by the Civil Court, we have thought it right to allow certain grounds on which the Civil Court may be moved not only to cancel but also to modify a certificate, these grounds being that the amount was not due, or that the amount due has been paid and not credited. In section 18 we have taken power for a District Collector to re-transfer any petition transferred by a Certificate Officer, so as to allow the District Collector to order that it be heard and determined by the Certificate Officer. We think this is a power of control which may be very useful for the District Collector to possess, namely, to refer a petition back to the Deputy Collector who works as the Certificate Officer.

"In section 19 we have tried to make it clear that an appeal may be preferred from an original order of the District Collector to the Commissioner. We do not propose to interfere much with the appellate sections in the Act. It is not proposed to give two appeals—first to the Collector and then to the Commissioner. It was considered that one appeal to the District Officer, except when he deals with a case himself originally (and in that case one appeal to the Commissioner), would be sufficient; that in all cases the Commissioner should have power of revision, which is a very wide power, as it will enable the Commissioner to interfere with any order on the records which come before him. Then, in section 19, we have also provided that an officer appointed to perform the functions of a Certificate Officer shall, if authorised by the District Collector, with the sanction of the Commissioner so to do, exercise the appellate powers of a District Collector subject to the general supervision and control of the District Collector. Cases may possibly arise when, the Collector being away in camp, or over-burdened with work, it may be necessary in the interests of good administration to provide for the prompt disposal of appeals There will be ordinarily an experienced Certificate Officer at head-quarters, and the District Collector should be allowed, with the sanction of the Commissioner, to authorise the Certificate Officer to hear appeals rather than allow them to accumulate and add to the already overburdened file of the Collector. It is a power which can only be exercised under the sanction of the Commissioner, and I think it ought to be allowed as a matter of administrative convenience. Section 21, which is the redemption section, provides for the payment of a penalty of one-tenth of the auction-price by a judgment-debtor who seeks to set aside a sale, and all we have done in this section is to add the words 'not less than one rupee.' I think this is a very small matter with which nobody need find fault.

[*Mr. Buckland.*]

"We have had an important discussion about section 21, because it appears to infringe at first sight the Act passed last year to amend the Code of Civil Procedure (Act V of 1894). The Report of the Select Committee states what is the difficulty about this section. We had some doubt whether we could override, so to speak, section 310A of the Code of Civil Procedure. But since the section was drafted we have found that under the Indian Councils Act of 1892 we have power, with the previous sanction of His Excellency in Council, to make changes in a law passed by the Council of the Governor General, and it also provides that any changes we make in a law passed by the Viceroy's Council shall not be invalid if His Excellency in Council subsequently sanctions them. This section with very small changes, which have since been introduced, was in the Bill laid before the Government of India last year, and so it may be fairly assumed that we have their permission to proceed with this section. There are two amendments on the agenda with regard to this section, particularly with reference to clause (*2*), which provides that if the deposit referred to be made within the said thirty days, the Certificate Officer may, if he thinks fit, pass an order cancelling the certificate and setting aside the sale. I am at liberty to say that the amendments will be accepted by the Government which suggest that instead of the words 'may if he thinks fit' the word 'shall' be substituted This will really bring the proviso into accord with section 310A of the Code of Civil Procedure, with only a small point of difference, and it will also be in accord with the language of section 174 of the Tenancy Act. We had thought that the words 'may if he thinks fit' might properly be introduced at this stage of our experience; that the obligatory word 'shall' was probably too rigid, and that it might somewhat tend to diminish prices obtained at sales. But after further reflection it is thought better to adopt the word 'shall' so as to bring it into accord with section 310A of the Code of Civil Procedure.

"In section 23(*2*) we have made changes in the wording to make it short. At one time the idea was that all the Chapters and all the Sections of the Civil Procedure Code which should apply to the enforcement of certificates should be set out at length in the Bill. The list of those Sections and Chapters as they appeared in the Bill, which was introduced on the 31st March last year, was a rather formidable one, and when the Bill was referred to Revenue Officers and Associations for criticism that list grew to even greater length. There were in

fact few sections of Chapters XIX and XX of the Code which it was not proposed to adopt for some reason or another. We have therefore by a few words made the procedure of the whole of those Chapters apply, as far as practicable, to certificate proceedings and to realization of the amounts recoverable thereunder. These general words are the words of the existing Act, but it will be my duty to move an amendment by the addition of a few words to provide for the omission of section 310A of the Code of Civil Procedure, because that section cannot stand compatibly with section 21 of our Bill.

"In section 33 we have taken advantage of the latest provision of the law regarding the service of notices by adopting, *mutatis mutandis*, section 45 of the last Land Acquisition Act passed in 1894. Section 33 now provides for personal service wherever it may be practicable on the judgment-debtor, for substituted service when the judgment-debtor cannot be found, or any adult male member of his family, and for alternative service by fixing a copy of the notice in certain specified places; and lastly, if the Certificate Officer shall so direct, the notice may be sent by post by a registered letter addressed to the judgment-debtor at his last known residence. Further than this we are not prepared to go. That enactment may be said to contain the collective wisdom of the Supreme Legislature on this particular point, and until some experience is gained, it seems very undesirable for us to attempt to improve upon it.

"I think I have now run over the principal sections of the Bill as they are affected by the Report of the Select Committee. I have been asked whether it is the object of this measure to make the procedure more drastic than it is now. I may safely say that that is not our intention. The origin of the amendment of this law was fully stated in this Council when the Bill was introduced, viz., that it had its rise from the judgment of the High Court in the case of Sadhusarun Singh *versus* Panchdeo Lall, which I daresay is pretty well known—at any rate to the legal members of this Council. The effect of that decision was to cause serious administrative inconvenience. It necessitated an appeal to the Commissioner of the Division at a distance, under the Revenue Sale Law, instead of to the officer on the spot, to set aside a sale. The effect of that decision was that only a certain number of sections of the Civil Procedure Code applied to the execution of decrees, and certificates had to be executed under the Revenue Sale Law. That was the origin of the amendment of Act VII (B.C.) of 1880. The first letter suggesting an amendment of the Act was submitted

to the Government of India in September, 1889, and this Bill has been the subject of discussion ever since. The object of the Legislature at present is to incorporate the result of the experience of the working of the Act which has been gained during the last fifteen years. There is no intention to make the Act more severe or more summary. The object is to take advantage of the experience which has been gained, and we think we have produced a more reasonable and a more workable measure. The first duty before me now is to move that the Bill be taken into consideration in order to the settlement of the clauses of the Bill."

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND also moved that the clauses of the Bill be considered in the form recommended by the Select Committee.

The Hon'ble THE PRESIDENT said:—"Before I proceed to call upon hon'ble members to move the respective amendments which stand in their names, I wish to state that the Government are prepared to accept the amendments which are numbered (6), (25), (28) and (29), and, therefore, it will probably be considered unnecessary for the movers of those amendments to adduce any arguments in support of them. With regard to some of the other amendments on the Agenda, we desire to be guided by the views of the Council and by the advice we may receive from our legal advisers, and as the discussions proceed the Council will be informed how far the Government can accept them, and how far the Government intends to oppose them."

The Motion was put and agreed to.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, moved that at the beginning of section 2 the following be inserted:—

'This Act, so far as is consistent with the tenor thereof, shall be construed as one with Act XL of 1859, passed by the Governor General in Council, and Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council.'

He said:—"I may remind the Council that these words are to be found in the original Act, but they have been omitted from the present Bill, and I understand that the omission has been intentional. The Report of the Select

Committee, however, does not give any reason for the omission. I think some difficulty may be created in consequence of this omission. The Council will observe that, after the passing of the decision in the well-known case, which was referred to by the hon'ble member in charge of the Bill, it has been held both by the High Court and, I understand, also by the Board of Revenue that a judgment-debtor, whose property is sold under the Certificate Act, has no remedy under that Act, but that his only course is to appeal against the order of sale under section 2 of Act VII (B.C.) of 1868. The provisions of this Act are only made applicable to sales under the certificate by the inclusion of the words which have now been omitted from this Bill; so that if these words are now omitted, I am afraid that the only provision which gave a right of appeal will be removed, and a person whose property is sold will have no remedy left to him. It may be said that section 19 of the present Bill gives a right of appeal, but that section is only a re-enactment of section 16 of the Act, and it only provides for an appeal from any 'order' of a Deputy Collector, &c. It has been held that the word 'order' there does not apply to sales, but only to the orders mentioned in the previous section. Therefore the present section 19 of the Bill will not give any right of appeal to a person aggrieved by the sale of his property; and if the provisions of section 2 of Act VII of 1868 will not apply to orders passed under this Bill, there will be no remedy left. There is also another difficulty, namely, that the Bill makes no provision for the granting of a certificate to the auction-purchaser.

"Under the present practice the auction-purchaser gets a certificate under section 28 of Act XI of 1859, which is the section under which, by the Board's rules, a certificate is granted. But the provisions of that law are made applicable to the procedure of the Certificate Act by force of the words which have been omitted from the present Bill. Therefore, if these words are omitted, I am afraid that the provisions of Act XI of 1859 cannot be applied to proceedings under the Certificate Act, and there is no other provision under which a certificate can be granted to an auction-purchaser. Consequently, I submit that these words are very material, and ought not to be omitted. It is said that section 23 of the Bill makes all the provisions of Chapters XIX and XX of the Code of Civil Procedure applicable to certificate proceedings. Now, section 316 of that Code, which finds a place in Chapter XIX, makes provision for giving a certificate to a purchaser. I have great doubt whether

the concluding words of section 23 (?) do not limit the applicability of the procedure under Chapters XIX and XX of the Code of Civil Procedure to certain specified things, namely the enforcement of the certificate and the realization of the amount recoverable thereunder. These words also occur in section 19 of the original Act VII of 1880. It was held by the High Court that up to the stage of the sale the procedure of the Civil Procedure Code would apply and no further. The words of the present section do not give a wider scope, so that if you cannot avail yourself of the procedure of the Civil Procedure Code after the sale, you will have no power to grant a certificate to the auction-purchaser. Therefore, I submit that these words should not be omitted, and that if they are omitted, difficulties may arise in the working of the law."

