."

The further consideration of this amendment was postponed to the next sitting of the Council.

The Hon'ble MR. GHOSE rose to order. He said:—"I find that the hon'ble member, who represents the Trades Association, has an amendment on sub-section (*4*) of section 237 in regard to the same matter with reference to which I have also an amendment. I gave notice of this motion several days before the meeting of the Council on the 17th of March last. I did not receive notice of the motion which the hon'ble member intends to propose until the meeting of the Council on the 14th of April. I find on the agenda paper of the 17th of March my amendment finds a place, but there was at that time no amendment in the name of the hon'ble member. But on the agenda paper for to-day, I find the hon'ble member's amendment on the same subject as mine, but in a diametrically opposite direction has precedence of my amendment. I desire to know on what principle precedence has been given to the hon'ble member's amendment?"

The Hon'ble THE PRESIDENT said:—"In regard to the question put by the Hon'ble MR. GHOSE, I do not think there is any definite rule on which motions are arranged, and it will certainly be inconvenient always to arrange notices of motion according to the priority in which they are sent in. The Assistant Secretary attempts to arrange them according to the convenience of the subjects for discussion. In the present case, one hon'ble member proposes to omit the words 'at the request of the Commissioners;' another proposes to add to them the words 'at a meeting.' It seems to me that the motion to leave out the words should come first, because, if the motion is carried, then there will be nothing to which any words can be added. If, on the other hand, the motion is lost, then the motion to add the words 'at a meeting' comes in. Therefore the order in which these motions have been put in the list is the correct one, having regard to the convenience of the Council in discussing the subject."

The Hon'ble MR. WOMACK also moved that in sub-section (*4*) of section 237, the words "at the request of the Commissioners" be omitted. He said:—

"The building sections are to my mind among most important provisions of the Bill. They will if properly carried out contribute not only to the increase in the value of property, but also to the health and comfort of those who live in the municipality. I think therefore that the Local Government should reserve to itself the power of bringing these regulations into force in the event of the Commissioners failing to apply for their extension. I believe I am right in stating that the building regulations in Calcutta are in a manner permissive, that is to say, they are not embodied in the Act; they are governed by bye-laws having the force of law, adopted by the Commissioners themselves. I think it will be admitted that the building regulations in Calcutta are far from satisfactory, and we may assume that the Commissioners themselves are of this opinion, seeing that some months ago they appointed a Committee to reconsider them. I think I am also right in saying that although the Committee was appointed seven or eight months ago, the subject is beset with so many difficulties that the Committee have not yet ventured to take up the consideration of the matter. If this has happened in the Presidency town and in a municipality which is naturally supposed to be the most enlightened in Bengal, is it reasonable to suppose that we can expect better action in far less advanced municipalities in the mufassal; therefore I submit that the Government should reserve to itself the right of taking the initiative in the event of the Commissioners not themselves taking action."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I must express my surprise at the hon'ble member who represents the Trades Association, bringing forward such an amendment. None of the official members of this Council have ever brought forward an amendment so drastic, and the hon'ble member's own speech affords the completest answer to the amendment he proposes. The building regulations are no doubt sanitary regulations of the greatest importance. In Calcutta they are not permissive, they are compulsory; they have been supplemented and added to by bye-laws passed by the Corporation under the sanction of the Government. That the administration of the building regulations is attended with considerable difficulty in Calcutta has been admitted, and a Committee has been appointed to re-adjust them on the lines that experience has taught. The question being so very difficult and complicated, it stands to reason that the representatives of the people ought to be permitted to deal with them, and that the Government should not force these regulations on an unwilling municipality. It strikes me that it would be exceedingly unwise to accept this amendment; and that the extension of these regulations ought to be brought about with very great care and deliberation, and that they ought not to be extended to any municipality, except on the distinct representation of that municipality; and that the Government ought not to take the matter out of the hands of the Commissioners and by its order impose these regulations on any municipality that may not be inclined to apply for them. I therefore hope and trust the Council will not accept this amendment."

The Hon'ble MR. BOURDILLON said:—"On behalf of the Government, I must state to the Council that it is not the intention of Government to support the amendment of the hon'ble member who represents the Trades' Association. The hon'ble member has forgotten I think what kind of municipalities exist in the mufassal, and does not sufficiently realise that they are still very far from that stage of development which would justify them in accepting the advanced provisions of section 237. As section 237 stands, its provisions cannot be extended to any municipality except at the request of the Commissioners, and considering what very stringent powers and very elaborate rules this section will enable the Commissioners to exercise and make, I think the provision in section 237 is a very wise and necessary one. I must therefore advise the Council to allow the Bill to stand as it is, and to reject the amendment before it."

The Motion was put and negatived.

The Hon'ble MR. GHOSE moved that in section 64 of the Bill, at the end of sub-section (*4*) of section 237, after the word "Commissioners", the words "at a meeting" be inserted. He said:—

"My motion relates to the same matter as the last amendment. The hon'ble member in charge of the Bill has already said that there is no intention on the part of the Government to take away the power now conferred on Municipal Commissioners to apply to the Government whenever they desire that any provisions contained in Parts VI—X of the Act ought to be extended to their municipality. It was never intended to repeal sections 220 and 221, and we all understood in Select Committee that the new and more elaborate sections framed in substitution of the present sections, were also to stand on the same footing, namely, that they were not to be extended, except on application from the Commissioners at a meeting. The Bill as printed after the final approval of the Select Committee does not contain the words 'at a meeting' after the word 'Commissioners', the effect of which would be to leave the power in the hands of the Chairman or Vice-Chairman, as the case may be. It was certainly not understood that these sections could be extended on the application of the Chairman or Vice-Chairman, and it was never proposed in Committee. I myself am inclined to believe that the omission of the words 'at a meeting' is a clerical error, and I apprehend the hon'ble member in charge of the Bill will find no difficulty in accepting this amendment."

The Hon'ble MR. BOURDILLON said:—"The Government has no objection to accept this amendment as far as regards this section. But with regard to what fell from the hon'ble member as to the effect of section 220, we shall hear more about that when the next amendment is brought forward."

The Motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in section 64 of the Bill, after sub-section (*4*) of section 237, the following proviso be added:—

"Provided that in the municipalities to which sections 237, 238 and 239 of Act III of 1884 have already been extended, so much of this section shall be deemed to be in force as may correspond with the provisions of those sections."

He said:—

"The building regulations in the Bill are of a very elaborate and complicated character, and they can only be extended to a few of the more advanced

municipalities, and are inapplicable to the majority of our municipalities. In about 30 or 40 of our municipalities out of a total number of 150, the building regulations under Act III of 1884 are already in force, Part VI of the Act having been extended to them. But under the provisions of the Bill, as now drafted, it occurs to me that the existing building regulations would cease to be in operation as soon as the present Bill has been enacted into law. The building regulations represent a step in advance, and I do not think the municipalities to which they have been extended ought to be allowed the opportunity of reconsidering their position and resiling from them. I do not think there will be any difference of opinion as regards the principle which underlies my amendment. If there should be any doubt as to the effect of the provisions of the Bill in regard to those municipalities to which the building regulations have already been extended, the question should be set at rest by the adoption of my amendment, which provides that the existing regulations will be in force in the municipalities to which they have already been extended."

The Hon'ble MR. BOURDILLON said:—"This matter is one which is not quite free from difficulty. A doubt has been suggested as to how far the new sections, which bear the same numbers as the old ones, will be in force in municipalities to which sections with the same numbers have already been extended. Section 220 of Act III of 1884 provides that no provision contained in this Part shall apply to any municipality unless and until it has been expressly extended thereto by the Local Government in the manner provided by the next succeeding section. Sections bearing the numbers of the sections in the Bill have already been extended to about 40 municipalities. The Bill before Council if passed into law will be merely an amending Act, and so there is no question of the rescission or cancellation of the old Act, or of substituting a new one for it; and I am advised that when section 239 for instance has been extended to a municipality, the new section 239, though it may contain very different provisions, is still in force there. I should like to have the advice of the legal advisers of the Government on this matter. Section 237 being a very advanced provision, has been placed first, and sub-section (*4*) of that section says that this section shall not take effect in a municipality until it has been specially extended thereto by the Local Government at the request of the Commissioners; as regards the remaining sections, the numbers of the sections

have been reduced by one, sections 237-240 being very much the same as 237-241, but the aggregate of the provisions is practically the same."

The Hon'ble MR. ALLEN said:—"In section 61 of the Bill there was an amendment of section 120 of Act III of 1884, which the Council accepted without discussion. The amendment consisted of the addition of the following proviso:—

'Provided that, except as is otherwise provided by this Act, in the case of any municipality to which all the provisions of any one of the Parts VII, VIII or IX of the Bengal Municipal Act, 1876, may have been extended, and provided that such provisions were still in force in such municipality immediately before the commencement of this Act, all the provisions of the corresponding Part of this Act, namely, of Parts VI, XI or X respectively, shall be, and shall be deemed to have always been, in force in such municipality without such provisions being expressly extended thereto.'

Saving clause.

"That seems to cover all the substantial part of the intention of the hon'ble member who is moving this amendment. The alteration in the numbers of the sections made in this Bill introduces an element of confusion into the matter. The relations between the amending sections Nos. 238, 239 in this Bill, and those in the existing Act are clear and obvious; but it appears to me that the amendment which the hon'ble member proposes, introduces an element of confusion and complexity into the understanding of the question, and it would be very much wiser to reject the amendment. If there are some few municipalities, as I believe there are,—I saw a list of some six of them—to which the provisions referred to in section 61 of the Bill have not been extended as a whole, it should be taken probably that the corresponding sections of this Bill are not in force in those few exceptional municipalities, but no difficulty can arise if the Commissioners of those municipalities apply to the Government, and get the corresponding provisions of this Bill extended to their municipalities. If this amendment is passed, there will be very great difficulty in understanding how the matter stands with reference to such municipalities. The new section 237, which will not come into force in any of the municipalities in Bengal, unless specially asked for, will, by the force of this amendment, be declared to be in force as far as it corresponds with the provisions of the existing Act. But the section does not correspond at all. It is a totally new section, and contemplates a state of circumstances very

different from those under the Act of 1884. It will, therefore, I think, be unwise to accept the amendment."

The Hon'ble BABU SURENDRANATH BANERJEE in reply said:—"I think the hon'ble member who has just spoken has indulged in a little hypercriticism, in commenting upon my remarks. The words 'so much of this' in my amendment are evidently a mistake. They should be 'so much of the provisions of the Bill.' If the hon'ble member had exercised a little of the legal ingenuity which he possesses, he might have seen that that was what was intended."

The Hon'ble MR. COTTON said:—"It seems to me that what we want is to ensure that the sections in the old law should remain in force until they are superseded by the provisions contained in the new Bill. I should say, although I speak with no authority as a lawyer, that it is more than doubtful whether the old sections can possibly remain in force after the new sections have become law. Not only are the sections themselves somewhat different, but their numbering has been transposed, and the section 237 of the Bill now before us, relates to a different subject-matter from section 237 of the existing law. Speaking under correction, therefore, I consider that the extension of the sections of the old law to a municipality will be invalid as soon as the new law is passed, and unless we provide—"

The Hon'ble MR. ALLEN rose to order. He said:—"The mover of the amendment having made his final reply, the hon'ble member is not now entitled to speak."

The Hon'ble THE PRESIDENT said:—"I did not consider the remark made by the hon'ble mover of the amendment to be his final reply. I look upon what he said as a mere interpolation to explain the intention of his amendment."

The Hon'ble MR. COTTON continued:—"I was suggesting that the Council should legislate to provide that the existing sections shall remain in force until the new sections are extended to a municipality which is affected by them. That seems to me to be a far simpler proposal than that of the hon'ble mover of the amendment, and to be the only way in which any building regulations at all can exist in the municipalities affected. It is most important that this point should be made clear. There is a risk of any one or more

[*Mr. Cotton; The President; Babu Surendranath Banerjee; Mr. Bourdillon.*]

of these municipalities, who neglect to apply to the Government to extend the new provisions, finding that the provisions of the old law do not continue to apply to them. Therefore, we shall be giving them an opportunity of backsliding, which is just what I apprehend the hon'ble member is not prepared to do. I am not ready at this moment to come forward with an amendment, but I think the matter deserves consideration, and would suggest that time should be allowed for the preparation of an amendment which would maintain the old sections in the case of such municipalities, until the provisions of the Bill now before us are substituted for them."

The Hon'ble THE PRESIDENT said:—"We are all agreed to carry out the views of the hon'ble mover of the amendment, but there is a difficulty in deciding upon the exact form of words by which that should be done. If the consideration of this amendment is postponed, the hon'ble member can, in the interval, with the assistance of the hon'ble member in charge of the Bill, and the legal advisers of the Government, settle the exact form of words which will be necessary, and bring forward a revised amendment at the next meeting of the Council."