The Hon'ble MR. GHOSE said:—"I think this is a very necessary and important amendment. I desire as a member of the Select Committee to take this opportunity of saying one word in order to explain my position in reference to this and other amendments that are to be moved to-day. It ought to be borne in mind that this Bill is of a very special character, and in order to correctly appreciate and form a proper estimate of its provisions, they have to be very carefully compared with the corresponding sections of the original Act and other Acts upon cognate subjects. Without such comparison it would be impossible to say whether the Bill makes any new departure, and, if so, whether such departure is a step in advance or the reverse. But we had to go rather rapidly through the Bill in Committee, as the time before us was very limited. We had, I believe, three or four meetings, and one of them I was unfortunately unable to attend on account of absence from town. I am free to confess, therefore, that certain matters escaped my attention which I should otherwise have brought to the notice of my colleagues. Under these circumstances, I shall feel it my duty to support such of the amendments before the Council to-day as may commend themselves to my judgment, although I may not have referred to them in my note of dissent.

"Coming to the present amendment, it has been pointed out by the hon'ble mover of the amendment that the High Court has held that, but for the existence of these words in section 2 of Act VII of 1880, a judgment-debtor would have no right of appeal against a sale under the

provisions of that Act. The learned Judges distinctly point out that it is only because by virtue of these words in section 2 of Act VII of 1880 you have to read the various provisions of the three Acts as if they were sections of one Act that the judgment-debtor is entitled to the benefit of section 2 of Act VII of 1868, which gives him a right of appeal to the Commissioner, and they have further held that sections 311 and 312 of the Civil Procedure Code do not apply to these cases. The result is that if you omit these words, you will leave the judgment-debtor without any right of appeal. And even if the matter admitted of any doubt, it is unquestionable that the deliberate omission of these words after the interpretation put upon them by the High Court would be a clear indication that it was the intention of the Legislature to deprive the judgment-debtor of the right of appeal. This in my opinion would be a distinctly backward step, and I therefore hope the Government may yet be able to see their way to accept this amendment."

The Hon'ble MR. BUCKLAND said:—"This is rather a technical legal subject, somewhat difficult to discuss in this manner. As far as I have been able to follow the arguments of the two learned gentlemen who have spoken, they are afraid that if these words are not restored in the Act, the judgment-debtor will be deprived of the right of appeal. That certainly was not the intention, and I do not myself see how the omission will have that effect. The object of omitting these words dates back from the time of Mr. Beames' connection with the Bill. In his first report he distinctly stated that 'the words by which Act VII (B.C.) of 1880 was directed to be construed as one with Act XI of 1859 and Act VII (B.C.) of 1868 have been omitted. The provisions necessary for making the certificate procedure independent and self-contained have been inserted in various sections of the Bill. The provision, however, that the powers given by the Act are to be deemed to be in addition to the powers conferred by any Act now in force, has been retained.'

"That was the object of the whole thing. The two Acts were to be made independent of each other, and we hold that the Bill before us is self-contained and amply sufficient for all practical purposes. I fail to see why it should be necessary to incorporate Act XI of 1859 with this Bill. The intention is that when a certificate has to be executed it should be executed according to the provisions of the Code of Civil Procedure. I fail to see why it is necessary that an auction-purchaser should be provided with a certificate under section 28 of

[*Mr. Buckland; Mr. Lyall.*]

Act XI of 1859, to which the hon'ble mover of the amendment seems to attach so much value. A certificate under section 28 of Act XI of 1859 is intended, as far as I know, for the special purposes of that Act, and does not apply to sales in execution of decrees under the Code of Civil Procedure. It seems to me, therefore, that the hon'ble gentleman's argument, so far as it lays stress on the value of that certificate, is irrelevant; because, when sales take place under the Code of Civil Procedure in execution of decrees under this Bill, the auction-purchaser will be put in possession in the ordinary way without any such certificate.

"As for the point whether the judgment-debtor is deprived of any right of appeal, the statement has been made, and I am not prepared to say that it is erroneous, but I am not prepared altogether to admit it. I would rather hear the learned Advocate-General's opinion on the point. We have certainly incorporated the two Chapters of the Code of Civil Procedure with the full intention of allowing the judgment-debtor to have every right of appeal for the purpose of setting aside the sale, as is allowed under that Code. We have not cut off any rights which attach to an auction-purchaser under the Code of Civil Procedure, and I do not see why we should go out of our way to incorporate another Act merely for the purpose of giving some fancied right of appeal, which, as far as I can see, is unnecessary. But it is such a technical question that I confess I should like to have further legal opinion upon it. For my part I do not see that the insertion of the words in the amendment is necessary. We think the Bill is sufficient in itself, and that no object will be gained by incorporating Act XI of 1859 with this Bill, whereas by incorporating it there may be some risk of confusion."

The Hon'ble MR. LYALL said:—"I desire to say a very few words in defence of my action in the Select Committee in having agreed to the omission of these words. The subject was fully considered by the Committee, I fancy, on the day on which the Hon'ble MR. GHOSE was not present. We went through the Act carefully, and considered that the addition of the words was absolutely unnecessary. I desire to call the attention of the Council to the great difference between section 19 of the Act, which is to be repealed, and section 23 of this Bill, which we ask you to pass to-day. Section 19 of the Act did not incorporate the whole procedure of Chapters XIX and XX of the Code of Civil Procedure, but only certain sections of them, and those sections were understood for many

years to extend to sales as well as to the executions of decrees. But owing to the decision of the High Court, which was referred to by the hon'ble mover of the amendment, their scope was limited. The reason why I agreed to the exclusion of these words was, that as the section had now been amended by incorporating the whole of Chapters XIX and XX of the Code of Civil Procedure, the mention of Acts XI of 1859 and VII of 1868 was not now necessary. I do not think this amendment is necessary, and I believe the insertion of the words proposed will be mere surplusage."

The Hon'ble SIR CHARLES PAUL said:—"I think that after the decision of the High Court, which has been referred to, it is very necessary to be careful. The Board of Revenue had decided previously that the provisions in respect to sales in execution of a decree would apply to the setting aside of sales under the Certificate Act, because a sale was not a sale until it was confirmed. But the High Court decided against such an interpretation; therefore it is necessary to be careful, and I accordingly propose one of two alternatives: either to state, as in section 23, that the procedure of Chapters XIX and XX of the Code of Civil Procedure shall, so far as it is applicable, be the procedure followed in execution proceedings to enforce such certificate, or that it shall be the procedure followed in execution proceedings in respect of such certificate. But the proposal that this Act shall be read as part of Acts XI of 1859 and Act VII of 1868, I think very objectionable. Every Act should stand by itself."

The Hon'ble MR. WILKINS said:—"I was of the same opinion as the Hon'ble MR. LYALL. All the members of the Select Committee who were present at the discussion thought that the inclusion of these words was altogether unnecessary; but now my opinion is modified to a certain extent by what has fallen in the course of the discussion, and I consider that it is necessary to put in some specific words to make it clear that there is no intention to deprive the judgment-debtor of the right of appeal, which he undoubtedly has."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I gather that there is a general unanimity of feeling that the judgment-debtor should have some remedy in cases of grave irregularity, and that in such cases he should be allowed to move for the setting aside of a sale. It is a matter which is attended with considerable difficulty. The words used by the High Court are as clear as words

can be. Mr. Justice Mitter observed that 'the only remedy of a judgment-debtor whose property has been sold in execution of a certificate issued under Bengal Act VII of 1880, and who has sustained substantial injury by reason of a material irregularity in publishing or conducting the sale is by way of an appeal under section 2 of Bengal Act VII of 1868'; and further on the Judges say:—'We think that by the force of section 2 of Act VII of 1880, the provisions in section 2, Bengal Act VII of 1868, became applicable to a sale under an execution issued upon a certificate made under Act VII of 1880.'

"The Hon'ble the Advocate General himself admits that the matter is attended with considerable difficulty; and that being so, it strikes me that it would be only wise that we should retain the provision which it is now proposed to omit. If the sense of the Council is that the judgment-debtor should have a remedy, and if it is doubtful whether without these words he would have a remedy, I think it would be right and proper that these words should not be omitted from the Bill."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, in reply said:—'My object in moving this amendment is not that these two Acts should be incorporated with this Bill. If this is a self contained Act as the Hon'ble the Advocate-General seemed to think, and all the provisions necessary to confer the power of appeal are to be found in the Bill, I do not wish the Council to insert these words. But as I read the present Bill, I do not think it is a self-contained Act. Reference has been made by the Hon'ble MR. LYALL to Chapters XIX and XX of the Code of Civil Procedure, and to section 23 of the present Bill, but then Chapters XIX and XX, the provisions of which are made applicable under section 23 do not provide for any appeal at all. They deal only with execution proceedings and the setting aside of sales under section 311, that is to say, for irregularity. The appeal section is to be found in Chapter XLIII of the Code of Civil Procedure. Therefore, if these words are omitted, section 23 of this Bill will not provide a remedy, although the whole of Chapters XIX and XX be made applicable. I admit that if some words are inserted such as will give the judgment-debtor a right of appeal, there will be no necessity for the inclusion of the words which I have proposed; but if the right of appeal is not given clearly by any section of the Bill, then I think these words are necessary."

[*The President; Maulvi Serajul Islam.*]

The Hon'ble THE PRESIDENT said:—"I understand the view of the hon'ble the Advocate-General to be that a small addition to section 23 of the Bill, which he will be prepared to move when the occasion arrives, will satisfy the wish of the hon'ble member that provision should be made for an appeal, and that being so, I think we ought to be satisfied with the advice of our chief legal adviser."