The further consideration of this amendment was postponed to the next sitting of the Council.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that in section 64 of the Bill, the following be substituted for clause (*a*) of section 240:—

"any alteration or enlargement affecting two-thirds of any building."

He said:—

"Section 240, clause (*a*), provides that the expression 'erection of a house' includes any material alteration or enlargement of the house. The word 'material' is not defined, and I want to define it. In the definition I propose, I follow the lines laid down by the building bye-laws of the Calcutta Municipality, where bye-law number 1 (*e*) contains the following definition of a new building:—'Whenever any old masonry building has been taken down to an extent exceeding one-half, the rebuilding shall be deemed to be the erection of a new building.'

The Hon'ble MR. BOURDILLON said:—"The Hon'ble the Legal Remembrancer, not long ago, advised a young legislator to avoid definitions, and I should like to repeat that advice. It seems to me that the clause is quite clear and specific

enough. The hon'ble member does not say how the two-thirds is to be ascertained, and I think we should do well to leave the question, whether the alteration is material or immaterial, to the decision of the local authorities."

The Motion was, by leave of the Council, withdrawn.

The Hon'ble MR. STUART moved that after section 72 of the Bill, the following section be inserted:—

"In the section 263, the words 'exceeding ten in number' shall be omitted."

He said:—

"This amendment does not involve any principle, but its adoption will greatly facilitate the municipal authorities in their endeavours to promote sanitation. The result of the working of section 263 is that practically the municipal authorities have no control over stables and cattle-sheds. I may take, as an instance of this, the municipality of Cossipore-Chitpur, one of the Municipal Commissioners of which asked me to visit the place, and I saw in one shed over 20 horses, and in one yard over 50 head of cattle. The municipal authorities are not able to enforce the taking out of licenses, because the proprietor states that only 10 or a less number belongs to him, the rest being apportioned among his servants. It was stated to me that at the time of the periodical fairs, over 2,000 cattle are collected in a small space within the municipality; but the municipal authorities have no power to compel the owners to keep these places clean, the consequence being that they are kept in a most filthy condition, and the refuse is not removed, but is allowed to fester in the sun or flow into wells, whence the neighbours draw their drinking water. The fee for registration is a very small one, the object being only to enable the municipality to enforce cleanliness. In Calcutta, any one who keeps animals for profit under section 235 of the Calcutta Municipal Act is obliged to take out a license; and I think that in the suburbs of Calcutta and in large towns, it is quite as necessary to take the same precautions."

The Hon'ble MR. GHOSE said:—"I do not see how the difficulty arises. Under section 263 the Commissioners seem to have ample powers. It provides that 'within such limits as the Commissioners at a meeting may determine, no milkman, cartman, livery stable-keeper or keeper of hackney carriages, shall keep horses, ponies, or cattle exceeding ten in number for the purpose of trade or business, except in a place licensed by the Commissioners'. The section does not

say anything with reference to such horses or cattle belonging to one person or more than one person. I think the Commissioners have ample powers for dealing with such matters, but if there is any doubt, it would be removed by adding the words 'whether singly or jointly' between the words 'shall' and 'keep.' If, on the other hand, you omit the words 'ten in number,' it might cause great hardship to particular persons, for there are many poor women who keep one or two cows and make their living by selling milk. Such cases ought not to be covered by this section. 'Milkman' includes 'milkmen.' When the aggregate exceeds the number ten, I think the section makes ample provision; but to make the section applicable to every person who keeps a cow, would involve hardships which are not called for under the circumstances."

The Hon'ble MR. BOURDILLON said:—"I think the Hon'ble MR. STUART'S amendment should be accepted. He says that the provisions of this section obstruct the Commissioners in maintaining in a proper sanitary condition places where cattle, horses, &c., are kept. With all respect to the legal knowledge of the hon'ble member who spoke last, it seems to me very doubtful whether in this case the singular does include the plural. It is not reasonable to suppose that the taking out of a license will be required in the case of a poor woman who keeps a cow for her support, and the Commissioners are not anxious to tax poor persons, but to obtain effective control over those who keep considerable numbers of cattle and yet just manage to evade the law as it now stands, it seems to me very unlikely that so large a sum as that provided in the section will be levied from any poor persons."

The Hon'ble SIR CHARLES PAUL said:—"It seems to me that it is not the case of singular and plural, but the aggregate number of cattle kept in any one place. Suppose any ten milkmen combine to keep nine head of cattle each, would they not come within the section?"

The Hon'ble MR. STUART in reply said:—"I can only say that this has proved an actual difficulty, and the difficulty is aggravated owing to the number of cattle brought together at certain times of the year. I would like the hon'ble member on my right (MR. GHOSE) to visit the *goala* bustee at Cossipore, where these 'poor women' each keep one or two cows. The bustees consist of a number of huts and cattle-sheds, and the condition of the place is not to be

described. The section provides for places outside the limits fixed by the municipality where these licenses would not necessarily be required."

The Motion was put and agreed to.

The Hon'ble MAULVI SERAJUL ISLAM KHAN BAHADUR moved, that in line 4 of section 81 of the Bill for "words" the word "word" be substituted, and that the words "and cesspools" be omitted. He said:—

"I do not quite see the reason which induced the hon'ble member in charge of the Bill to include 'cess-pools' in Part IX of the Act, nor do I see any reason given in the Report of the Select Committee for the alteration proposed. It appears from paragraph 34 of the Report of the Select Committee that no alteration was intended. They said:—

'After careful consideration we recommend that the present system of levying fees for the construction and cleaning of privies and cess-pools may be left unaltered.'

"The impression left on one's mind in reading this paragraph is that it is not intended that there should be any alteration, but on a careful reading of the sections of the Act and of the Bill, it would appear that the inclusion of cess-pools in Part IX makes an important change, and indirectly gives the Commissioners power to impose additional fees on the rate-payers under that Part. As the law at present stands, under section 186 of the Act, the Commissioners are bound to provide for the removal of sewage out of the general fund. The word 'sewage' is defined in section 6, clause 17 of the Act as including the contents of cess-pools; so that the cost of clearing cess-pools is provided for out of the general fund. Now section 321 of Part IX gives Municipal Commissioners power to levy an additional fee, called the latrine-fee, and section 322 provides that such fees are to be levied solely for the maintenance of establishments for cleansing latrines, privies, &c. Therefore, if cess-pool is included in this Part, the Commissioners will have to provide for the maintenance of a larger establishment under that Part, and will have power to impose additional taxes on the rate-payers. I would leave the law as it stands, and therefore move this amendment."

The Hon'ble MR. BOURDILLON said:—"The hon'ble mover of the amendment has not, I think, given sufficient consideration to the fact that Part V, which provides for conservancy, generally applies to all municipalities, and

that Part IX, which applies to the cleansing and maintenance of latrines only, is extended to municipalities by the order of the Government on the application of the Commissioners. All that the Committee wished to do was to make the existing law clear. The words 'and cess-pools' have been included only to secure correspondence with the definition of sewage in section 6. The words 'privies and cesspools' have been substituted for 'latrines,' because it was generally thought that the word 'latrine' rather imports a public convenience, but by using the words 'privies and cesspools,' it will be made more clear that the provisions of this Part apply to private places. The hon'ble member will see that no great change is intended, and the Bill should be allowed to stand as it is."

The Motion was, by leave of the Council, withdrawn.

The Hon'ble MAULVI SERAJUL ISLAM KHAN BAHADUR also moved that in section 83 of the Bill the words "if there is no occupier or" and "and the provisions of section one hundred and ten shall be applicable" be omitted. He said:—

"Under the provisions of the present Act (section 322), the owners of holdings which have no occupier are not liable to pay the latrine fee. Reading the whole section, it would appear that under the existing law as it stands, such owners are not made liable to pay any latrine fee. The effect of the amendment made by the Select Committee is to make the owner liable to pay the latrine-fee in cases where there are no occupiers, only receiving a remission of half the amount under section 110. In paragraph 34 of the Select Committee's report, they say:—'We have allowed a remission or refund on account of vacant holdings. This shows as if the Select Committee are making a fresh concession to the owners of vacant holdings; but under the law as it stands, they are not liable to any latrine fee for vacant holdings. I do not see why owners should be liable to pay any latrine fee for vacant houses."

The Hon'ble MR. BOURDILLON said:—"The question between the Select Committee and the hon'ble mover of the amendment is, whether a latrine rate should or should not be levied from vacant holdings. The hon'ble member has overlooked one point, namely, that the latrine tax is not a fee for services rendered, but it is a rate on holdings. It was proposed and at one time strongly

pressed, that the tax should be a fee for services rendered, but the Committee decided that it should continue to be a rate on holdings. They have not therefore in this respect interfered with the existing law, which provides that the latrine rate should ordinarily be paid by the occupier, but where a house is occupied in severalty, the owner pays the rate, and recovers it proportionately from the several occupiers. The words to which the hon'ble member objects are intended to provide for the payment of the rate when a house is not occupied, and in making that provision we have followed the analogy of the house-rate, and we have followed out the parallel by allowing a partial reduction when the holding is vacant for any considerable time. When a house is vacant for sixty consecutive days in the year, the owner can apply and obtain a proportionate refund, or if he has not paid any rate, the appropriate amount will be remitted."

The Hon'ble MR. LYALL said:—"As a member of the Select Committee, I have a word to say. I voted for the section as it stands, because it seems to me a matter of expediency that the tax should not be allowed to fall off on account of houses being vacant. A portion of the establishment cannot be dismissed or discharged as a house becomes vacant, and, moreover, in most mufassal municipalities, sweepers have to be imported, and the establishment has to be maintained whether they are employed fully or not. I therefore voted for the remission of half the rate only in such cases, so that the proceeds of the tax might vary as little as possible."

The Motion was put and negatived.

The Hon'ble MR. GHOSE moved that in section 83 of the Bill, after sub-section (4) of section 322, the following proviso be added:—

"Provided that no such fee shall be levied in respect of any shop or place of business which does not contain any privies or cess-pools, when a fee under this Part is levied from the occupier thereof in respect of his dwelling-house within the same municipality."

He said:—

"My amendment also relates to the matter of this latrine tax. As a member of the Select Committee, I agreed to the compromise arrived at, although at first I was inclined to think that it was unfair to tax vacant houses where no service was necessary; yet, recognising that a particular establishment had to be kept up, for the purpose, I agreed to the compromise of requiring half the fee from vacant houses. But there is another class of cases which is covered

by my amendment, and in which there will be great hardship unless my amendment is accepted. It is the case of a shop-keeper who resides in his own house, and has a shop in another house. It does seem to me to be hard that a man should have to pay the latrine tax twice over, once for the house in which he resides, and again for his shop or place of business, although there is no privy or cess-pool in the latter. I think that whenever he is assessed in respect of his dwelling house, he should not be taxed for his shop or place of business in which there is no privy or cess-pool."

The Hon'ble MR. BOURDILLON said:—"The amendment seems to me, as a member of the Select Committee, to be conveniently reasonable, and I desire to support it."

The Motion was put and agreed to.

The Hon'ble MAULVI SERAJUL ISLAM KHAN BAHADUR moved that after section 85 of the Bill, the following new section be added:—

"85A. In line 5 of section 339 of the Act, between the word 'Commissioners' and the words 'may grant' the following words shall be inserted:—

'shall, as regards markets (already existing) at the time of the extension of this Part to the municipality, and in all other cases.'"

He said:—

"I am sorry I have to detain the Council with this amendment at this late stage; but it is after much deliberation and consultation with some of the most eminent members of the Calcutta bar that I have been induced to bring forward this motion. On a reference to Part X of the Act, sections 335 to 340, it would appear that the power of the Commissioners to grant licenses for markets is purely discretionary, and cases have occurred in which the Commissioners have exercised their purely arbitrary powers without due regard to the private rights of parties. The well-known case of the Motihari Municipality is an instance in point. In that case the Municipal Commissioners refused to grant a license to Messrs. Moran, the owner of an old and very valuable market, simply because they themselves had set up a rival market; and although Messrs. Moran obtained a certificate from the Chairman under section 340 to the effect that they had complied with the provisions of the law, still the Commissioners did not think it proper to grant a license. The result was that

Messrs. Mohan were deprived of their market, and when they went to law, the Courts declared that they could not interfere. I would invite the attention of the Council to a passage in the judgment of Mr. Justice Pigot at page 333 of the Indian Law Reports (Volume XVII, Calcutta Series). The learned Judge says:—

'There is no doubt that the powers possessed by the municipality under the Part X of Bengal Act III of 1884 have been so used as to put an end to that market to the profit of a market established by the municipality under the authority of one of the sections of Part X of the Act; and the question before us is whether, under the provisions of Bengal Act III of 1884, power was conferred upon the municipality of doing those acts destructive of the plaintiff's property, and yet no remedy or no right was allowed by the Act to persons in the position of the plaintiffs in case of the Act being so used to the destruction of their property.'