The Motion was, by leave, withdrawn.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, also moved that in sub-section (*1*) of section 5, for the words "an estate, tenure or any share of either" the words "a tenure or any share thereof" be substituted. He said:—

"I must confess that I rise with some hesitation and diffidence to move this amendment. I am aware that my amendment would be a new departure from the existing law, and that if the amendment is carried, it may affect the interests of the Government to a certain extent. Hence my hesitation. At the same time I am so much convinced of the justice of my amendment that I feel it my duty to submit it for the consideration of the Council. Under the provisions of this Bill and of the existing Act, it is a fact that a zamindari may be sold for arrears of revenue, and if the sale proceeds are found to be insufficient to meet the Government arrear, the Government can now, under the provisions of this section, proceed against the person and other property of the judgment-debtor for the balance of the arrear due. This is also the provision of the existing law. But I submit that it will operate hardly upon the zamindar. Take, for instance, the case of a zamindari worth Rs. 25,000; it is put up for an arrear of Rs. 5,000 and is knocked down for Rs. 1,000. Every zamindari is hypothecated to the Government for its revenue, the Government revenue being the first charge upon it. The Government has a summary procedure under Act XI of 1859, otherwise called the Sunset Law, to realize its dues from such zamindari, and then when the property is sold by the Government, by the aid of its own machinery, the auction-purchaser gets the property free from all incumbrances created by the defaulting zamindar. That being so, if the price which the property fetches is inadequate, the zamindar ought not to be held responsible, and the Government should not proceed against his person and

other property for the balance of the arrears due. That appears to me to be unjust and inequitable. He loses his property; it is sold for an inadequate price; it may be on account of any irregularity which might have occurred in the sale: the zamindar should not be held liable for the balance of the arrear. The object of the amendment is to remove zamindari estates from the operation of this section."

The Hon'ble Mr. BUCKLAND said:—"I think I may say at once that we cannot possibly accept this amendment. The hon'ble mover is aware that this has been the law for the last 15 years. All that he says is, that the poor zamindar ought not to be held responsible. He is aware that the interests of the Government may be affected if a zamindari is sold for an inadequate price and the Government dues are not paid up, but he would let the zamindar go, and leave the Government apparently no remedy at all. That is entirely a one-sided way of looking at the matter. This law, I believe I am right in saying, has been in force for a very long time. I said in my remarks on the Report of the Select Committee, that the two demands referred to in these sections 5 and 6 stand upon a different footing to the general list of public demands. They are taken from an old Regulation, and it would be subversive of a very sound principle if the change now sought were introduced. The object of the whole of the procedure is to recover the dues of the Government, and if a zamindar fails in paying the Government revenue and his estate does not fetch an adequate price, surely the hon'ble member is not prepared to say that the Government should be deprived of its dues. This procedure is the only means I am aware of of getting the balance of the arrears out of the zamindar. I think it would be hard if the Government were to be deprived of this power."

The Hon'ble Mr. LYALL said:—"I desire to say a very few words in opposition to this motion. The hon'ble mover of the amendment does not propose to exempt tenure-holders from this liability, but only the owners of estates. In other words, he proposes to make the Government the only sufferer. There is another point on which the hon'ble member scarcely stated his case very fairly. He said that the auction purchaser obtained the property free from all incumbrances, but that is only true to a certain extent because a zamindar is able to

[*Mr. Lyall; the President; Babu Surendranath Banerjee; Mr. Buckland.*]

create certain incumbrances against all purchasers, and thus to deprive the Government of its revenue. I oppose the motion as being entirely one-sided."

The Hon'ble THE PRESIDENT said :—" I agree with the last two speakers in thinking that this is not a motion which can be supported by the Government."

The Motion was, by leave, withdrawn.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in line 2 of sub-section (*2*) of section 6, for the words "six months" the words "one year" be substituted. He said:—

" If this amendment is accepted, the law will remain as it is at present. Under the existing law the judgment-debtor may file a suit in the Civil Court, for the purpose of contesting a certificate, within one year from the date of the service of notice, or within one year from the date of the determination of the objection, or from the decision of any appeal preferred by him to the revenue authorities. It is now proposed to reduce this term and to restrict, so far as time is concerned, the opportunities which the judgment-debtor has hitherto had for contesting a certificate. I have read very carefully the papers which have been circulated, and have listened very attentively to the hon'ble member in charge of the Bill, and I must say that I fail to see that any justification has been made out for the reduction of the limit of time. No complaint has ever been made against the operation of the existing law. This is a restrictive measure so far as the opportunities of contesting a certificate are concerned; and that being so, it is incumbent on the Government to bring forward the amplest justification for a provision of this kind, and I submit that no such justification has been made out. I hope that under these circumstances the existing period of one year will be retained."

The Hon'ble MR. BUCKLAND said :—" I think the hon'ble member has made a little slip. He says that under the present law a judgment-debtor may bring a suit within one year from the date of the service of notice, within one year from the date of a petition of objection, or within one year from the date of an appeal. If he will look at section 6, sub-section (*b*) of the existing law, he will find it stated that a judgment-debtor may at any time within one year after service upon him of such notice, as is mentioned in section 10, bring his suit.

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

Nothing is said there of the period of limitation running from the date of the petition of objection, or from the date of the appeal. We have in Select Committee extended in section 6 (*c*) the term from which the date of the right to appeal begins to run; what we have allowed by section 6 (*c*) is that the judgment-debtor shall have a clear period of six months, if he has filed a petition of objection, after the determination thereof, or if he has appealed after the decision of such appeal, within which to consider whether it is worth his while to prefer a suit This suggestion emanated from the Board of Revenue with regard to section 15, and it is from that section that we imported it. I therefore cannot see any justification for allowing a longer period of time. The object should be to clear off work, and not to allow these cases to hang on. I think the judgment debtor will have ample time to make up his mind whether he will bring a suit or not."

The Motion was, by leave, withdrawn.

The Hon'ble Babu Surendranath Banerjee also moved that the whole of the proviso to sub-section (*c*) of section 6, marked (*a*), commencing with the words "has omitted to state" and ending with the words "that there was good reason for such omission, and" be omitted. He said —

"The effect of this proviso is to place the judgment-debtor who goes straight to the Civil Court in a better position than the judgment-debtor who goes to Court after preferring an appeal to the Revenue authorities. The judgment-debtor who goes to the Civil Court may prefer whatever grounds of appeal he chooses, but the judgment-debtor who has once been to the Revenue authorities will not be allowed in his appeal to the Civil Court to prefer other grounds than those which he has already submitted to the Revenue authorities. There may have been an omission on the part of his legal adviser, but he is precluded from supplying the omission, except with the leave of the Court, and unless sufficient grounds are shown. The object of my amendment is to place both classes of judgment debtors in the same position, and that not by restricting the right which the one possesses, but by placing both on the same footing of justice and freedom."

The Hon'ble Mr. Buckland said:—"The hon'ble gentleman has brought his amendment upon section 6 (*c*). He will find that the words to which he

objects to in this sub-section are only copied into it from section 8 (*b*) of the existing Act. He will find it there stated, with regard to the majority of public demands, that any judgment-debtor can bring a suit in the Civil Court to contest his liability, but no suit shall be entertained unless the judgment-debtor has stated in a petition to the Collector the ground upon which he claims to have such certificate cancelled, or unless, having omitted to state such ground in such petition, he can satisfy the Civil Court that there was good reason for such omission. That is the existing provision with regard to the majority of public demands under section 8 (*b*) of Act VII (B.C.) of 1880. All we propose to do is, to incorporate the same provision in section 6 (*g*). It is obvious that, when a man goes to the Civil Court direct, he will be required to state his whole case there; but if he prefers to go in a roundabout way by presenting a petition of objection first, he should state his case at once. It is believed to be a sound principle of law that a man should show his whole case—his whole hand—and not keep in the background certain facts to be laid before a later Court. That is the whole point."

The Hon'ble MR. LYALL said:—"The object of this provision in my view is to reduce litigation. If a man has a good case, there is no reason why he should not declare it before the Collector, who would in all probability decide in his favour. I can see no reason why he should be allowed to make reservations before the Collector, and not state his whole case there. This provision is a reproduction of section 33 of Act XI of 1859. The Imperial Council has decided that, in sales of estates for arrears of revenue, the zamindar who has an objection to urge against the sale of his estate should state his whole case to the Commissioner in the first instance, and not be allowed to keep back a part of his case for the Civil Court; and that provision has been incorporated into the present Bill."

The Hon'ble BABU SURENDRANATH BANERJEE in reply said:—"With all deference, I desire to submit that the point I raised has not been met. It is admitted that the two classes of judgment-debtors are treated in a different manner. The one who goes to the Civil Court direct is allowed to state what he likes; the other is not so privileged. Practically, the man who shows his confidence in the Revenue authorities is placed in a worse position than he who

goes to the Civil Court in the first instance. It may be that the Government of India has not affirmed the principle for which I am contending; but we are now amending the law, and it is but fair that the two classes of judgment debtors should be placed upon the same footing. I hope that under these circumstances this amendment will be accepted by the Council."

The Motion was put and negatived.

The Hon'ble MR R. C. DUTT moved that the concluding portion of clause (*2*) of section 6, beginning with the words "and has not paid such arrears" be omitted. He said:—

"This portion of the clause prevents a judgment-debtor from going to the Civil Court unless the money demanded has been paid within fifteen days. This has been the law for the last fifteen years, but as we are amending the law, I think it is open to any hon'ble member to suggest the omission of any clause which is both unnecessary and open to objection. I think these words unnecessary, because, as far as my experience goes, this clause does not help the work of collection in any appreciable degree. When a man from whom money is due has any property, we can, by following the procedure of the Certificate Act, obtain the money without restricting his right to go to the Civil Court. On the other hand, this is a provision which the judgment-debtor is in most cases unable to comply with. Suppose a man has taken farm of an estate from the Government for a number of years, and is unable on account of an inundation or other cause to pay up the amount in due time? The question is whether, if he brings an objection before the Collector, pleading that the inundation is due to breach of an embankment kept up by the Government, and the Collector rejects that ground of objection, then, before he can go to the Civil Court, he must pay the money within fifteen days after the order is passed. It is very often impossible for a man under such circumstances to pay the money, and we are therefore imposing a sort of impossible condition upon him. As I have already said, it is not a condition which helps us in realising the money when a man is insolvent. But when a man is solvent, when he has any property, we find no difficulty in recovering the money, and therefore I would let him go to the Court to contest the certificate. I suggest this all the more, because the certificate is made by the Revenue authorities, and if we are wrong in any way, let the judgment-debtor go to the Court and prove

that we are wrong. As the law now stands, he must first put down the money within fifteen days before he can show us that we are wrong and have his remedy. For these reasons I think that, although this has been the law for the last fifteen years, the law should be amended."

The Hon'ble MR. LYALL, with the permission of the President, asked the hon'ble mover of the amendment to state whether he based his proposal on any case of hardship within his own knowledge?

The Hon'ble MR. R. C. DUTT replied:—"There have been cases similar to the case supposed. There has not been any case that I know of exactly on all fours with the supposed case, but there have been analogous cases in which I have found it impossible for the man to pay the money within fifteen days. I cannot refer just now to any particular case exactly similar to the case I have supposed."

The Hon'ble MR. BUCKLAND said:—"I am not prepared to accept this amendment on behalf of the Government. The hon'ble member said he considered it unnecessary because the present procedure did not help us in making realizations. The procedure requires that the judgment-debtor, before making an objection, should pay up the money, and if that does not help us, I do not know what will. But though the hon'ble member admits that this has been the law for fifteen years, he has not consulted the proceedings of the Council in connection with the passing of this law. It has been my lot to call attention to the difference between these two sections in the Act. The demands referred to in these sections (5 and 6) were intended, when the Bill, which became Act VII (B.C.) of 1880, was introduced, to be called 'certificates absolute.' That expression was subsequently dropped, but afterwards they were called 'certificates of the 1st class.' I shall read a few words to show what Mr. Field, who was in charge of the Bill, meant. He said on the 3rd April, 1880:—

'In respect of these two classes of arrears, what was then termed a Certificate Absolute was proposed to be made, that is to say, a certificate which should have to all intents and purposes the force of a final decree of the Civil Court. In the margin of the Bill Mr. Field had, however, pointed out an old Regulation of the Bengal Code which had, in all probability, been overlooked when the Act of 1868 was before the Council. The effect of that Regulation was that if a person were called upon by the Collector to pay a sum of public revenue, and at the time made an objection in writing and then paid the amount, such person could

afterwards bring a suit in the Civil Court to contest his liability. It appeared to the Select Committee desirable to bring that Regulation within the purview of the Bill. The Committee have accordingly done so, and the right which the Regulation gave of contesting the liability to pay has been left intact, but the provision that the amount must first be paid up has been retained. Certificates of this class would no longer be Certificates Absolute, and the Committee therefore struck out the term *absolute*. The result is to leave the law as it was before, only that this law is now contained in one Act, instead of being as it was before to be sought for in an Act and a section of an old Regulation.'

"So that the law to which the hon'ble mover of the amendment takes exception has been the law for much more than fifteen years, and on the part of Government I am not prepared to alter it in the way proposed."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I have heard it said in the course of these debates more than once that this law has been more than fifteen years old. We legislate with the view of introducing changes in the law. I think this amendment deserves the support of the Council. My hon'ble friend, the mover of the amendment, has not been able to cite specific instances, but the fact which he asserts is that to make this demand must deter the judgment-debtor from bringing his suit. If he has been unable to pay the money, and a certificate has been made, it stands to reason that he will have considerable difficulty in paying the money before launching into expensive litigation. Zamindars do not find difficulty in recovering their rents. The whole question between the Government and the raiyat is whether the raiyat should pay the money or not? He denies his liability to pay, but you make him pay before he can contest his liability. This, I submit, is inverting the natural law of justice. The man denies his liability, the State compels him to make the payment, and then gives him leave to contest his liability. This is not, in my judgment, the light in which we ought to amend the law, and I therefore think this amendment ought to be accepted by the Council."

The Hon'ble MR. WILKINS said:—"The hon'ble member who has just spoken has not quite correctly stated the object of legislation when he says that we legislate to introduce changes into the law. I think it may be more fairly said that we legislate and make changes in the law when such changes are shown to be necessary and desirable, not otherwise. In the present instance, I see no necessity for any change. An hon'ble member had in the course of these

discussions expressed a considerable amount of sympathy for the individual whom he has been pleased to call the poor and oppressed raiyat. As I read section 6, the poor and oppressed raiyat does not come into consideration at all. It refers to a judgment-debtor in respect of certain arrears which are still due after an estate or tenure has been sold, or in respect of arrears due from a farmer who has not paid; therefore I think that this particular part (*b*) of clause (*2*) should be retained, and that for a very essential reason—because, if the objector (the judgment-debtor) has money to file a civil suit, he has money to pay the arrears which are undoubtedly due from him. He is allowed every possible opportunity of objecting against the payment of an amount undoubtedly due, and he should not have the further opportunity of filing a civil suit until he has paid the money."

The Hon'ble MR. R. C. DUTT in reply said:—"I do not think that I can quite follow the reasoning of the hon'ble gentleman who has last spoken. It very often happens that an estate is farmed to a farmer for a large sum of money. It would be very difficult for him to find all that money and pay it down before going to the Civil Court, whereas the initial expense of filing a civil suit will not be anything like Rs. 2,000 or Rs. 3,000 which he may have to pay the State. If in such case he has been unable to pay, owing to floods caused by a breach of a Government embankment for instance, we ought to allow him to contest his liability without imposing upon him the condition to pay a large amount within fifteen days, which it would be impossible for him to do."

The Motion being put, the Council divided:—

Ayes 7.	*Noes* 8.
The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.	The Hon'ble Mr. Wilkins.
The Hon'ble Mr. Womack.	The Hon'ble Mr. Buckland.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.	The Hon'ble Mr. Collier.
The Hon'ble Mr. Ghose.	The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.
The Hon'ble Babu Surendranath Banerjee.	The Hon'ble Mr. Bourdillon.
The Hon'ble Mr Dutt.	The Hon'ble Mr. Lyall.
The Hon'ble Mr. Cotton.	The Hon'ble Sir John Lambert.
	The Hon'ble Sir Charles Paul.

So the Motion was lost.

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

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following words be added at the end of the proviso to sub-section (*2*) of section 6:—

'or in any case in which an appeal has been preferred under section nineteen within fifteen days of the determination of such appeal.'

The Motion was put and agreed to.

The Hon'ble MR. R. C. DUTT moved that clause (*f*) of section 7 be omitted, and that the necessary alterations be made in other parts of the Bill. He said:—

"Under the law as it at present exists, the certificate procedure may be had recourse to for arrears of rent due to estates under the Court of Wards, and managers of estates under the Court of Wards have for many years past applied to the Collector for certificates for realization of arrears of rent. I am not sure that the result of this practice has always been either successful or what is desirable. It has been my experience in several districts that managers have taken undue advantage of this facility in collecting rents, and that tahsildars have not exerted themselves as they would if they had not the advantage of this procedure. In several districts, year after year, thousands of requisitions were sent by managers to the Collector for realizing rents from raiyats which it was the duty of the manager to realize, but which he did not exert himself to realize. And the result was that as the Collector had charge of the property, he had to make the certificates in the way laid down by the law. Some years ago an order was passed by the Government that certificates should not be made with regard to rents due to any estates unless such estates had been surveyed and settled. The result is that in most parts of the estates managed by the Court of Wards, the certificate procedure is not now followed. There are something like eight or ten such estates in the Midnapore district, and in Burdwan there is the very large estate of the Burdwan Raj under the Court of Wards. Very small portions of these estates have been surveyed and settled, and the managers are therefore trying to realize rents without the help of the certificate procedure I do not think the result has been any worse than in previous years, and this shows that managers can realize rents without that procedure.

"I therefore submit that it is unnecessary to invest managers of Court of Wards' estates with the power of sending requisitions to the Collector for the collection of arrears under the certificate procedure. I do not think, strictly speaking, rents due to such estates can be called public demands. They are not rents due to the Government, but they are rents due to private zamindars, whose estates we are managing for the time being, and they are being realized by managers who are paid out of the proceeds of the estate. They are not public revenue in any sense of the word, and the principle upon which we have recourse to the certificate procedure to realize Government demands does not apply, I humbly think, to such classes of demands. The principle I understand is that, when money is shown in public books as due to the Government, there is very little doubt as to the amount being due, and therefore it is unnecessary to go to the Civil Court for the realisation of the amount, and a simple declaration of the Government that the sum is due may be held to be tantamount to a Civil Court decree. I do not think that this principle can apply to rents due to a private zamindar from his raiyats; he depends upon a large number of tahsildars who are there before we take charge of an estate, and who continue making collections after we take charge, and on whom we have to depend to a large extent. I do not think we can be as certain in this class of demands as we can be with regard to demands due to Government; and I therefore object to this procedure being followed for the recovery of such demands. And our recent experience has shown that it is quite unnecessary, because managers can do the work very well without the aid of the certificate procedure."