"Their Lordships held that under the law as it at present stands, a person who is deprived of his property by the Municipal Commissioners under Part X has no remedy. I therefore submit that it is the duty of the Legislature to step in and remedy such a state of things, and on these grounds the amendment I have the honour to propose should be accepted."

The Hon'ble Mr. Bourdillon said:—"I may at once inform the hon'ble member that the Lieutenant-Governor has considered this matter, and read the case to which the hon'ble member has referred me—as well as another case, the case of the Madaripur Municipality—and the opinion of the Lieutenant-Governor is, that if the hon'ble member will substitute the words 'lawfully established' for 'already existing', there will be no objection to the amendment."

The Hon'ble Maulvi Serajul Islam Khan Bahadur said:—"I accept the alteration."

The Motion, as amended, was then put and agreed to.

The Hon'ble Mr. Ghose moved that in section 86 of the Bill, sub-section (*3*) of section 349B be omitted. He said:—

"This amendment deals with the question of fires and the action taken for preventing the spread of fire, and the last clause of the section runs thus:—'Any damage done in the exercise of a power conferred or a duty imposed by this section shall be deemed to be damage by fire within the meaning of any policy of insurance against fire.' It is a very rare thing for a dwelling-house, even in Calcutta, to be insured, and I am not aware that any house in the mufassal,

unless it be a factory or a mill, is ever insured. When we speak of pulling down houses to prevent the spread of fire we practically refer to thatched houses and huts which are never insured. Under these circumstances, I do not see the necessity for a clause of this kind, and it seems very doubtful whether this Council in amending the Municipal Act can indirectly alter the law as regards policies of insurance, especially as there is no necessity for it. I think the wiser course will be to drop this sub-section, and I should very much like to have the opinion of the learned Advocate-General."

The Hon'ble SIR CHARLES PAUL said:—"I am quite sure that we cannot legislate to declare that damage done in putting out a fire is 'damage by fire within the meaning of any policy of insurance against fire.'"

The Hon'ble MR. COTTON said:—"The point was considered when the Fire-brigade Bill was under consideration, and it was then decided to omit a somewhat similar section in that Act. I think there will be no objection to the omission of the clause in the Municipal Bill."

The Hon'ble THE PRESIDENT said:—"I am of opinion that the Council ought to follow the advice of the Hon'ble the Advocate-General."

The Motion was put and agreed to.

The Hon'ble THE PRESIDENT said:—"I thank the hon'ble members for their patience in sitting so long to finish this Bill. At the next meeting of the Council, after the wording of the Bill has been thoroughly considered, and any alterations made in grammar or other minor points, in order to make the amendments which have been accepted fit in with each other and with the rest of the Bill. I hope we shall be able to pass the Bill into law."

The motion No. 2 in the List of Business was postponed to the next sitting of the Council.

The Council adjourned to Saturday, the 28th instant.

GORDON LEITH,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

CALCUTTA;
The 18*th May*, 1894.

Reg. No. 185G—300—23-5-94.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892.

The Council met at the Council Chamber on Saturday, the 28th April, 1894.

Present:

The Hon'ble Sir Charles Alfred Elliott, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.

The Hon'ble Sir Charles Paul, K.C.I.E., *Advocate-General*.

The Hon'ble T. T. Allen.

The Hon'ble H. J. S. Cotton, C.S.I.

The Hon'ble Sir John Lambert, K.C.I.E.

The Hon'ble D. R. Lyall, C.S.I.

The Hon'ble J. A. Bourdillon.

The Hon'ble F. R. S. Collier.

The Hon'ble C. E. Buckland.

The Hon'ble C. A. Wilkins.

The Hon'ble Maulvi Syed Fazl Imam Khan Bahadur.

The Hon'ble Surendranath Banerjee.

The Hon'ble L. Ghose.

The Hon'ble Maulvi Serajul Islam Khan Bahadur.

The Hon'ble W. C. Bonnerjee.

The Hon'ble J. G. Womack.

The Hon'ble J. N. Stuart.

COMPENSATION ALLOWANCE TO NON-DOMICILED EUROPEANS AND EURASIANS.

The Hon'ble Mr. Bourdillon replied as follows to the Hon'ble Babu Surendranath Banerjee's question regarding compensation allowance to non-domiciled Europeans and Eurasians, asked at the meeting of the 31st March last:

The number of non-domiciled European and Eurasian servants of the Government on the Bengal establishment who draw compensation allowance is 520. There is nothing in the records of Government to show how many of these are Europeans and how many Eurasians.

"The Lieutenant-Governor does not believe that there are any non-domiciled European and Eurasian employés appointed since 1879 whose appointments required the sanction of the Governor General in Council and have not received it. It is the duty of the Accountant-General of Bengal to draw attention to such cases should they occur through oversight, and the Lieutenant-Governor has received no application to this effect from him.

"The third part of the question is answered by what has just been said. As far as the Lieutenant-Governor knows, there are in Bengal no officers of the class indicated."

BENGAL MUNICIPAL ACT, III OF 1884, AMENDMENT BILL.

The Hon'ble MR. BOURDILLON moved that the clauses of the Bill to amend Bengal Act III of 1884, as amended by the enlarged Select Committee, be further considered for settlement in the form recommended by the Select Committee.

The Motion was put and agreed to.

The Hon'ble MR. BOURDILLON also moved that in section 7 of the Bill, after the words and figures "in section 15" the following be inserted:—

"After the word 'election', at the end of the first sentence, the words 'and the authority who shall decide disputes thereunder' shall be inserted."

He said:—

"The necessity for this amendment has been explained by a confidential memorandum, which was circulated at the beginning of this week, and it is therefore unnecessary for me to detain the Council now at any length. The object of the amendment is simply to obtain greater administrative convenience. I have already pointed out in the memorandum referred to that, under section 15 of the Act, power is given to Government to make rules as to the manner in which municipal elections shall be conducted, but nothing is said as to the authority by whom election petitions or disputes arising therefrom may be decided. Since the late general elections which have taken place all over the Province, many applications have been received both by Government and by Commissioners of Divisions, asking that certain election proceedings may be set

[*Mr. Bourdillon; The President; Mr. Collier; Mr. Ghose.*]

aside, but hitherto the policy of the Government, based upon the present state of the law, has been to decline to interfere, and to refer the parties to the Civil Courts. It is now suggested that an alternative and more summary procedure should be adopted, that Government should take power to decide these disputes summarily when moved to do so, and that with this object the Government should be empowered to appoint the Magistrate or such other person as they think proper to consider such petitions. It is not the intention of the Government to interfere with such jurisdiction as the Civil Court now may possess in regard to such matters, and apparently if any party is dissatisfied with the finding of the local officer, it will always be open to him to seek his fortune in the Civil Court. I trust that after this explanation the amendment may be passed without dissent."

The Motion was carried *nem con.*

The Hon'ble THE PRESIDENT said:—"Before calling upon the Hon'ble MR. GHOSE to move the next amendment which stands in his name, I wish to observe that at this stage of the proceedings of the Council, we ought not to admit any new contentious matter, and if any hon'ble member objects to any amendment which may be proposed, it should be withdrawn without discussion."

The Hon'ble MR. COLLIER said:—"I object to the following amendment, of which the Hon'ble MR. GHOSE has given notice, as it is not only unnecessary, but at variance with the Act:—

"That in section 55 of the Bill, at the end of section 210, the following proviso be added:—

'Provided that any person aggrieved by an order under this section may appeal to the Commissioners within seven days of the service of the notice upon him, and such appeal shall be dealt with in the manner prescribed by section 242A.'"

The Hon'ble THE PRESIDENT said:—"The objection will be considered when the amendment to which it relates is before the meeting."

The Hon'ble MR. GHOSE moved that the following proviso be added to section 15 of the Act:—

"Provided that nothing contained in this section, nor in any rules made under the authority of this Act, shall be deemed to affect the jurisdiction of the Civil Courts."

He said:—

"I do not apprehend that my hon'ble friend, the member in charge of the Bill, will find any difficulty in accepting this amendment, for I find that in the confidential memorandum, to which the hon'ble member referred, he said:—

'I am to disavow in the plainest terms all intention of interfering with any jurisdiction that the Civil Courts now possess. The design of the proposal is to provide for those who desire it a simple summary method of having their disputes settled, any person dissatisfied with the orders so passed being still at liberty to try his fortune thereafter in the Civil Courts.'

"This is also to be gathered from the speech which the hon'ble member has just made in proposing the amendment which has been accepted by the Council.

"My amendment seeks to give effect to the intentions of the Government, so that it may not be possible for any ingenious lawyer to create any doubt with regard to the intention of the Legislature. With these observations I submit my amendment to the Council, and I trust that the Government will see its way to accept it."

The Hon'ble MR. LYALL said:—"Will the Legal Remembrancer say whether there is any necessity for this amendment? No attempt is being made to bar the jurisdiction of the Civil Courts."

The Hon'ble SIR CHARLES PAUL said:—"The meaning of this amendment is that this Bill shall not give a right to the Civil Court, if such right does not previously exist. I think, therefore, that the amendment has been carefully worded, so as to give no offence."

The Motion was put and agreed to.

The Hon'ble THE PRESIDENT said:—"I will ask the Hon'ble MR. GHOSE to withdraw the following amendment, to which objection has already been taken by the Hon'ble MR. COLLIER:—

"That in section 55 of the Bill, at the end of section 210, the following proviso be added:—

'Provided that any person aggrieved by an order under this section may appeal to the Commissioners within seven days of the service of the notice upon him, and such appeal shall be dealt with in the manner prescribed by section 242A.'"

The amendment was accordingly withdrawn.

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

The Hon'ble BABU SURENDRANATH BANERJEE said :—"I have been in communication with the hon'ble member in charge of the Bill, and I understand that he has renumbered the sections relating to the building regulations, and the learned Advocate-General is of opinion that, having regard to the renumbering of the sections, the effect will be to keep the building regulations intact in those municipalities into which the whole of these regulations have been introduced. I was anxious that none of those municipalities should have the opportunity of resiling from the position which they have taken up in this matter, and which represents a step in advance in sanitation. On the understanding that the effect of the renumbering of the sections is to keep intact the building regulations in municipalities, to which the whole of these regulations have been extended, I beg leave to withdraw the following amendment which stands in my name :—

"That in section 64 of the Bill, after sub-section (*i*) of section 237, the following proviso be added :—

'Provided that in the municipalities to which sections 237, 238 and 239 of Act III of 1884, have already been extended, so much of this section shall be deemed to be in force as may correspond with the provisions of those sections.'"

The Hon'ble MR. BOURDILLON said :—"By direction of the President the discussion of the above amendment was postponed at the last meeting in order that the question might be discussed informally by a sub-committee of the Council.

"It occurred to me during the discussion, and the Hon'ble MR. ALLEN has independently made the same proposal, that the difficulty may be most easily got over by re-arranging the new sections and following as closely as possible the numbering and order of the sections as they stand at present in the Act.

"Section 237 in the Bill, which is entirely new, was put first on account of its advanced character, but it can easily come in last. I have in the paper just laid before all hon'ble members re-arranged the numbering, and it will be found that the correspondence is now very close. I have also made some necessary verbal alterations.

"Taking the new numbering it appears that section 237 as it will now stand will include old sections 237, 238 and 239. The only change is (*a*) that 'six weeks' is substituted for 'fourteen days' as the period within

which sanction is to be given or refused, and (*b*) that 'compensation may be given in consequence of any prohibition,' &c. Both these changes are in the direction of further leniency and cannot be objected to by the rate-payers.

"Then section 238 (new style) embraces old sections 241 and 240. Here again six weeks take the place of fourteen days; that is the only difference.

"I propose to make a new section (239) out of the clause dealing with the period for which sanction is to hold good.

"New section 240 is a definition section, and new section 241, formerly 237, is intended for the advanced municipalities only, and it is specially provided by sub-section (*4*) that it shall not be extended to any municipality unless specially applied for.

"All the sections in the Act (237-241) hang together, and so do sections 237-240 of the Bill as now re-arranged. The aggregate of the provisions of the two groups is exactly the same except—

(*a*) that six weeks have been substituted for fourteen days,

(*b*) that compensation is to be payable in certain cases, and

(*c*) that sanction only lasts for one year.

"I feel sure that the mover of the amendment will now agree that his amendment may be withdrawn on the understanding that the order of the sections is re-arranged as above proposed.

"I stated in Council that there were only six municipalities* in Bengal in which there would be difficulty on the ground that these sections were extended to them in part only. I have now myself scrutinised the papers of these six municipalities, and find that as a fact it is only in two of them, viz., Ramjibanpur and Sassaram, that these sections are in force piecemeal. The cases of these two municipalities can easily be dealt with, and it can be explained to the Commissioners that they had better apply for a fresh extension of these sections.

* Jhalokati | Bogra
Kendrapara. | Ramjibanpur.
Mohespur. | Sassaram.

"The result is, that there can be no doubt except in two municipalities what sections are in force; in 38 all the building sections are in force, and in 109 none of them. This takes away all *doubt* and uncertainty. I have already shown that the changes are infinitesimal, and that such as there are make for

leniency, and I hope that on this explanation the Council will agree that the amendment has been properly withdrawn."

The amendment was accordingly withdrawn.

The Hon'ble MR. WOMACK moved that the following be added after clause (*2*) of section 238:—

"Provided that no rule under section 241, and no legal order shall be held to have been contravened by anything done in accordance with plans and specifications forwarded to the Commissioners under section 237, and not objected to by them."

He said:—

"This amendment embodies in terms which have been come to between the hon'ble member in charge of the Bill and myself since the last meeting of the Council the principle which Your Honour was good enough to accept at that meeting, and I trust it will meet with the approval of the Council. The proviso, I expect, will remain more or less a dead-letter, but it will have the effect of ensuring on the part of building committees a stricter examination of plans submitted to them for sanction, and may under certain circumstances prevent injustice being done; as therefore it will on the whole work for good, I hope the Council will see fit to accept the amendment."

The Hon'ble MR. BOURDILLON said:—"I have only one word to say, and that is, that the reference to sections contained in the proviso it is proposed by this amendment to add will have to be corrected, with reference to the renumbering which has already taken place in the numbers of the sections relating to the building regulations."

The Motion was carried *nem con.*

The Hon'ble MR. BOURDILLON said:—"In rising to propose four small amendments, it is necessary for me to explain that after the Council dispersed last Saturday, His Honour the President desired the Hon'ble MR. COLLIER, the Assistant Secretary and myself, to go through the Bill in order to make sure that it contained no grammatical or typographical errors. We discovered several errors in punctuation and other grammatical errors, which were not worth being put before the Council, but the four amendments which have been printed on a separate piece of paper seem to require mention as being somewhat more

important. I will first refer to section 40 of the latest version of the Bill, which amends section 98 of the Act. The section as it stands gives 'the Commissioners,' with the sanction of the Local Government, power to exempt from assessment any holding used for purposes of public charity. It occurred to the President that this important power should not be left to the Chairman or Vice-Chairman, who exercise all the powers of the Commissioners, but that it should be exercised by the Commissioners at a meeting. I conceive that there can be no objection to this proposal.

"The next section in regard to which an amendment has been prepared is section 43 of the Bill, which enacts a new section 111A. It will be in the recollection of hon'ble members that at the last meeting of Council the question was raised whether the powers given to the Assessor should or should not include the power of revision vested in the Commissioners by sections 113-115. I do not myself think that the question is open to doubt, but as a doubt has been raised, it seems better to remove it by enacting that the Assessor shall exercise all the powers of assessment vested in the Commissioners, except those under sections 113, 114 and 115. That makes the matter perfectly clear, and this amendment has already been incorporated in the Bill in anticipation of the sanction of the Council.

"The next amendment refers to section 72 of the Bill. This amendment refers to an oversight which has been brought to notice. Section 256A, which is enacted by section 72 of the Bill, says:—'Where notice is given of the intention to close any burial-ground under the last preceding section, private burial-places in such burial-grounds may be exempted from the notice, subject to such conditions as the Commissioners may impose in this behalf.' The privilege of having a private burial place exempted when the general cemetery in which it is included is closed is an important one, and it is conceivable that if the power to grant or withhold it were left in the hands of a Chairman or Vice-Chairman, serious complaints of injustice might sometimes arise. It is therefore proposed to insert the words 'at a meeting' after 'Commissioners,' so as to make the power exercisable only by the Commissioners as a body.

"The last of these amendments refers to section 78 of the Bill, which amends section 270 of the Act. It adds to section 270 the following clause:—'makes a roof or wall with grass, leaves, mats or other inflammable material

in contravention of the provisions of section 236.' The proposed amendment inserts the words 'or repairs' after 'makes,' and substitutes 'of' for 'with', so that the clause will now run thus:—'makes or repairs a roof or wall with grass, leaves, mats, or other inflammable material in contravention of the provisions of section 236.' The object of the amendment is merely to make section 270 correspond with section 236.

"These are the small amendments which the Council are asked to accept, and as they are all, I think, obviously desirable, I trust that there may be no demur to any of them."

The Motions were carried *nem con.*

The Hon'ble MR. GHOSE said:—"I beg to ask the permission of the President to move that in section 200, as amended by this Bill, option be given to the owners of private tanks or pools as regards all the three processes of re-excavating, filling up or cleansing them when such tanks or pools are declared by the Commissioners to be dangerous to health, or offensive to the neighbourhood. At the last meeting when this section was being discussed, I drew the attention of the Council to a passage in a letter from the Legislative Secretary to the Government of India to the Secretary to the Government of Bengal, Municipal Department (No. 17, dated Calcutta, 5th January, 1893), in which the Government of India point out that the whole section requires reconsideration, particularly as to whether a mere occupier should be held liable at all, and whether the option between re-excavating, or filling up, or cleansing should not be left to the party concerned. I have had an opportunity of consulting the learned Advocate-General, who thinks that the best way of meeting the difficulty would be to add a proviso to the section in these words: 'whenever an order is made by the Commissioners under this section, it shall be at the option of the owner either to re-excavate, or to fill up with suitable material, or to cleanse, &c.' This is the amendment which I would wish, with the permission of the President and the Council, to move."

The Hon'ble MR. ALLEN said:—"I entirely oppose this amendment on the ground that it is very dangerous to allow this option, which may have the effect of entirely defeating the original purpose of this section."

[*Sir Charles Paul; The President; Mr. Bourdillon.*]

The Hon'ble SIR CHARLES PAUL said:—"I think it will be a very great error not to accept this amendment. Every one is at liberty to have a tank in his own compound, and if the tank requires cleansing, the owner or occupier may be called upon to do so. To impose upon him the burden of re-excavating it or filling it up with suitable material will, I think, be very hard. In cases, however, where it is absolutely necessary to re-excavate a tank or to fill it up, it should be done by the municipality at its own cost after acquiring the land; but when the Commissioners are not prepared to do so, they should give the option to the owner of doing one of these three things. That is the view of the Government of India, I understand, in the instructions which have been received from that Government."

The Hon'ble THE PRESIDENT said:—"This is an amendment which was the subject of much consideration and discussion at a previous meeting of the Council, and having regard to the objection which has been taken by the Legal Remembrancer, I feel bound to stand by what I said at the commencement of this meeting that only non-contentious amendments should be passed. I therefore am obliged to say, under the ruling which I have laid down for the guidance of the Council, that I cannot put the amendment of the Hon'ble MR. GHOSE to the Council."

The Motion was accordingly not put to the Council.

The Hon'ble MR. BOURDILLON said:—"It now becomes my duty to move that the Bill, as it has been settled in Council, be passed. The Bill has been for so long a time before the members and the public, that I feel no compulsion to say many words upon this occasion. I will only congratulate the Council that this Bill, which has been on the stocks for more than three years, which has grown from 53 sections to 99 sections, which adds 37 new sections to the existing Act, and which has taken up a very large portion of the time of the Council during the present Session, is now approaching completion. It is idle to hope that a Bill of this kind will please all parties, or any one party. It has from the first been a measure of compromise, but I think the Council may congratulate themselves that they lent a ready ear to reasonable representations, and that whatever has been worthy of consideration has been very carefully considered.

Time alone will show what the effect of this enactment will be, but I, for my part, believe that the effect will be on the whole beneficial. I therefore move that the Bill. as settled in Council, be passed."

The Hon'ble Babu Surendranath Banerjee said:—"I feel that I cannot allow this motion to pass unchallenged. I cordially acknowledge that the Bill which is now before us, and which is about to pass, is a very different measure from the Bill which was introduced into this Council in July, 1892, and that it has been very considerably modified in deference to public opinion. But I state the bare truth when I say that the Bill, even as modified after the elaborate discussions which it evoked, does not contain a single concession to popular rights—that it does not contain a single provision which is calculated to broaden the institution of Local Self-Government, or to widen the sphere of rights and privileges already possessed by the local bodies. In this respect, it represents an unhappy departure from similar enactments in the past. Sir, I have had occasion to remark in this Council that the history of Municipal laws in Bengal is the history of progressive legislation. The Act of 1876 was a distinct improvement upon the earlier Act. The Act of 1884 was even a greater improvement upon the legislation of 1876. Can it be said that the Bill which is before us will be an improvement upon the Act of 1884, so far as the principle of Local Self-Government is concerned? It will promote administrative convenience; it will strengthen the interests of sanitation in the mufassal; it will perhaps place municipal taxation upon a sounder basis, but it will weaken the principle which lies at the root of the system of Local Self Government, and which has been happily described by a great authority as the government of the people by the people and for the people in regard to their local concerns. I gratefully admit that concessions have been made, but not in regard to crucial questions, save and except in the matter of sanitation, where the principle of local option has been allowed to supersede the principle of coercion. Where the Executive officers of Government are sympathetic and kindly disposed, I apprehend no difficulty: the municipalities will work smoothly enough. But where the officers are differently disposed, where they are the reverse of being sympathetic, friction will arise and the municipalities will not work satisfactorily. It seems to me to be a matter of infinite regret that advantage should not have been taken of this opportunity to place our municipal institutions upon a satisfactory footing—to relieve them of the risks of personal likes and dislikes—to

reduce to a minimum the element of personal government, and to ensure the future success of municipal self-government upon the basis of well-recognised rules which would make our municipalities independent of the influence of personal idiosyncracies."

The Hon'ble MR. GHOSE said:—"I regret that my hon'ble friend, the member for the Corporation, has thought it his duty to challenge the last motion in connection with this Bill. I agree with him in thinking that there are matters as to which the Bill is susceptible of improvement, but I cannot forget that legislation by a Legislature constituted even as this Council is must be to a certain extent a matter of compromise. I cannot agree with my hon'ble friend when he says that no concession has been made to public opinion, nor is it consistent with his own admission that the amended Bill scarcely bears any resemblance to the Bill as originally referred to the enlarged Select Committee. I cannot forget that many concessions have been made and many a compromise arrived at out of deference to public opinion, and in consideration of the objections made in the Select Committee and in this Council. We have moved our amendments and made our protests whenever we considered that any section of the Bill was legitimately open to criticism or protest. Some of our amendments have been carried, some have been accepted with modifications, while others have been lost. I regret quite as much as my hon'ble friend that all our amendments were not successful. But having already recorded our protest against those sections of the Bill which seemed objectionable to us, I do not conceive it to be my duty to oppose the Bill as a whole including all our own amendments, and although it contains some provisions that are positive improvements upon the existing law. Therefore I do think it is an unwise proceeding on the part of my hon'ble friend to oppose the passing of the Bill, merely because certain amendments which were moved by the hon'ble member or by myself, or by other hon'ble members with whom we have the pleasure of acting in concert, were not carried. Under these circumstances, I think it is our duty at this stage of the Bill not to offer an uncompromising opposition, such as I understand my hon'ble friend to offer, but having made our protest in respect of the several amendments standing in our name, which have been rejected, now to accept the decision of the Council and let the Bill pass.

The Hon'ble MR. BOURDILLON in reply said:—"The hon'ble member who opposed my motion opposed it, I understand, on general grounds, and he did not

[*Mr. Bourdillon.*]

pause to say against what particular measure or part of the Bill his objections were strongest. However, anticipating that there would perhaps be some objection at the last moment to the passing of the Bill, I have been at the pains to jot down a few notes to show how far an allegation, if made, that the measure was retrograde and hostile to Local Self-Government, would be borne out by the facts.

"The sections of the Bill naturally divide themselves into three groups, viz., (*a*) those which deal with large questions of principle; (*b*) those which make administrative changes of a lesser character; and (*c*) those which are merely corrective, which repair omissions, give effect to the decisions of the Law Courts, recast the wording of old sections, and repeal those which are no longer necessary. The latter is, of course, far the larger group. It has constantly been asserted—and the latest assertion appears in the *Amrita Bazar Patrika* of two days ago—that the Bill represents a determined and long-sustained attack upon the principle of Local Self-Government and the powers of Municipal Commissioners. Nothing could be further from the truth, for the powers of the Commissioners have been greatly increased in very many ways, while they have been curtailed in one or two respects only.