The Hon'ble MR. BUCKLAND said:—"I am not prepared to accept this amendment on behalf of Government. The hon'ble gentleman who has just spoken is perhaps not aware that this question has been debated more than once in this Council. It has been the subject of a number of reports, and comes before us with a long history attached to it. If the hon'ble gentleman before entering upon this question had only referred to the Proceedings of this Council which took place when Act VII (B.C.) of 1880 was being passed, he would have seen a great deal of discussion upon this very point, namely, whether the principle of the certificate procedure should be applied to the recovery of arrears of rents in estates under the management of the

[*Mr. Buckland.*]

Court of Wards. It becomes almost painful to have to go over the same ground over and over again. When the Sale Law Bill and this Bill were first circulated for criticism some years ago, the High Court went into this question and made some remarks about it. The Judges considered in paragraph 10 of their letter of the 29th August, 1891, that the system, *i.e.*, the certificate procedure, should no longer be allowed to prevail in respect of rents due upon private estates under the management of the Courts of Wards or otherwise in the hands of the Collector. The Board of Revenue, I think, fully answered everything which had been said by the High Court, and before the Government referred the present Bill to the Government of India in 1893, we examined carefully the Proceedings of this Council at the time the Certificate Act was passed. It will probably save the time of the Council on the whole if I read a rather long extract from our letter to the Government of India, because there we take care to sum up as precisely as possible all that has been said on the subject. We said:—

"The High Court's argument was mainly directed against the inclusion in the class of public demands of rents due in estates under the management of the Court of Wards, and the Lieutenant-Governor asked the Board whether there was any reason why the conditions suggested by the High Court should not be fulfilled in the case of Wards' estates. The Board's reply (in paragraphs 7-12 of their letter of 12th September, 1892,) is that demands on behalf of the Court of Wards partake but slightly of the character of claims made on behalf of a private individual: such estates are under Government officials, their records are open to inspection, and their accounts are audited, so that the theoretical objection to the use of the certificate procedure hardly exists in case of such estates more than in respect of Government estates.

"'An estate,' the Board observe, 'under the Court of Wards is not liable to sale for arrears of revenue, and as the demands due to it from tenure-holders and raiyats are often so numerous and for so small an amount as to make a resort to the Civil Court in every case impossible, the management of the estate could not be carried on without the employment of a summary procedure. It is also the fact that the management of a Government estate, as regards the nature of the demand, is on all fours with that of an estate under the Court of Wards; yet the High Court have not objected to the employment of the certificate procedure in respect of demands due from the raiyats on a Government estate.'

"The principle which is now criticised is not a new one, but has been established for a long period of years. The Lieutenant-Governor thinks it unnecessary to go over the whole history of this matter, but he would invite a reference *inter alia* (1) to section XIX of Regulation VII of 1799, which rendered a certain stringent procedure, authorized for the

recovery of arrears of rent due to proprietors and farmers, applicable to the managers of Wards' estates and to joint undivided estates, as well as to Collectors holding lands in attachment or under *khas* collection; (2) to the Proceedings in the Bengal Legislative Council of the 13th and 20th March and 3rd April, 1880, in connection with the Bill which became Act VII (B.C.) of 1880; (3) to the Hon'ble Mr. O'Kinealy's speech in Council on the 20th March, when he 'agreed with the Hon'ble the Advocate-General and Mr. Dampier that since the beginning of the British rule in India, realizations in rent in Wards' estates were subject to exactly the same procedure as that of Government estates, and the reason was that the Government having taken charge of the estates and looked after them, considered itself justified in recovering amounts due to the estate by the same process as in Government estates;' (4) to the fact that, on the 3rd April, 1880, when the Hon'ble Babu Kristo Das Pal, in Council, moved that the certificate procedure should not be applicable to the realization of rents in Wards' estates, his motion was negatived almost unanimously, mainly on the ground that Government should be allowed such powers by reason of its fiduciary interest in Wards' estates. The principle had been admitted when section 63 of Act IX (B.C.) of 1879 was passed; it was extended to the recovery of interest and costs by section 10 of Act III (B.C.) of 1881, and the Lieutenant-Governor does not see that any facts have come to light which require a reversal of this policy. It is true that there are cases where estates when first taken over are found to have their accounts in confusion, and the Board have, at the Lieutenant-Governor's request, issued orders that the certificate procedure is not to be employed in a Ward's estate until a settlement and record of rights have been made therein, and that no certificate shall issue in any case where a question of right or title is involved."

"That sums up the history of the discussion upon the question as shortly as it can be done. As regards Wards' estates, the Government occupies very much the same position as it does with regard to estates belonging to the Government. It is absolutely responsible for the good management of Wards' estates as much as it is responsible for its own property. It has been held hitherto that without this summary procedure rents could not be properly collected. The hon'ble gentleman referred to some Wards' estates in the Midnapore and Burdwan districts under his supervision, which showed that managers were trying to do their best. I trust that all managers would try to exert themselves to collect rents whatever the law might be; but it is much too early to say, in fact we have absolutely no information before us, whether those managers are successful or whether they will fail. We know that this procedure has been found necessary elsewhere to enable the Board of Revenue and the Court of Wards to render a proper account of their stewardship, and I am not prepared on behalf of the Government to surrender it at present."

[*Mr. Ghose.*]

The Hon'ble MR. GHOSE said:—"Although I have an amendment on the same subject which is in the nature of a compromise between the amendment of my hon'ble friend and the provision contained in the Bill, I shall be very glad if this amendment is carried. I entirely agree with my hon'ble friend that it is difficult to see how rents due to private estates under the management of the Court of Wards or of the Revenue authorities can properly be said to be public demands, and I do not see any reason why a summary procedure, which is only justifiable in the case of debts due to the Crown, and which are easily and correctly ascertainable from public records, should be extended to private demands having no analogy to those exceptional cases. I will not dwell on the evils and the abuse to which this system is liable. The hon'ble mover of this amendment can speak on that subject with an authority which I do not possess. Hon'ble members are well aware that the learned Judges of the High Court are strongly opposed to this provision of the law, and I submit that their opinion on a matter like this is entitled to the greatest deference. The hon'ble member in charge of the Bill alluded to the previous debate on the principle of this provision as having settled the question so far as the principle of this amendment is concerned, but he did not tell the Council that even in 1880 some strong protests were made against this measure. The Hon'ble MR. FIELD, who was then in charge of the Bill, certainly spoke in very guarded and hesitating terms when he alluded to the principle of this provision. He said:—

'I then come to clause (7), which proposes to extend the special procedure to the recovery of rents in estates which, under any law for the time being, are under the management of the Court of Wards. This is a new provision, and I am prepared to admit that it is a provision which carries the principle of the Bill to its extremest limits.'

"The hon'ble gentleman has also told us that a motion was made in regard to this provision, and that it was lost by a large majority. The late Babu Kristo Das Pal, than whom no abler representative of his countrymen has ever sat within these walls, made a strong protest, and he was supported by his colleague, Raja Peary Mohun Mookerjee. Then, again, what is of greater importance and to which no reference was made by the hon'ble member in charge of the Bill, the protests of those gentlemen were virtually endorsed by no less an authority than the then Lieutenant-Governor of Bengal, SIR ASHLEY EDEN. I will, with your permission, Sir, draw the attention of hon'ble

members to the grave and weighty words which fell from the President of the Council on that occasion. His Honour said :—

'His Honour the President, before putting the question that the Bill be read in Council, would say, as regards the question of principle that had been raised, that he must admit it seemed to have a great deal of force and reason in it, and it was a subject which the Select Committee should carefully consider. It was not a matter which the Council could raise and dispose of off-hand. He understood it was not the intention of the hon'ble member who raised this question to move a specific amendment, but to request that the Select Committee should consider it It might be quite true, as the hon'ble member on the right (Mr. Dampier) said, that the history of this principle, although it had been rather confused at times, had been generally to affirm that there should be a special procedure for the recovery of demands in estates under the management of Government officers, even though they were not the property of Government. His Honour did not think it necessary to go back to the practice of 1799, because the summary procedure which existed then was not the present certificate procedure, and bore no sort of resemblance to it. Then, in the Act of 1870, a clear distinction was drawn in section 4 as to estates managed *khas* and those managed through a manager or agent, and he thought the necessity for making that distinction showed how unsound was the principle of bringing Wards' estates under the procedure of that Act; the section provided that under direct management of the Collector, the special procedure might be accepted, but not where Wards' estates were under the charge of managers, showing the doubts that existed in the minds of the framers of that measure. Therefore it could not be said that the principle of the provision in the present Bill was absolutely affirmed in 1870. It would no doubt be said that if the special procedure was absolutely necessary to ensure the recovery of a sufficient amount of rent to meet the Government demand, the same security was necessary for all estates in the country. It should be remembered that special powers were given to Government, because it was not holding as a private individual, but as a trustee for the public. Government had no individual interests in the collection of its dues, and was not likely to be influenced by selfish or unjust motives, but that was not the case where the interests of a private estate were concerned. Where estates were managed by the Court of Wards, it was not the interests of the public which were being guarded and protected, but the interests of a private individual: the loss or profit did not affect the public revenues, but the revenues of a private estate, and therefore the question of Wards' estates differed altogether from Government estates * * * * * * *

'On the whole, he thought it desirable that the Select Committee should consider very carefully the whole principle, whether the grounds which made it necessary to have a summary procedure for the recovery of Government demands applied to the management of Wards' estates. He should be very glad, in consequence of what had passed, if the Committee would give to the subject their serious consideration when the Bill was laid before them.'

[*Mr. Ghose; Sir Charles Paul; Mr. Lyall.*]

"Under these circumstances, I think my hon'ble friend who moved this amendment and those who agree with him are perfectly justified in respectfully asking the Council to reconsider a principle, the soundness of which was at that time condemned in such unmistakable language by the President, which was protested against by those who then represented the popular voice in this Council, and which is still opposed by public opinion and by the learned Judges of the High Court."

The Hon'ble SIR CHARLES PAUL said:—"I was a party in the discussions to which the Hon'ble MR. BUCKLAND has referred, and as I think that the arguments which I then adduced were very strong arguments, and as they commend themselves to me now as much as they did then, perhaps the view I took then may serve to convince hon'ble members of the necessity for this provision of the law. I said then:—

'Although an estate managed by the Court of Wards was not a Government estate, still the Government was to a certain extent directly interested in the collection of the rents of that estate. When an estate came under the charge of the Court of Wards it could not be sold for arrears of revenue, and it behoved the officer in charge to get in the rent (as speedily as possible) in order to pay the Government revenue, and in that way the collection of rents in Wards' estates became a matter as important to the Government as its own revenue.'