"The administrative changes involving no particular loss or gain of power to either the Government or the party which calls itself the party of Local Self-Government are these:—First, the introduction of the drainage and water-supply sections (Bill section 23), which are so carefully balanced as to give to Government and governed equal powers; and, secondly, the extension of the franchise as provided for in section 7 of the Bill.

"The matters on which Government, on behalf of the rate-payers or for the better administration of the country, has felt itself obliged to intervene are few in number, and each is carefully safeguarded. First comes the power taken in sections 4 and 5 of the Bill to disestablish a municipality, or to alter its boundaries when it no longer fulfils the conditions which originally justified its creation; then follow the power to appoint Commissioners *ex-officio*, a small matter of administrative convenience (section 8), the delegation to Commissioners of Divisions of certain of the smaller powers of Government (section 21); the appointment of a special Auditor when the accounts are in confusion (section

33); and, lastly, the power to appoint an Assessor when it has been proved that the affairs of the municipality require it, and when the Commissioners will not move of themselves (section 43).

"On the other hand, the powers and responsibilities of the Commissioners have been advanced in many ways. They will now be able to order a survey (section 66) and to organise a fire-brigade (section 92). Their financial powers are increased by the provision that the Commissioners shall not finally pass orders on their Budgets till they have had an opportunity of replying to his criticisms (section 32), and their income may be considerably developed in several ways, *i.e.*, the maximum of the water-rate is increased to 7½ instead of 6 per cent. (sections 35 and 81). They may levy in the same municipality both the tax on persons and the rate on holdings (section 34); arable lands may now be assessed where the personal tax is in force (section 36); property in their temporary possession may be turned to pecuniary advantage (section 57); licenses may be issued at burning-ghats and burial-grounds (section 73), and the latrine rate may be levied from vacant holdings (section 88). Not less important are the larger powers of administrative control now confided to Municipal Commissioners. They may control the water-supply where its purity is suspected, even when private rights are affected (sections 56-57); they will exercise larger powers over ruined and dangerous houses, walls and trees (sections 58 to 60). Their powers in regard to building regulations may be greatly increased at their option (section 68), and they have been enabled to frame wider bye-laws and to enact rules of business for their own guidance (sections 93 and 96).

"Surely, Sir, these numerous and important provisions refute the allegation that this is a narrow and retrograde Government measure aimed at the development of Local Self-Government, and corroborate my assertion that it is on the contrary a carefully-considered and temperate enactment, dealing with acknowledged wants and difficulties, and framed to facilitate and improve, not to embarrass and restrict, Municipal Government in these Provinces."

The Motion being put, the Council divided:—

Noes 14.

The Hon'ble Mr. Stuart.
The Hon'ble Mr. Womack.
The Hon'ble Maulvi Serajul Islám Khan Bahadur.
The Hon'ble Mr. Ghose.
The Hon'ble Maulvi Syed Fazl Imam Khan Bahadur.
The Hon'ble Mr. Wilkins.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Collier.
The Hon'ble Mr. Bourdillon.
The Hon'ble Mr. Lyall.
The Hon'ble Sir John Lambert.
The Hon'ble Mr. Cotton.
The Hon'ble Mr. Allen.
The Hon'ble Sir Charles Paul.

Noes 2.

The Hon'ble Mr. Bonnerjee.
The Hon'ble Babu Surendranath Banerjee

So the Motion was carried.

RESETTLEMENT OF LAND REVENUE AND AMENDMENT OF BENGAL TENANCY ACT, VIII OF 1885.

The Hon'ble MR. BUCKLAND moved for leave to introduce a Bill to remove doubts which have arisen in connection with the resettlement of land revenue in temporarily-settled areas, and to amend the Bengal Tenancy Act, VIII of 1885. He said:—

"Mr. President, as I do not propose to offer any remarks at this stage, but will do so at a later stage if this motion is carried, I will now simply make the motion standing in my name."

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND also applied to the President to suspend the Rules of Business. He said:—

"I will say just one word in justification of this motion. The Local Government has only within the last nine or ten days received the permission

of the Government of India to introduce this legislation, and it is very desirable that the Bill should be read in Council, and published before the end of this Session of the Council, so as to give time for consideration during the time the Council will be in recess. It is therefore my duty to ask Your Honour to suspend the Rules. to admit of the Bill being read in Council at once."

The Hon'ble THE PRESIDENT having declared the Rules suspended—

The Hon'ble MR. BUCKLAND introduced the Bill and also moved that it be read in Council. He said:—

"Mr. President, I have now, Sir, to make such observations as I have to offer, as regards the Bill in my hands. I ought to explain, first, the circumstances under which the necessity for legislation has arisen. The Council may be aware that very large settlements of land revenue are in progress in these Provinces, especially in Orissa and Chittagong. I may mention that Chittagong contains 1,000 square miles, and about 250,000 tenants; while Orissa contains something like 5,000 square miles, with 6,000 estates, and about one million tenants, whose rents have to be settled. It is obvious that the settlement of the rents of such an enormous number of people cannot be undertaken in a day or a month, or even within two or three years, the operations to be gone through being very considerable and requiring the greatest care. The land revenue settlement in Orissa and Chittagong, to which I have referred, will be falling in before very long; in Orissa, in September, 1897, and in Chittagong some of the earlier taluks in 1898, and the later taluks in subsequent years. The settlement of land revenue, as every one in this room probably knows, depends upon the settlement of rents. It becomes therefore necessary in dealing with such an enormous number of people to undertake the settlement of rents at a reasonable time beforehand—in such time that they may be all completed and the records all written, so that the new rents and the new land revenue may come into force together on the expiration of the current land revenue settlement. While these proceedings have been in progress in the two areas I have mentioned, a question has been raised by the officers concerned as to the date on which the settlement of rents may be legally taken in hand.

"Questions of this sort have to be decided according to law, and the question was naturally referred to the legal advisers of the Government, namely, my

[*Mr. Buckland.*]

hon'ble friends the Legal Remembrancer and the Advocate-General. The Legal Remembrancer gave an opinion to the effect that, although all preliminary enquiries may be taken in hand whenever convenient, the earliest period when any raiyat can be called upon to consider the table of proposed rents, and acquiesce in or object to the rent entered against him is during the currency of the last year of the existing settlement. The Advocate-General said that no measures can be taken requiring tenants to appear and contest anything in the shape of rent, until after the expiration of the current settlement. The receipt of these opinions raised considerable difficulty, and I am not saying too much when I mention that a Conference was held with the legal advisers of the Government, and the Advocate-General to some extent modified his previous opinion, on it being pointed out to him what was considered by the Government to be the full force of the old Regulations VII of 1822 and IV of 1828, under which the land revenue settlements are being carried out. On his attention being drawn to those Regulations, that is, to certain portions of them, the Advocate-General expressed an opinion to the effect that when the term of engagement has been extended for one year beyond such term by six months' notice, immediately preceding the termination of such engagement, a revision of the settlement may be entered upon and commenced after this notice, and within the six months last mentioned, that is, resettlement is possible during six months before the expiry of the land revenue settlement. Obviously if all revenue resettlements could not be begun until six months previous to the expiry of the current settlement or until after the expiry of the settlement, it will be impossible to get all the work done, and to make the new rents and land revenue come into force on the expiry of the settlement.

"But it is contended by the Government that it is perfectly reasonable that such increased revenue as may be acquired by the settlement should be obtained from the expiry of the previous settlement, and on consideration of the old Regulations and the North-Western Provinces Land Revenue Act, XIX of 1873, which was based on the old Regulations, it appeared to the Government that this was a reasonable view to adopt. When Act XIX of 1873 was passed for the land revenue settlement of the North-Western Provinces, it was then expressly declared in Council—I have my finger on the reference—that the Act then passed was merely a consolidation of the old Regulations, which I have enumerated. By

[*Mr. Buckland.*]

this Act (XIX of 1873, sections 30-37) all that is necessary is, for Government to issue a notification to declare when a local area has been brought under settlement, and a local area shall be held to be under settlement from the date of such notification, and that notification immediately legalises all operations. But when we come to look at our own Tenancy Act, VIII of 1885, under which the rent settlement must be made simultaneously with the land revenue settlement, we come to an expression in section 101, clause 2(*d*), read with section 104, clause 2, that rents must be settled by the Revenue Officer when the settlement of the revenue is being made in respect of a local area.

The question thus arose, what is the meaning of the words 'land revenue settlement is being made.' It is to meet that difficulty that the legislation on which we are now embarking has been proposed. The Advocate-General holds that the words 'is being made' shall be read to mean 'is about to be made,' or 'is being revised.' He holds, as I understand him, that if such words as I have mentioned are introduced into the Tenancy Act, then it would be legal for such rent settlements to be made some time before the expiration of the current land revenue settlement. In other parts of India no difficulty has been raised with regard to the land revenue settlement and the simultaneous rent settlements being made before the expiration of the current settlement. And I believed it has happened in other parts of India that the Local Governments have received severe censure from the Supreme Government for not entering in time on the resettlement of an area or district, whereby considerable sums of money have been lost to the estate, and considerable rents to the landlords in such areas.

"I trust I have made myself clear that the Local Government is anxious to do in this matter what is reasonable in the public interests in regard to the land revenue. The objection which has been taken has been regarded by the Government as a somewhat technical one; but as it has been raised by the legal advisers of the Government, it is impossible to ignore it, and it is proposed to adopt the simple method proposed by the Advocate-General to make things clear. The result will be that when a settlement of land revenue is to be made or is being made in respect of a local area, then under section 101, clause 2 (*d*), and section 104, clause 2, it will be incumbent on the Settlement Officer to resettle the rents upon which the land revenue depends.

[*Mr. Buckland.*]

"These are the remarks I have to offer with regard to the general scope of the measure. I have in doing so practically run over the greater part of the first section of the Bill. All that it is proposed to do by the first section is to insert the words 'is to be or' after the word 'revenue,' in section 101, clause 2 (*d*) of the Bengal Tenancy Act. My learned friend the Advocate-General has informed me since entering this Council Chamber that it is quite unnecessary to say anything about the omission of commas in the section which can be done without any mention of them in the Bill. This little point can easily be rectified hereafter.

"I turn now to the second section of the Bill, which practically follows as a necessary consequence of the previous portion of the Bill. By section 110 of the Tenancy Act, when any rent is settled under Chapter X, it is laid down that the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record. As I have said in the Statement of Objects and Reasons, the date of the agricultural year next after the final publication of the record will not necessarily be the same date as the commencement of the new revenue settlement. All that is meant by the first part of section 2 of the Bill is to provide that all fair and equitable rent settlements under section 104, clause 2, of the Tenancy Act, that is to say, rents settled when a land revenue settlement is in progress—not *all* rents settled under any part of section 104—shall take effect from the date from which the new revenue settlements come into force. I submit that this is a very obvious and reasonable provision, and I do not suppose there can be any serious objection to the first part of section 2.

"Then I come to the proviso of section 2, which is rather a long one, but comparatively simple. As I have intimated, it may be necessary to settle many of these rents at some considerable time before the current land revenue settlement expires, and the new settlement comes into force. It may, for instance, happen that in Orissa the settlement of rents may be going on now, whereas the land revenue settlement may not expire until September, 1897, and obviously a great many things may occur in the interval, such as a cyclone or flood or unexampled droughts, which may render it necessary and equitable to alter the rents settled some time previously. Therefore the proviso leaves it open either to the landlord or the tenant to apply on the ground of special circumstances

[*Mr. Buckland.*]

having occurred to have the settlement of his rent revised. The proviso also goes on to make it competent for a Revenue Officer, if so directed by Government, to revise such rents without any application being made. It is quite possible that these words of the proviso may be challenged, because, as is well known, it is one of the important features of the Tenancy Act that the settlement of rents is a judicial proceeding, and this proviso may be challenged on the ground that the Local Government will be interfering to set aside the settlement of rents made by its officers. I wish to say here that there is no intention whatever on the part of the Government to interfere on a large scale, and the chances are very great that, if the Government does interfere of its own motion to get revised such rents as have been settled, they will do so rather in the direction of a reduction of rent than an enhancement. But it is desirable that the Government should have such power.