"That was what I then stated, and although on principle one is perfectly justified in saying that the rent which the Court of Wards collects is not a public demand, still in reality there is very scarcely any difference between a Government demand which should go into the treasury as speedily as possible and may be recovered by summary procedure, and a demand which the Government through the Court of Wards is entitled to realize without delay for the benefit in part of themselves. Therefore the difference, although it exists in principle, does not appear in reality, and hon'ble members are justified in extending to such demands the summary procedure prescribed by this Act."

The Hon'ble MR. LYALL said:—"I desire to traverse one or two of the statements which have been made by the hon'ble mover of the amendment. He said that at the end of the year a number of requisitions are filed by the managers of the Court of Wards' estates. I would ask whether the zamindars do not follow the same course in respect of their rents? Do not they file suits to avoid claims being barred by limitation? And why should not managers

of Courts of Wards of estates take proceedings to avoid their claims being barred? That these requisitions are made broadcast at the end of the year I deny so far as my experience goes, and I think it is generally admitted that out of the many departments administered by Government few or none do more good to the country at large than the Court of Wards. Many families have been saved from ruin by its management, and estates have been saved from sale. Such being the case, I think we are bound to give every facility to managers to do their work, and I am convinced that the Court of Wards would not be able to do the amount of work it does without this summary procedure. This procedure was legalized under the Court of Wards Act, 1879, section 63 of which provides that 'all arrears of rent due by farmers, under-tenants and raiyats in respect of property under the charge of the Court, (whether such rents have become due before or after the Court has taken charge) shall be recoverable as arrears of revenue, and shall constitute a demand under Bengal Act VII of 1868, or any similar Act for the time being in force. The last preceding clause shall not apply to arrears of rent enhanced after issue of notice under section 13 of Act X of 1859, or under section 14 of Act VIII of 1869, but of which the enhancement has not been agreed to by the person who is liable to pay the same, or has not been confirmed by competent authority.' That law is now in force, and even if the amendment is carried, it will absolutely have no effect, for what I have read will still remain the law. I desire also to bring to the notice of the Council what has happened since the passing of that Act. Almost immediately after the Wards Act was passed, the Tenancy Act came before the Government—a measure which was originally based on a digest of the then existing law prepared by MR. FIELD, and in section 4 of that digest he retained this procedure as regards Wards' estates. The next draft of the Tenancy Act was prepared by a Commission, and there again this procedure was included in section 4. The next was what is generally known as the Bengal Bill, and in section 4 of that Bill also it was included. It was again included in section 284 of the Bill introduced in the Council of the Governor General; and finally when the Tenancy Act was passed, this provision was contained in section 195, and no word was said in the Imperial Council against the retention of this provision in the Tenancy Act. The Hon'ble MR. GHOSE has read what was said by SIR ASHLEY EDEN on this subject. I desire to place before the Council a later opinion of a Lieutenant-Governor of

this Province (SIR RIVERS THOMPSON) when he reported to the Government of India his opinion upon the Tenancy Act. In paragraph 28 of that letter he said :—

'There is besides the paramount reason that the rents collected by Government are really revenue, and the procedure for enforcing payment of State dues must, in the general public interests, be more summary than the procedure for enforcing private dues. If this were not so, the ultimate result would be the employment of larger establishments, greater expenditure, and increased taxation. Thus a summary procedure for collecting the public revenue, while necessary if the Government of the country is to be efficiently administered, and while not open to the objections to which a summary procedure for collecting private debts is opposed, is in the long run the easiest and the cheapest for the people. Nor is this principle inapplicable in case of estates of disqualified proprietors managed by Government, for the rents of such estates include the revenue'

"The above embodies a later opinion of this Government than that quoted by the Hon'ble MR. GHOSE, and we have heard from the Hon'ble MR. BUCKLAND that this is still the opinion of the Bengal Government. In conclusion, I wish to say that the Board of Revenue believe that if this amendment is passed, the management of estates under the Court of Wards will suffer very severely."

The Hon'ble MR. R. C. DUTT in reply said :—"The Hon'ble the Advocate-General has admitted that in principle rents due to estates under the management of the Court of Wards are not public demands, and this Council will have to decide whether under these circumstances the law for the recovery of public demands should be applied for the realization of such rents. I entirely agree with what has fallen from the Hon'ble MR. LYALL as to the amount of good which is done to the country by the Court of Wards managing the estates of minors incapable of managing their own estates, and also as to the feeling all over the country that the Government is doing a vast amount of good by saving the property of minors by employing their own officers to manage minors' estates. My only contention is, that we shall be able to manage just as well without this summary procedure. In that respect, I have ventured to differ from a senior and more experienced officer. I believe that the experience of the last few years has shown that what I propose can well be done."

[*The President.*]

The Hon'ble THE PRESIDENT said:—"This is in my opinion the most important amendment before the Council to-day, and although the opinion of the Government has been well and ably expressed by the hon'ble members who have spoken on behalf of the Government, I think it right to express my own view as briefly as possible in order to show why I consider it most inadvisable to accept this amendment. The Hon'ble MR. DUTT has supported his amendment upon two grounds—*first*, that it is just in principle, and *secondly*, that it is feasible in practice. Taking the latter point first, the question of practice, I do not think the hon'ble member has himself sufficient information to put the matter fully before the Council. The order passed at my request by the Board of Revenue, that in Wards' estates which are not settled and surveyed the certificate procedure should not be adopted, has not been in force very long, and we have no definite statistics as to the effect it has produced. I find in the last Board's Report (for 1893-94) that in Court of Wards' estates 7,930 certificates were filed. This is not altogether in agreement with the impression which exists in the mind of the Hon'ble MR. DUTT, and which he conveyed to us, namely, that the certificate procedure in these estates has been to a large extent stopped. It is evident that it is to a large extent going on, although it may have decreased. But what would be the effect of stopping it altogether?

"The hon'ble member seems to think that this procedure is only used by managers and tahsildars in Wards' estates who are lax in collecting rents; that they are slack in their procedure and rush into the Collectorate with a bundle of requisitions at the end of the year I am not prepared to say that this is not altogether correct, simply because there is a certain amount of imperfection in the human organization. No one will believe that tahsildars are absolutely free from the faults due to common human nature. But as the Hon'ble MR. LYALL has explained, it is absolutely necessary, when all has been done which could be done, at the last moment, to avoid the operation of the Limitation Act, that a certain number of certificates should be filed on the requisition of tahsildars, just as suits are filed by zamindars during the last two or three days of the year. If these 7,930 certificates were to be turned into 7,930 civil suits, what would be the result? Would it be for the good of the 'poor and oppressed' raiyats? Certainly not. They would have the cost and labour of defending the suits, and they would also have to pay the expense incurred in the execution of decrees instead

of the simple procedure and trifling expense of a certificate. It would be to his injury and not to his good if the principle of this amendment is carried out. I entirely agree with the expression of SIR RIVERS THOMPSON'S opinion which the Hon'ble MR. LYALL has read, that the certificate procedure is the most convenient and easy procedure on behalf of the judgment-debtor. It is for the debtor's good that we should use this procedure.

"Then, from the question of practice we come to the question of principle. The attack is based on the principle that this is a Public Demands Recovery Act, and that money due to Wards' estates is not a public demand. Even on that ground the attack should be resisted. We have heard the Hon'ble the Advocate-General say that the opinion which he held fourteen years ago is still held by him in his maturer mind unchanged, and the same opinion is expressed by the Government letter which has been read by the Hon'ble Mr. BUCKLAND. But I take my stand from a different point of view. Although this is called a Public Demands Act, it is not intended to be confined to public demands. That is a convenient way of denoting demands on account of which a certificate is issued, but it is not an exhaustive description. The operation of the Act is not confined to public demands, for we know that under the Road Cess Act this procedure may be used for the recovery of sums due to a landlord who has paid the cess on behalf of his shareholders. That is essentially a private demand, and yet we allow the certificate procedure to be used by the zamindar, and I wish to impress upon the Council that the reason why we do so is that it is a demand which is positively known. This is what differentiates claim for which a certificate may be taken out from other claims. If there be no dispute, if it is clearly laid down in the *jamabandi* or the *jamawasil-baki*, that a certain tenant owes a certain sum as rent to Government or to the manager of the estate on behalf of Government, what necessity is there to file a suit in the Civil Court when you know absolutely the fact that the demand is due? This question will come before the Government shortly in another shape. A suggestion has been made with regard to the maintenance of the Record of Rights Bill that zamindars who pay the survey cess on behalf of their tenants should be allowed to recover it if necessary by taking out a certificate. This suggestion seems to me a reasonable one, and if the Select Committee approve it I shall be ready to give the assent of Government to it. I shall do this the more readily because it will to some extent pave the way to granting to zamindars a more summary method of collecting arrears of

rent. Hon'ble members know that it has long been my desire to be able to provide a measure of this sort. The difficulties are very great, but I hope before I leave India that I may be able at least to put before the Government of India a project of law to the effect that where there is a demand which is absolutely certain, where a zamindar has had his estates surveyed and settled under the Tenancy Act, and the record kept up and all mutations registered, he should be able to get a certificate from the Collector, and be free from the trouble and annoyance of going to the Munsif to enforce his right on account of arrears. For these reasons, I think it will be extremely inconvenient to take a retrograde step now. My view is that we should be able to extend the law to other cases in which the sum in demand is truly and certainly known to be due, so that there can be no dispute about it."

The Motion being put, the Council divided:—

Ayes 4.	*Noes* 11.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.	The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.
The Hon'ble Mr. Ghose.	The Hon'ble Mr. Womack.
The Hon'ble Babu Surendranath Banerjee.	The Hon'ble Mr. Wilkins.
The Hon'ble Mr. Dutt.	The Hon'ble Mr. Buckland.
	The Hon'ble Mr. Collier.
	The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.
	The Hon'ble Mr. Bourdillon.
	The Hon'ble Mr. Lyall.
	The Hon'ble Sir John Lambert.
	The Hon'ble Mr. Cotton.
	The Hon'ble Sir Charles Paul.

So the Motion was lost.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, moved that in the proviso to clause (*f*) of section 7, after the word "this" the words "and the preceding". be inserted. He said :—

"It is but fair that the proviso should be extended also to clause (*s*) with reference to Government *khas mahals* as well as to estates under the management of the Court of Wards. I submit that where there is any question about the enhancement of rent, about which there is a dispute, it is but fair that the procedure of the Certificate Act ought not to be applied,

[*Maulvi Serajul Islam; Mr. Buckland; Sir Charles Paul; Maulvi Muhammad Yusuf.*]

and the raiyats be forced to pay the enhanced rate of rent in this summary manner. I therefore move that this proviso, which is applicable to the Court of Wards' estates, ought to apply also to clause (*e*) regarding the recovery of arrears in *khas mahals*, and which the Government is in the same position as a zamindar."

The Hon'ble MR. BUCKLAND said:—"As far as I can make out, the hon'ble member has not brought forward a single reason for altering the existing law. He proposes to extend to clause (*e*) a proviso which applies only to clause (*f*). It applies to clause (*f*) because it is the present law under section 63 of the Court of Wards' Act of 1879. That clause does not now appear in the Court of Wards' Act, as it finds a place in the Certificate Act, but I cannot see any reason for extending it to clause (*e*). Does the hon'ble gentleman suppose that the Government—the Collector or other Certificate Officer—would issue a certificate as a means of enhancing and recovering any enhanced revenue or rent under clause (*e*)? The object of the whole Act, as His Honour the President explained, is that certificates may be issued for the dues of Government, which are absolutely and certainly known to be due. Is it likely that the Collector would deliberately issue a certificate for an enhanced rate of rent without being certain that it is absolutely due? I see no real reason whatever for adopting the amendment. Has the hon'ble member known of any single case in which a Certificate Officer has tried, on behalf of the Government, to levy a demand which he is not perfectly entitled to levy? If he has not, I am bound to say that I cannot accept the amendment."

The Hon'ble SIR CHARLES PAUL said:—"I must confess I do not understand the meaning of this amendment. Enhanced rent must be rent which has been either agreed upon or which has been confirmed by a competent Court. There can be no element of uncertainty about it."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"As I understand the object of this amendment is to introduce some sort of uniformity in the issue of certificates, and to remove want of some uniformity. One uniform rule is suggested to govern cases falling within both clauses (*e*) and (*f*), and it is contended that both the clauses should be governed by the same principle both as regards the cases in which the certificates ought to be issued and also in regard to cases in which certificates ought not to be issued; the

law laid down in the Bill makes a distinction by applying the proviso only to clause (*f*). The question, therefore, is, do not the cases which fall under both the clauses (*e*) and (*f*) stand on the same footing, and should they not be dealt with in all respects by the same rule and the same principle? I do not see any material difference between the cases falling under those two clauses, regarded from the point of view from which they are now being considered. If the principle regulating the issue of certificates is the certainty of the demand, and if the cases under clauses (*e*) and (*f*) have been included under the certificate procedure by reason of such certainty, and further, if, by reason of want of such certainty, some cases are to be taken out of the operation of the rule laid down in clause (*f*) and thrown in the proviso to that clause, then it is clear that the very same want of certainty affects those identical cases when they fall under clause (*e*). There is no reason why the exception should be confined to clause (*f*), and should not be extended to clause (*e*). If it is necessary that there should be an exception in clause (*f*) in favour of cases in which there has been no decree of a competent Court, then it is likewise necessary that there should be a corresponding exception in clause (*e*) in favour of like cases. Under clause (*f*) the landlord is the Court of Wards; under clause (*e*) the landlord is the Secretary of State. Both might have power to issue a certificate when the demand is certain, and consists of what is really and strictly an arrear of rent; but an enhanced rent is only nominally an arrear of rent. To make it really an arrear of rent, the enhancement must have been agreed upon or finally adjudicated upon; and before adjudication by a competent authority, the enhanced rent is not a demand for a sum certain. Until such adjudication, the enhanced rent contains all the elements of uncertainty in consequence of the parties interested entertaining conflicting notions of the right to enhance. I therefore venture to think that when the demand results from a question of enhancement of rent, the right to issue the certificate should be withheld from clause (*e*), for the same reasons for which it has been considered prope to withhold it from clause (*f*)."

The Hon'ble MR. LYALL said:—"I venture to point out a mistake which has been made by the hon'ble gentleman who last spoke. He contended that clauses (*e*) and (*f*) are analogous, but I say they are quite different. The gist of the demand under clause (*e*) is, that it is a public demand and no enhancement of rent is *payable* unless it is legally due. The wording of clause (*e*) is entirely different from the wording of clause (*f*). Nothing is entered in the Collector's

books as 'payable' until it has become a legal liability, and certificates are properly issued for the recovery of such demands."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, in reply said:—"With great respect to the hon'ble gentleman who spoke last, I do not think that the word 'payable' makes everything payable to Government a legal liability. It may be payable in the view of the Collector, but a Civil Court may hold otherwise, and say that enhanced rent is not payable, though the Collector or the manager of a Ward's estate may claim it to be payable. There may be a dispute whether enhanced rent is payable or not, and under such circumstances the certificate procedure should not apply. With regard to the observation which fell from the hon'ble member in charge of the Bill whether it is likely that the Collector would issue a certificate for a demand which was not due, if the Collector was bound to look into the matter himself it would be different. If the Collector could do everything personally there could be no complaint; and as a matter of fact many complaints are made of irregularities occurring and, therefore, this power should not be given to a Government officer or a manager of a Ward's estate. It is admitted to be the principle of this law that where a demand is disputed this procedure ought not to apply. The very foundation of this Act is that the demand is justly due, and therefore this summary procedure is granted; but where there is a question of enhancement of rent, I submit that this summary procedure ought not to be given even to the Government."

The Motion being put, the Council divided :—

Ayes 6.	*Noes* 9.
The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.	The Hon'ble Mr. Wilkins.
The Hon'ble Mr. Womack.	The Hon'ble Mr. Buckland.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.	The Hon'ble Mr. Collier.
The Hon'ble Mr. Ghose.	The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.
The Hon'ble Babu Surendranath Banerjee.	The Hon'ble Mr. Bourdillon.
The Hon'ble Mr. Dutt.	The Hon'ble Mr. Lyall.
	The Hon'ble Sir John Lambert.
	The Hon'ble Sir Charles Paul.
	The Hon'ble the President.

So the Motion was lost.

The Hon'ble MR. R. C. DUTT, by leave of the Council, withdrew the motion of which he had given notice that the last paragraph of section 7, beginning with the words "Provided also that a certificate filed" be omitted.

The Hon'ble MR. GHOSE moved that the following further proviso be added at the end of section 7:—

'Provided further that as regards claims under clause (*f*), no certificate shall issue until after such estate has been surveyed and a record of rights made in respect thereof, and in no case shall a certificate be issued in respect of such claims where any question of right or title is involved.'

He said:—"After the discussion which has taken place on the motion of my hon'ble friend, the Commissioner of Burdwan, it will not be necessary for me to detain the Council for more than a moment or two. I said on that occasion that the amendment I have now the honour to move is a compromise between the amendment moved by my hon'ble friend and the provision contained in this Bill. I ask the Council to embody in the law the wholesome restrictions that under instructions from Your Honour's Government, have been imposed by executive order forbidding, in certain cases, the employment of the certificate procedure for the realization of debts due to estates under the management of the Court of Wards. I have endeavoured to follow almost word for word the terms of the letter of the Government of Bengal, and I hope the Government may be able to accept this amendment. The public are thankful to the Government for its endeavours to mitigate the hardships and rigour of the law by executive order, but I submit that when this Bill is under consideration those restrictions should be embodied in the law itself rather than that the executive administration should continue to exercise a sort of dispensing power to moderate the hardships of the law. Under these circumstances, I ask the Council to accept this amendment."

The Hon'ble MR. BUCKLAND said:—"The hon'ble gentleman's amendment consists of two parts, but he has spoken only to one of them. With regard to the part to which he has spoken, I should like to ask him whether any fault can be found with the executive administration since that order to which reference has been made was issued in May, 1892? That order was issued in consequence of a Resolution of this Government in April, 1892, and the order now in force is an order of the Board of Revenue with which I need not trouble the Council.

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

The effect of that order is, that the certificate procedure is, not to be used until a survey and settlement of rights has been carried out. Since May, 1892, has any single case come to notice in which that order has been disregarded? I hear no reply, and I am not prepared to say of my own knowledge that a single case has occurred in contravention of that order. Therefore it seems to me that the order has sufficiently fulfilled its purpose. It is very often made a charge against the Legislature that they legislate for things which are unnecessary. It has certainly been a charge against us in the past that a great many things have been included in Acts which might better have been made the subject of executive orders. We are told that an order which has been working well for the last three years should be included in the law, but I fail to see any necessity for it so far as regards the first part of the amendment. But the second part of it is just as important, namely, that in no case should a certificate issue in respect of claims where any question of right or title is involved. Very serious objection has been taken to that suggestion by the Board of Revenue, and for this reason, that there is hardly any case in which an ingenious Pleader or learned Counsel would not be able to make out a *primâ facie* case that a question of right or title is involved. It will never do for the course of a certificate to be suddenly arrested at the outset by some very fine drawn plea that some remote question of right or title is involved. We had this question brought to our notice at full length in a report of the Board of Revenue submitted in respect to the particular Bill. What we want is to be able to issue the certificate and then if it is found subsequently to be the fact that the man has a *bonâ fide* question of right or title, let him go to the Civil Court, but we do not want that the certificate should be nipped in the bud in the first instance because some clever Pleader or experienced Counsel may be able to show that in some way or other a question of right or title is involved. Therefore, in regard to both branches of the amendment, I put it to the Council that this amendment should not be accepted."