"It often happens that landlords or tenants who would have a perfect right to appeal within thirty days to the Special Judge do not appeal, either through apathy, or indifference, or ignorance of their legal rights, and they similarly might omit to apply for a review under the power which it is proposed to give them under this proviso. It is therefore considered very desirable for the Government to possess this power, though it will be exercised with very great discrimination, and probably very seldom. But when you have these settlements going on in such great dimensions as I have stated, rents being settled in many places in a district at the same time by officers, some of whom perhaps have not very great experience and are comparatively new to such work, it becomes necessary for the Government to have full power to supervise, and, if necessary, to revise the proceedings of its own officers. I know that there is power on the part of the Government to appeal to the Special Judge, but that right has to be exercised within thirty days, and practically, through want of adequate means of supervision, it becomes very difficult for the Government to exercise that right of appeal within the specified time. I think therefore that it is not unreasonable, and may be very desirable, for the Government to have this power in their own hands. It would be a monstrous thing if, for want of a power to get them reviewed, rents settled by subordinate officers which are either notoriously low or oppressively high should, on the lapse of the right of appeal, be unalterable, and the local area become excited and disturbed, and

perhaps such riots occur as we have heard of lately in Assam. At any rate it is quite possible that circumstances may occur in which it may be desirable for the Government to interfere by way of review to put matters right before they become serious in any local area under settlement.

"There is at present a provision in the Tenancy Act which authorises the Government to order a special settlement in special cases, but that section (112) was framed for a state of things which might be held to be very serious. It was meant to take the place of the Agrarian Outrages Act of 1876, and was intended to be used as an extreme power for a state of circumstances of no ordinary character—cases where local disturbances have occurred or are likely to occur,—but the object of the words in the present proviso is to enable the Government to interfere at a much earlier stage to prevent any such scandal of either notoriously low rents or oppressively high rents being fixed, and such review, as I have said, would take place more probably in the direction of reduction than enhancement of rent.

"This power of review is, I am informed, in existence in other parts of India. In the North-Western Provinces and the Central Provinces, it is quite open to the Government to order a review of the assessment of revenue, possibly entailing a review of the rents that have been settled. The words which I propose to introduce are really only intended to extend to Bengal the principle which is in force in other provinces of India. Then the proviso goes on to say that the Revenue Officer or such officer as the Government shall select for the purpose shall take such application into consideration, and shall make such revisions of rent as may be fair and equitable, and make such corrections in the record as may appear necessary by such revision. The object of these words is merely to compel the Government officer to take action when applications have been made or he is directed to do so. The third section of the Bill is merely intended to give retrospective effect to the Bill, where the work of assessment has been already done. I think it is a very salutary provision, as it legalises any mistakes which have been made inadvertently under the reading of the law by the Executive Government, in regard to which certain objections have been raised by their legal advisers. It is merely a precautionary provision, and I think it an important one, which I commend to the Council.

"I think I have now exhausted all I had to say to commend this Bill to the notice of the Council. The intention is that the Bill should now

be published in the Gazette, and later on, if there is an autumn session, or as may be otherwise thought fit, it will be necessary to appoint a Select Committee to deal with the Bill, and to take into consideration such opinions as may be offered by any persons who may wish to submit a report to the Council. It is not considered desirable to appoint a Select Committee now, as the Bill has only just been introduced, and the members of the Council are now dispersing. I will therefore, with Your Honour's permission, merely move that the Bill be now read in Council."

The Motion was put and agreed to

The Bill was read accordingly.

The Hon'ble THE PRESIDENT said:—"I propose to ask hon'ble members to meet again in July next, when we hope to carry on this little Bill, and if we have received by that time sufficient replies, we may be able to push forward the Sanitary Drainage Bill. I do not think there is any other business which will be taken up in the summer session, and possibly it may be too early to take up the Drainage Bill at that time."

The Council adjourned *sine die*.

GORDON LEITH,

Assistant Secretary to the Govt. of Bengal, Legislative Department.

CALCUTTA;
The 31*st May*, 1894.

Reg. No. 237G—300—7 6 94.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892.

THE Council met at the Council Chamber on Saturday, the 7th July, 1894.

Present:

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General.*

The HON'BLE H. J. S. COTTON, C.S.I.

The HON'BLE SIR JOHN LAMBERT, K.C.I.E.

The HON'BLE J. A. BOURDILLON.

The HON'BLE MAULVI ABDUL JUBBAR KHAN BAHADUR.

The HON'BLE F. R. S. COLLIER.

The HON'BLE C. E. BUCKLAND.

The HON'BLE C. A. WILKINS.

The HON'BLE MAULVI SYED FAZL IMAM KHAN BAHADUR.

The HON'BLE MAHARAJA RAVANESHWAR PROSAD SINGH BAHADUR OF GIDHOUR.

The HON'BLE SURENDRANATH BANERJEE.

The HON'BLE MAULVI SERAJUL ISLAM KHAN BAHADUR.

The HON'BLE W. C. BONNERJEE.

The HON'BLE MAHARAJA JAGADINDRA NATH ROY OF NATOR.

The HON'BLE J. N. STUART.

THE MUHARRAM PROCESSION AT GAYA.

The Hon'ble MR. W. C. BONNERJEE asked—

Whether the Government will reconsider the decision embodied in its letter No. 798J., dated 6th February, 1894, addressed to the Commissioner of the Patna Division, disallowing the prayer of the Shias of Gaya to carry an *alam* with *maskh* and *tir* in their processions and allow them to carry these emblems in the next Muharram and Chehloom processions, directing the local officers to take proper safeguards for the preservation of the peace?

The Hon'ble MR. COTTON replied :—

"In the town of Gaya the Shias number only 150 to 200 souls, while the number of Sunnis is about 10,000. The Sunni community entertain a

deep-rooted aversion from the use of symbols in any form, and especially to the exhibition of the symbols of the *maskh* and *tir* with the *alam* in the Muharram procession. It is unnecessary to consider the grounds of this aversion: it exists, and the fact remains that in 1882, when the procession with these emblems was permitted, a disturbance took place which was only quelled by the interference of a large body of police. Since that year the executive authorities in the exercise of their legal powers have prohibited the carrying of these emblems in public procession, and this prohibition has been annually enforced. During the past two or three years there has been an active agitation on the part of the Shias to rescind the prohibition, and the whole subject has been fully reported on by the local officers and has been carefully considered by Government. The final orders of the Lieutenant-Governor were contained in my letter No. 798J., dated 6th February, 1894, to the address of the Commissioner of Patna, in which it was laid down that no change in the established procedure could be allowed in Gaya or elsewhere. The Lieutenant-Governor is convinced that the principle of withstanding innovations must be maintained. Moreover, the emblems, if allowed at all, would have (as is admitted in the terms of the Hon'ble Member's question) to be conducted under a special guard appointed for the purpose. This the Lieutenant-Governor cannot permit, and the Government adheres to the principle laid down in my letter quoted that no community has a right to carry out religious observances in public, which are not sanctioned by continuous usage, which offend another community, and which would lead to riot if not protected by the strong arm of the police.

"For these reasons, the Lieutenant-Governor declines to reconsider the orders prohibiting the carrying of these emblems in public procession in the town of Gaya."

EXCHANGE COMPENSATION ALLOWANCE TO EURASIAN CLERKS.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Will the Government state if it is a fact, as stated in one of the newspapers, that in the returns which are prepared from time to time showing the respective number of Europeans and Natives in Government service, it is the usual practice to include Eurasian clerks under the head of "Natives?" Whether,

[*Babu Surendranath Banerjee; Mr. Bourdillon; Mr. Buckland:*]

as stated in the same newspaper, among the Eurasian clerks who are shown as "Natives" in the returns referred to above, there are not some who have been drawing exchange compensation allowance?

The Hon'ble MR. BOURDILLON replied:—

"The Lieutenant-Governor has not seen the newspaper statement to which the Hon'ble Member alludes, and cannot therefore say to what returns reference is made; no returns answering to the description given are prepared by or under the orders of the Government of Bengal. The figures given by the Chief Secretary in reply to a question by the Hon'ble Member on the 9th February last referred only to superior officers, and did not include clerks. The Hon'ble Member may, however, rest assured that no official is granted exchange compensation allowance who has not established the fact that he has a European domicile."

RESETTLEMENT OF LAND REVENUE AND AMENDMENT OF BENGAL TENANCY ACT, VIII OF 1885.

The Hon'ble MR. BUCKLAND said:—"It will be in the recollection of the Council that on the 28th of April last I introduced into Council a little Bill to remove doubts which have arisen in connection with the resettlement of land revenue in temporarily-settled areas, and to amend the Bengal Tenancy Act, VIII of 1885. On that occasion I said that nothing further would be done at that moment than to read the Bill in Council and to circulate it for opinion, and that later on it might be necessary to appoint a Select Committee to deal with any opinions and criticisms which might be received, and to consider any suggestions which might be made. The Bill was read without discussion, but a number of reports have since been received from Associations and others interested in the measure, and it is now my duty to refer the Bill to a Select Committee for the consideration of those reports. I therefore move that the Bill to remove doubts which have arisen in connection with the resettlement of land revenue in temporarily-settled areas, and to amend the Bengal Tenancy Act, VIII of 1885, be referred to a Select Committee consisting of the Hon'ble

Messrs. BOURDILLON, WILKINS and GHOSE, the Hon'ble MAULVI SERAJUL ISLAM KHAN BAHADUR, the Hon'ble MAHARAJA JAGADINDRA NATH ROY OF NATOR and the Mover.

The Motion was put and agreed to.

The Hon'ble THE PRESIDENT said:—"There is no other business before the Council to-day, but I may mention now that I hope the members of the Select Committee will be able to arrange to meet at a very early date for the purpose of considering the Bill. As far as I am aware, the Bill contains no contentious provisions or matters to which objection is likely to be taken on principle. The only question, as far as I know, which is likely to arise would be possible emendations of language, which may be suggested by the Legislative Department or by our legal experts in Council. In that case, if our anticipations are fulfilled, I hope the Report of the Select Committee will be at once laid before the Council, and that the Council will meet again on Saturday next to consider and pass the Bill. If no objection is taken to the Bill, I presume it will be convenient for hon'ble members to pass this Bill at once next Saturday, and in that case I do not think it will be necessary to summon the Council again for any further business during this summer session."

The Council adjourned to Saturday, the 14th instant.

GORDON LEITH,

Assistant Secretary to the Govt. of Bengal, Legislative Department.

CALCUTTA ;
The 16th July, 1894.

Reg. No. 352G.—300—16-7-94.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892.

The Council met at the Council Chamber on Saturday, the 14th July, 1894.

Present:

The Hon'ble Sir Charles Alfred Elliott, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.

The Hon'ble Sir Charles Paul, K.C.I.E., *Advocate-General*.

The Hon'ble H. J. S. Cotton, C.S.I.

The Hon'ble J. A. Bourdillon.

The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.

The Hon'ble F. R. S. Collier.

The Hon'ble C. E. Buckland.

The Hon'ble C. A. Wilkins.

The Hon'ble Maulvi Syed Fazl Imam Khan Bahadur.

The Hon'ble Surendranath Banerjee.

The Hon'ble L. Ghose.

The Hon'ble Maulvi Serajul Islam Khan Bahadur.

The Hon'ble W. C. Bonnerjee.

The Hon'ble Maharaja Jagadindra Nath Roy of Nator.

The Hon'ble J. N. Stuart.

WATER-WORKS AT HOWRAH.

The Hon'ble Mr. Ghose asked—

1. Whether the site of the intake of the proposed Howrah Water-Works is not within a distance of about 60 yards from a largely-frequented public ghât, and whether, within a distance of 400 yards from the intake, there are not several other ghâts, and whether it is the fact that within that distance from the intake some 3,000 coolies employed in the India Mill are in the habit of bathing daily?

2. Whether for three miles above the proposed intake the shore is not lined with a succession of bathing ghâts at which the inhabitants of the towns of

[*Mr. Ghose; Mr. Bourdillon.*]

Baidyabati, Sheorapholi, Chattra, and Serampore, amounting to 30,000 persons or thereabouts, bathe daily, and whether it is the fact that there are no public ghâts for a considerable distance above and below the intake of the Calcutta Water-Works at Fulta?

3. Whether complaints as to the insanitary state of the foreshore within 400 yards of the intake have been recently made to the Serampore Municipality; and whether, if cholera breaks out among the persons bathing, there is not a reasonable probability of the germs being transmitted to Howrah; and whether it is the fact that Dr. Simpson, the Health Officer of the Calcutta Corporation, has advised against the scheme on sanitary grounds, and suggested a site higher up the river, and whether the Government proposes to take any, and if so what, steps in the matter?

The Hon'ble MR. BOURDILLON replied:—

"The Lieutenant-Governor is informed that there is a largely-frequented bathing ghât about 60 yards above the intake of the proposed Water-Works at Serampore, and that there are three or four other ghâts within some 400 yards of the spot.

"The facts stated in the second paragraph of the Hon'ble Member's question are substantially correct; but although it is believed that there are no bathing ghâts in the immediate vicinity of the Fulta Water-Works, there are many of them within three miles above and below the intake at that place.

"As regards the third question, it has been ascertained that an objection was made in January last by the Civil Medical Officer of Serampore to the effect that the river bank was being polluted: the nuisance was immediately put a stop to. Government is not aware of any other complaints of this character. Whether cholera is likely to be conveyed from Serampore to Howrah through the Water-Works, the Lieutenant-Governor cannot pretend to say. It is not the fact that the Health Officer of Calcutta has advised on sanitary grounds against the scheme of an intake at Serampore, or suggested a site higher up the river.

"The Government does not propose to interfere with the arrangements already in progress. I may inform the Hon'ble Member that the mouth of the pipe through which the water is drawn is 100 feet away from the river bank

[*Mr. Bourdillon; Babu Surendranath Banerjee; Mr. Cotton; Mr. Ghose,*

and 10 feet below the surface at low water. The water at this point has been analysed and shown to be a sufficiently good potable water, and it will pass through settling and filtering-tanks before transmission to Howrah. Lastly, if Serampore were abandoned as the site of the water-works, they would have to be moved some six miles up the river, and the additional cost would be fatal to the whole project."

DACOITY AT KHURDA.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Has the attention of Government been called to the disturbed state of the villages lying within the jurisdiction of the Khurda thana in the sub-division of Barrackpore, to the case of dacoity at Patali, and to the cases of theft and burglary which are of frequent occurrence in the neighbourhood?

Whether any representations have been made in this connection to the District Magistrate, and what action, if any, has been taken upon those representations?

The Hon'ble MR. COTTON replied:—

"On receipt of the Hon'ble Member's question the Lieutenant-Governor caused enquiries to be made and has ascertained that a dacoity occurred last month at Patali, and is still under enquiry. There has been a slight increase in the number of thefts and burglaries reported in the Khurda thana during the first six months of the current year, the number being 41 against 35 during the corresponding period of 1893.

"The District Magistrate has received various representations on this subject, and proposals for the improvement of police arrangements in Khurda are under his consideration.. In the meantime, extra constables have been deputed to that thana for patrol duty."

MUHARRAM PROCESSION AT CALCUTTA.

The Hon'ble MR. GHOSE asked—

Whether on Monday last, the 9th instant, between 9 and 10 P.M., some of the streets of Calcutta, including Circular Road, from the corner of Harrison

Road to the junction of Theatre Road, were not occupied by successive groups of *Muharram akharas*, not being processions passing along the streets, but stationary crowds occupying the entire width of the road and forming a ring, in the centre of which performances were going on with *lathies* and lighted torches, entirely blocking the traffic to the great inconvenience of passengers and causing imminent danger to persons driving along the road?

Whether a certain number of constables were in attendance upon each of these *akharas* without taking any steps to make them pass on, and whether the permission given by the Police authorities referred only to processions passing along the road, or whether such permission actually sanctioned the occupation of the road at various points by the different *akharas* for the purpose of the said performance?

Whether, having regard to the fact that a sufficient number of suitable places, such as squares and waste lands besides the *maidan*, are available for the purpose of such performances, the Government will consider the desirability of prohibiting such performances taking place in the public thoroughfares?

The Hon'ble MR. COTTON replied:—

"By notification dated the 5th July, 1894, issued under the provisions of section 62 of Act IV (B.C.) of 1866, and section 39 of Act II (B.C.) of 1866, the Commissioner of Police granted licenses for processions with music on account of the celebration of the Muharram in the Town and Suburbs of Calcutta on Monday, the 9th instant, between the hours of 9 P.M. and 10 P.M. The *akharas* referred to by the Hon'ble Member formed part of the procession and passed along the routes prescribed. Such processions are allowed to halt at intervals for the purpose of mimic warfare. About 450 licenses have been issued to take out processions during the present Muharram.

"The practice is to tell off a certain number of policemen to accompany each *akhara*, but the orders issued to the Police forbid interference except to maintain order and to ensure that the route and hours prescribed are duly observed.

"It has been established by long custom that these processions shall proceed by certain routes to enable them to visit shrines and other places held in veneration. It would not be possible therefore to restrict such processions to squares and waste lands or to the *maidan*. The above usage applies not only

to Muharram processions, but to other assemblies and processions, which take place annually in the Town and Suburbs of Calcutta, and on such occasions the temporary obstruction of ordinary traffic in certain public thoroughfares is unavoidable: but intimation is always given to the public by notifications previously issued."

RE-SETTLEMENT OF LAND REVENUE AND AMENDMENT OF BENGAL TENANCY ACT, VIII OF 1885.

The Hon'ble MR. BUCKLAND, in presenting the Report of the Select Committee on the Bill to remove doubts which have arisen in connection with the re-settlement of land revenue in temporarily-settled areas, and to amend the Bengal Tenancy Act, VIII of 1885, said:—"A very few words of explanation are needed. I may say at once that the meeting of the Select Committee appointed at our last sitting was not a long one, but we discussed the Bill thoroughly, and removed what might have been considered to be the only contentious matter. I think I may say that the Bill as it now stands is free from any possible objection. We have made a few verbal amendments with the intention of making the object of the Bill more clear. In the preamble we have introduced some words so as to make it plain that the Bill applies to Government estates, as the expression 'temporarily-settled areas' has hitherto been held, in Bengal Revenue literature, as not necessarily including Government estates. There is really no alteration of principle by the introduction of these words. In the second section we have made a slight alteration in the language so as to show that new rents settled shall not take effect until the date upon which the new settlement of land revenue comes into force. The change was made to meet a criticism offered by one of the Associations to whom the Bill was sent for the favour of their opinion. A material change has been made in what now stands as the second proviso in the second section of the Bill. The Bill as originally presented to the Council on the 28th April last contained a proviso that Government might direct a revision of rents under certain circumstances. The words 'under certain circumstances' did not appear; but, as I explained at the time, the intention was that Government could apply for revision of rents when mistakes had been made, either by fixing notoriously low rents or oppressively high rents, by inexperienced Settlement Officers. It came to the notice of Government

that, by some extraordinary misconception, objection was taken to this proviso, and at the instance of Government the Select Committee have, on my suggestion, withdrawn the words which stood in the original Bill. The object of the Government may be stated briefly to have been as follows: It was intended that power should be given to the Government to direct a judicial revision by another Revenue Officer of rents which have been judicially fixed by a Revenue Officer, when circumstances such as the fixing either of notoriously low or oppressively high rents by subordinate officers came to light after the right of appeal had lapsed. It was intended by these means to rectify the mistakes of inexperienced officers, and the phrase used that such revision should be fair and equitable was intended to imply the exercise of judicial procedure on the part of the revising Revenue Officer. There was never any intention on the part of Government to interfere by the exercise of final executive authority to revise rents which had been settled judicially. But as this strange misunderstanding has come to light, these words have been withdrawn. The intention of Government is now that such mistakes shall not be allowed to occur; by a careful selection of Settlement Officers, and their Assistants, by adequate supervision of the Settlement Officer over his subordinates, and by exercise of the right of appeal within the 30 days allowed, it is hoped to obviate the necessity for any such provision. It is quite possible that it may be hereafter found necessary to make some such provision for the rectification of mistakes. The result will be for the present that when mistakes have been made there will be no legal power for getting rents reduced or otherwise altered, but the omission of these few words removes, as I have said, all contentious matter from the Bill. The intention of the Government, that the revision of rents shall be by judicial procedure in the cases when it is to be allowed on the application of landlord or tenant under special circumstances, has been made more clear by the addition of a few words to the end of section 2, to the effect that the provisions of Chapter X of the Bengal Tenancy Act shall apply in this connection, and an explanation has been added to show that the settlement of land revenue includes the settlement of rents in Government estates. I ought to mention that in Select Committee a little point was raised which led to some little discussion. It was suggested that as power had been given to revise rents on the application of landlords and tenants under special circumstances, such as the occurrence of cyclones, diluvion, or other convulsions of nature, we ought to take power at the same time to

provide for the revision of the land revenue which would follow necessarily on the revision of rents. We discussed the matter and came to the conclusion that, as this little Bill only deals with the settlement of rents, and not with the settlement of land revenue, and as it is perfectly certain that the Revenue Settlement Officers will take cognizance of such revision of rents as are effected under such circumstances, it would be out of place in this Bill to introduce any provision in regard to the revision of revenue settlements entailed by the revision of rents in these particular circumstances. I promised the Select Committee that I would mention the matter in order that it might be placed on record, and I have fulfilled my pledge accordingly."

The Hon'ble MR. BUCKLAND also moved that the Report of the Select Committee on the above Bill be taken into consideration by the Council, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The Motions were put and agreed to.

The Hon'ble MR. BUCKLAND, in moving that the Bill, as amended by the Select Committee, be passed, said:—"I think the Council will hardly desire any recapitulation of the main objects of the Bill—certainly not at any length, and I do not propose to detain the Council more than a minute. The principal object of the Bill has been met by section 1, to which I have not adverted this morning, because no change has been made in it by the Select Committee. The Council will remember that the necessity for legislation arose in consequence of the opinion given by our legal advisers that under the existing law the settlement of rents could not be undertaken previously to the expiration of a land revenue settlement. The few words which have been introduced by this Bill into the Bengal Tenancy Act have been considered sufficient by our legal advisers to meet the requirements of the law, so that now the Government will be able to undertake the settlement of rents at any time—two, three, or more years if necessary—before the expiry of the land revenue settlement. But by a later section the new rents will not come into force until the new land revenue settlement takes place. The other provisions of the Bill are merely ancillary to this main object. The last section is an

indemnifying section, as it were, to validate what had been previously done on a possibly erroneous understanding of the law. I now beg to move that the Bill, as amended, be passed."

The Motion was put and agreed to.

ADJOURNMENT OF COUNCIL.

The Hon'ble THE PRESIDENT said:—"There will be no further business to lay before the Council in the present autumn session, but I conceive that we shall have some important business to discuss when we meet again in the winter time."

The Council adjourned *sine die*.

GORDON LEITH,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

CALCUTTA;
The 23rd July, 1894.

Reg. No. 871G.—300—24-7-94.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892.

THE Council met at the Council Chamber on Saturday, the 25th August, 1894.

Present:

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General.*

The HON'BLE H. J. S. COTTON, C.S.I.

The HON'BLE SIR JOHN LAMBERT, K.C.I.E.

The HON'BLE MAULVI ABDUL JUBBAR KHAN BAHADUR.

The HON'BLE F. R. S. COLLIER.

The HON'BLE C. E. BUCKLAND.

The HON'BLE C. A. WILKINS.

The HON'BLE MAULVI SYED FAZL IMAM KHAN BAHADUR.

The HON'BLE SURENDRANATH BANERJEE.

The HON'BLE L. GHOSE.

The HON'BLE MAULVI SERAJUL ISLAM KHAN BAHADUR.

The HON'BLE W. C. BONNERJEE.

THE BENGAL POLICE.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Will the Government state the reasons why, under the Notification dated the 16th July, 1894, which appeared in the *Calcutta Gazette* of the 18th July last, announcing that an examination of candidates for recruiting the staff of the superior Police Officers in Bengal will be held in December next, it has been laid down by implication that Native Indian candidates will be excluded, and that only such European candidates as have been nominated by the Lieutenant-Governor will be permitted to present themselves for examination? Whether the Government is prepared to reconsider this part of the notification?

Will the Government state (1) the number of Assistant and District Superintendents of Police in the Bengal Police Force, (2) the number of native gentlemen who are Assistant and District Superintendents of Police, (3) the

number of Assistant Superintendents who have been selected from among Inspectors in accordance with the recommendation of the Public Service Commission?

The Hon'ble MR. COTTON replied:—

"The result of a long discussion which followed on the Report of the Public Service Commission has been that the strength of the Police Department for Bengal and Assam has been fixed at 94 officers, of whom 2 are Deputy Inspectors-General of Police, 55 are District Superintendents, 29 are Assistants, and 8 Probationers. The average annual recruitment required to keep up this force is about $4\frac{1}{2}$. It has been decided that two officers should be appointed annually by competitive examination in England and two by competitive examination in India, these being officers of European parentage. The examination referred to in the Hon'ble Member's question is the second of these, or the Indian one. It has been decided to appoint for the present two Natives of India to the police in every three years, but it has not been thought desirable to appoint them by competitive examination, and they will, as a rule, be promoted by selection from among Inspectors in accordance with the recommendation of the Civil Service Commission.

"The number of Native District Superintendents now in the Department is two: the number of Native Assistant Superintendents is three. The number of Assistant Superintendents who have been selected from Inspectors is three, viz., Babu Ras Behary Biswas, on the 19th January, 1891; Maulvi Zinnat Hosain Khan; on the 23rd June, 1892, and Babu Girindro Chunder Mukherjea, on the 21st May, 1894."

GOVERNMENT AND HIGH EDUCATION.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Whether the attention of the Government has been drawn to the comments which have appeared in the newspapers on the Resolution of Government on the subject of Local Self-Government, and the evident sense of alarm in regard to the question of high education, which the Resolution has created? Is it the intention of the Government that local funds at the disposal of the District Boards should not be devoted to the support of education of a higher

kind until full provision has been made for primary education? Is the Government aware that such an order, if given effect to, would mean the virtual closing of a large number of grant-in-aid schools, which impart secondary education?

Will the Government state the percentage of educational grant that used to be spent upon primary education by the Government before the creation of the local bodies? If the percentage varied from time to time, will the Government state the percentage for the five years preceding the establishment of the District Boards under the Local Self-Government Act?

The Hon'ble Mr. Cotton replied:—

"The Hon'ble Member's question refers to a passage which occurs in the preamble to the Resolution of the 28th June, 1894, and which was itself a quotation from a previous order. The bearing of this passage must be ascertained from a consideration of the drift of the Resolution itself

"The object of the Resolution was to point out that while the income of District Boards had increased considerably since 1888-89, their contributions to education had scarcely increased at all. The sum spent by Government on the educational establishments made over to District Boards was Rs. 10,09,657, or, including scholarships, which were afterwards transferred to them, Rs. 10,39,177; and this amount was placed at the disposal of the District Boards in addition to the Road Cess and other funds with which they dealt. In the year 1888-89 their expenditure on education was Rs. 10,30,809, and on primary education alone Rs. 6,84,047. In the year 1892-93 their outlay on education had risen only to Rs. 10,54,477, and that on primary teaching to Rs 7,07,785. Meanwhile their total income had risen from Rs. 51,24,896 to Rs. 59,55,285. The Lieutenant-Governor urged upon the District Boards the importance of devoting a portion of their growing resources to education, and more particularly to primary instruction. No suggestion was made that primary schools should be fostered at the expense of secondary schools by diverting funds from the one class to the other. The importance of fostering all sorts of schools was insisted on, and it was urged that especial attention should be given to the spread of primary education. During the present year an additional sum of Rs. 31,000 has been placed at the disposal of the Director of Public Instruction from Provincial Revenues to be expended on primary teaching in the districts where that class of education is most backward.

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

'In the latter part of the Hon'ble Member's question he is understood to enquire what percentage the total expenditure on primary education bore to the total expenditure on education in the Province before the District Boards were created. The figures obtained from the information before Government are as follows:—The percentage was in 1882-83, 25·5; in 1883-84, 25·3; in 1884-85, 28; in 1885-86, 27·4; in 1886-87, 26·4. These figures, however, are believed to be somewhat lower than the true percentages, as some portions of the expenditure under general heads, such as Inspection, Buildings, &c., which are debitable to primary education, cannot be detached without detailed enquiry and calculation, which there has not been time to make."

THE MUHARRAM DISTURBANCES AT RAJSHAHI.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Has the attention of Government been called to the *Muharram* disturbances at Rajshahi? Is it true, as reported in the newspapers, that the police fired upon the people without any orders from their superior officers, although no resistance had been offered by the Muhammadans when the *lathis* were being taken away from them by the police? Did the constables fire in the presence of their superior officers? If so, why did they not interfere with a view to stop the firing?

Whether any enquiry was held into the matter by the Magistrate and the Inspector-General of Railway Police, and will the Government lay on the table the reports, if any, of these officers? Will the Government state what steps it proposes to take to prevent the recurrence of such proceedings on the part of the police?

The Hon'ble MR. COTTON replied:—

"The attention of Government has been drawn to the disturbances referred to. Special enquiries have been made into them by the Inspector-General of Police, and also by the Commissioner of the Division, and the reports received from those officers, which have just been placed in the hands of the Lieutenant-Governor, are now under consideration. It has been shown that five police constables fired once each, three with blank cartridge and two with

buckshot, not with ball, as has been stated in some newspapers, without any orders to do so from their superior officers, and they have each of them been convicted under section 29 of Act V of 1861, and sentenced to simple imprisonment for one month and one day. They were rushed by the mob, and two of them having already received rough treatment from the rioters, they were panic-stricken and fired without orders.

"The reports received and the orders passed thereon will be made public in due course."

THE MEA CHAPRA CASE.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Has the attention of Government been called to a letter from its Muzaffarpur correspondent, which appeared in the *Bihar Herald* of the 14th July last?

Is it the case, as stated in the letter, that the raiyats of Shapur Buzurg, in the subdivision of Hajipur, having complained against some of the factory people employed in the Mea Chapra Indigo concern, the petition was referred by the Subdivisional Officer, Mr. Konstam, to the Manager of the Factory, whose servants were complained against, "for favour of enquiry and report?" Does the Government approve of such a proceeding, in which a person directly interested in the prosecution is allowed to have a voice in the decision of the case? Will the Government take steps to prevent its recurrence?

Whether it is the case that the Manager in replying to the communication of the Subdivisional Officer addressed him as "My dear Konstam?"

Whether it is true that the Magistrate, without passing any orders upon the complaint of the raiyats, proceeded with the case in which the factory people were the complainants, and convicted seven raiyats and sentenced them to one month's rigorous imprisonment and to a fine of Rs. 10 each?

Whether it is the case, as stated in the letter referred to above, that there was a complaint by the factory servants against some raiyats pending in the file of the Native Sub-Deputy, and that this case was transferred to the file of Mr. Morshed, the then Subdivisional Officer of Hajipur, the Manager having written to Mr. Morshed that the factory case was a true one, and that it should be withdrawn from the file of the Native Sub-Deputy to his own file?

[*Babu Surendranath Banerjee; Mr. Cotton; Sir John Lambert.*]

Will the Government lay on the table a statement showing the number of cases instituted from April, 1893, to June, 1894, within the jurisdiction of the Subdivisional Magistrate of Hajipur (1) by the raiyats against people employed in the factories, (2) by the factory people against the raiyats; (*b*) the number of such cases tried by the Subdivisional Officer and the number of such cases tried by Native Deputy and Sub-Deputy Magistrates; (*c*) the result in each case; (*d*) the number of such cases, if any, transferred to the file of the Subdivisional Officer from the file of Deputy and Sub-Deputy Magistrates, together with the reasons for such transfer?

The Hon'ble MR. COTTON replied:—

"The Lieutenant-Governor understands that the case referred to in the Hon'ble Member's question has been brought before the High Court, and is still pending before that Court. In these circumstances, it would not be proper for Government to express any opinion in regard to it.

"The Lieutenant-Governor does not consider it necessary to obtain the information asked for in paragraph 5 of the Hon'ble Member's question. In the opinion of Government all cases of importance—and cases in which a factory is concerned generally come within this category—should be heard by the Subdivisional Officer himself, and should not be referred for trial to a Sub-Deputy."

TRAVELLING ALLOWANCE FOR POLICE OFFICERS.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Will the Government state the system that is followed in giving travelling allowance to Inspectors belonging to the Calcutta Police Force? Is it true that European Inspectors get travelling allowance when they are transferred from one thana to another, but that the same indulgence is not shown to the Indian Inspectors of Police?

The Hon'ble SIR JOHN LAMBERT replied:—

"The allowance granted to European Inspectors and Constables of the Calcutta Police Force to cover the actual cost of moving their luggage on

[*Sir John Lambert; Maulvi Serajul Islam Khan Bahadur*

transfer from one police-station to another is regulated by clause (*l*), article 1189 of the Civil Service Regulations, which runs as follows:—

'(*l*) European Inspectors and Constables of the Bombay City Police and of the Calcutta Town and Suburban Police may charge the actual cost of moving their luggage on transfer from one station to another in the city, provided that the charge shall not exceed Rs. 8 in the case of an Inspector and Rs. 5 in the case of a Constable.'

"It will be seen that this rule does not apply to the case of Native Indian Inspectors."

MUHAMMADANS IN GOVERNMENT EMPLOY.

The Hon'ble MAULVI SERAJUL ISLAM KHAN BAHADUR asked—

Will the Government be pleased to prepare tables showing (*a*) the population of Muhammadans and the number of non-gazetted appointments with salaries ranging from Rs. 15 per month and upwards held by them in the Bengal, Bihar and Orissa districts, (*b*) the population of Hindus and the number of non-gazetted appointments with the same salaries as in (*a*) held by them in those districts, (*c*) the number of non-gazetted Hindu and Muhammadan employés on the same salaries as in (*a*) in—

I.—The Bengal Secretariat.
II.—The Board of Revenue.
III.—The Office of the Inspector-General of Police.
IV.—The Postmaster-General's Department.
V.—The Excise and Customs Department.
VI.—The Divisional Commissioner's Office.
VII.—The Court of Small Causes, Calcutta.
VIII.—The Office of the Inspector-General of Registration.

Will the Government also prepare lists showing (*a*) the total number of appointments in the Subordinate Executive Service and the number of appointments held by the Hindus and the Muhammadans respectively, (*b*) the total number of appointments in the Subordinate Judicial Service, and the number of appointments held by the Hindus and the Muhammadans respectively?

[*Maulvi Serajul Islam Khan Bahadur ; Mr. Cotton.*]

Regard being had to the disproportion of Muhammadans to that of Hindus in Government service, will the Lieutenant-Governor be pleased to pass such orders as will secure for them a certain number of appointments both in the districts and the departments mentioned in question I (*c*), and thus satisfy their claims to share Government appointments with the Hindus?

The Hon'ble MR. COTTON replied:—

"The Government are not prepared to undertake the collection of the statistics called for by the Hon'ble Member or to institute any elaborate comparison between the total number of Muhammadans in each district and the number employed in service under Government. To do so would serve no useful purpose. It is well known that the number of Muhammadans in Government service is very small in comparison with the total number of the Muhammadan population in these provinces, and the reasons for this disproportion are also well known to the Hon'ble Member and to the public. It is the policy of Government to encourage the employment of Muhammadans consistently with the welfare of the public service, and the Lieutenant-Governor has lost no opportunity of giving effect to this policy whenever properly-qualified Muhammadan candidates are available. The number of such candidates, the Lieutenant-Governor is glad to be able to say, is steadily increasing. Certain statistics are furnished every year in the Annual Administration Report of Commissioners of Divisions regarding the number of Muhammadans employed in Government service in every district, and these statistics for the past year will be supplied to the Hon'ble Member, but it is not considered necessary to lay them before the Council."

BENGAL MUNICIPAL ACT, 1894, AMENDMENT BILL.

The HON'BLE MR. COTTON moved for leave to introduce a Bill to amend Bengal Act IV of 1894. He said:—

"In section 37 of Act IV of 1894, certain words are inserted in amendment of section 89 of Bengal Act III of 1884, which enable buildings, the property of Railway Administrations and of local authorities, to be assessed in the same manner as buildings the property of the Government. This provision was introduced in the Bill by the Select Committee, and was passed by this Council without comment. It escaped notice that by the Indian Railways Act of 1890,

an Act passed by the Imperial Council, a provision is made in section 135, which exclusively regulates by rules contained in that section the levy of taxes in respect of railways and from Railway Administrations in aid of the funds of local authorities. In these circumstances it is undesirable for this Council to make any reference in any law passed by it to the assessment of railway buildings; and in order that there may be no possible conflict between any legislation passed by this Council and by the Council of the Government of India, it has been considered necessary to introduce this amending Bill, which eliminates from section 37 of Bengal Act IV of 1894, any reference to buildings belonging to Railway Administrations."

The Motion was put and agreed to.

The Hon'ble MR. COTTON said:—"This measure, Sir, being of a very technical character, it appears unnecessary to postpone its consideration to a future meeting of the Council or to refer it to a Select Committee, and with your permission, Sir, I will ask you to suspend the Rules of Business and to allow me to introduce the Bill and to move that it be read in Council."

The Hon'ble THE PRESIDENT having declared the Rules of Business suspended—

The Hon'ble MR. COTTON introduced the Bill, and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble MR. COTTON said:—"I have nothing to add regarding the little Bill I have in my hands. It speaks for itself, and calls for no further explanation. I apprehend that the Council will be willing to accept without objection or comment the motion that the clauses of the Bill be taken into consideration by the Council."

The Motion was put and agreed to.

The Hon'ble MR. COTTON also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned *sine die*.

CALCUTTA;
The 4th September 1894.

GORDON LEITH,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.