The Hon'ble Babu Surendranath Banerjee said:—"It is admitted by the hon'ble gentleman who has just spoken that the first part of my hon'ble friend's amendment has been made the subject of an executive order. What objection can there be to make it also the subject of a legislative enactment? The hon'ble member has asked the hon'ble mover of the amendment whether any case has occurred in contravention of the executive order. But an executive

order is a very unstable thing; it is liable to changes. His Honour the present Lieutenant-Governor has issued this order, but his successor may not agree with him, and may modify or rescind the order. I am quite aware that a legislative enactment may also be changed, but it can only be changed by a very complicated process. I think that if there is no objection to the executive order it ought now to be made the subject of legislative enactment."

The Hon'ble MR. COTTON said:—"I would suggest that there seems no particular objection to accepting the amendment proposed by the Hon'ble MR. GHOSE. Although an executive order has been passed which substantially gives effect to this provision, I am not altogether satisfied that that order has been strictly carried out. Of course, I am not in a position to answer the hon'ble member in charge of the Bill by pointing out any particular case, but I will take the figures the President read out a few minutes ago, when His Honour himself observed that the order which had been passed had not led to much reduction in the number of certificates. [The Hon'ble THE PRESIDENT said:—"I did not intend to convey that impression, because I have not got the figures separately for estates which have been surveyed and settled."] I have not the figures either, but I think it should be unnecessary to issue so many as 7,930 certificates in the comparatively limited number of estates which have been surveyed and settled, and I am not at all satisfied that the order has been entirely carried out. I would venture to point out that an executive order is very different indeed from a statutory provision. If the proposed provision is contained in the law, it would afford a ground of objection in the Civil Court; but I do not think the Civil Court will take any cognizance of an executive order if it were brought to its notice by a plaintiff. There can be no question that the object of the Government is identical with that of the Hon'ble Member who has moved this proviso, and I think it will be the best solution of the question to accept the amendment which has been proposed. And with regard to the last portion of the amendment, I believe I am right in saying that similar orders have also been issued that no certificate shall issue in respect of a claim where any question of right or title is involved. If such an order has issued and it is desirable that it should be carried out, then I think it well that it should find a place in the statute book. I hope, therefore, Your Honour will find no difficulty in accepting this amendment, which is intended to give effect to executive orders which have been issued by the Government."

[*Maulvi Muhammad Yusuf; Sir Charles Paul.*]

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said.—"I am prepared to support both branches of this amendment, and I venture to think that if the amendment were to be adopted, the law would be improved because the section would then, in express terms, correspond to what has been the admitted practice under, and by force of, the executive orders. I think it is highly desirable that there should be no uncertainty in the words of a Statute, and that an enactment should express correctly and properly the real intention of the Legislature. If it is the deliberate intention of the Council not to authorise the issue of a certificate in certain cases, then that intention should be made clear in the Bill itself, and not left to be gathered by executive orders and rules. I submit that it is wholly undesirable to make the law expressly and in terms extend beyond the limit of expediency, leaving it to executive rules and orders to cut down the law, and tone it down so as to be brought within the limits of expediency. Before the executive orders which have been referred to in the course of the debate, I know that the practice in the matter of issue of certificates was quite different. Those orders introduced a very salutary change, and brought about a very wholesome result; they mitigated much of the inconvenience and annoyance which existed before; by making the law conform to the practice, permanency would be given to the practice, and the result would be public confidence and security in the existence of the practice which would have the sanction of the law.

"In regard to the second branch of the amendment, I submit that the principle of the amendment is equally beyond question. Claims which involve a question of right and title fall, I submit, outside the principle which regulates the certificate procedure. Certificates should only issue in cases in which there is positive certainty, and where all elements of doubt are removed. When a question of right and title is involved, the parties interested are likely to hold conflicting views on that question, and so it would be undesirable to arm one of those parties with a weapon which he might wield with dangerous consequences to his adversary. In a case involving the question of right and title, both parties should be left to fight out their difference on equal terms without the law placing one of them on a vantage ground."

The Hon'ble SIR CHARLES PAUL said:—"If I apprehend rightly the question comes to this, that in cases where the parties differ and where there is

no agreement, this certificate procedure should not be adopted. If that is so, the matter answers itself."

The Hon'ble MR. LYALL said:—"I think there are many things which are desirable, but which are not desirable to put into a law; and that restrictions are far more easily put into an executive order, and with better effect. It is not always well that such executive orders should be made rigid by being enacted into law. The present is a case in point. The executive orders have been thoroughly carried out in both these cases, and there is an inelasticity in a law which does not exist in an executive order. It may be that some future Lieutenant-Governor may think fit to enlarge the scope of the present orders, or it may be found necessary to reduce them; therefore I think such orders should not be made too unbending. Then as to the last portion of the amendment, I think the hon'ble member will admit that at first it does not appear whether a case is one of right or title or not; that only appears when an objection is filed. The present order is that when the Collector finds that it is a case of right or title, he is to dispose of the case under section 13 by dismissing it and leaving the decision to the Civil Courts. It is impossible for the Collector to see when a matter first comes before him on requisition that it will develope into a question of right or title. All that he can do when he finds that out after he has started the case is to take it off the file. Beyond that it is impossible to ask him to go."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"I agree with the hon'ble mover of the amendment, but I wish to suggest a modification, namely, the addition of the words '*bonâ fide*' before the words 'question of right or title.'"

The Hon'ble MR. GHOSE in reply said:—"I have unfortunately not by me the Blue Book relating to this subject, but if my memory serves me rightly, it will be found in page 134 of the Blue Book that, under instructions from Your Honour's Government, the Board of Revenue have issued orders that not only in cases where a survey and record of rights have not been made, but also in cases where a question of right or title is involved, the certificate procedure should not be applied. That being so, there is no conflict between my amendment and the orders passed by the Executive Government. The only question

[*Mr. Ghose; the President.*]

which remains for consideration is, whether those executive orders ought not to be incorporated with the law. I submit that they ought. As long as the law remained defective the public were grateful to the Government for moderating the hardships of the law, but the whole law on the subject is now under amendment, and I see no reason why those orders should not now be made part of the law. As has been pointed out by the Hon'ble the Chief Secretary, if these orders are disregarded, the Courts of Law will not take cognizance of them, and a man who is proceeded against in spite of those orders will have no remedy. And, moreover, another order may be passed abrogating the existing orders. The hon'ble member in charge of the Bill has asked me if I know of any case of grievance after the issue of these orders. I am not in a position to give the information, but it should be remembered that the orders are now fresh, and therefore they are probably being implicitly obeyed. They will, however, gradually grow old and rusty, and be forgotten, and when certificates are made in spite of those orders, the poor men concerned will have no remedy; whereas by incorporating those orders with the law you will make it absolutely impossible for any one to disregard them. On these grounds I desire to put this motion before the Council, but before doing so I ask leave to divide the motion into parts, inasmuch as hon'ble members who may support one part may not be disposed to support the other; and as regards the second portion of the amendment, I thankfully accept the suggestion of my hon'ble friend, MAULVI SERAJUL ISLAM, to insert the words '*bonâ fide*' before the words 'question of right or title.'"

The Hon'ble THE PRESIDENT said:—"Before putting the question to the vote, I wish to say that I am unhesitatingly opposed to both the motions, and I trust the Council will not accept them. It is not a question of principle. We are all agreed as to what should be done, and I think you may take it that we of the executive know best the way in which to carry out our intentions. I have no doubt that the best way is to put it into an executive order rather than into a law. It is true it is less difficult to change a law than to change an executive order, but if this motion is carried it will not be long before the Council is called upon to change it, because I feel sure it will not work in the way in which it is intended to be worked. It is easy to frame an order, but it is very difficult to pass a legislative enactment in such a way that holes will not be picked in it. In the executive order the words 'record of rights' are used in a rough and practical way which is not liable to be misunderstood, but

technically and legally speaking it has only one meaning, namely, such a record of rights as is framed under section 102 of the Bengal Tenancy Act. But the intention of Government was not to confine the operation of the order to those rights. We have other estates in other districts settled under other Acts. We have recently settled the Western Duars in the Jalpaiguri district under a very peculiar Act, which I have already proposed should be abolished, but the record prepared under that Act is not what the Bengal Tenancy Act calls a 'record of rights,' and once this provision is put into law every kind of objection will be raised against the Government in passing its orders. With regard to excluding any cases which may involve a question of right and title, it was the intention of the Government to introduce that principle, but the Board of Revenue, after grave consideration, pointed out that there is great danger of technical objections being raised. The first thing every objector will do will be to say that there is question of right and title involved. It will lead to a good deal of litigation, expense and delay, and throw a good deal of difficulty in the way of carrying out the simple and summary procedure of this Act, and will have no effect in producing a better administration of the principles of the law."

The Amendment was divided into two parts: the first part to consist of the words "Provided further that as regards claims under clause (*f*), no certificate shall issue until after such estate has been surveyed and a record of rights made in respect thereof"; the second part to consist of the words "and in no case shall a certificate be issued in respect of such claims where any *bonâ fide* question of right or title is involved."

The first part of the amendment was put to the vote and negatived.

The second part of the amendment was put to the vote and also negatived.

The Hon'ble MR. R. C. DUTT moved that after section 9 the following new section be added:—

'Before making a certificate under the provisions of sections five, seven or nine, the Certificate Officer shall send by post, addressed to the person from whom the demand is alleged to be due, at his last known residence, and registered under Part III of the Indian Post Office Act, 1866, or any similar Act for the time being in force, a notice calling upon such person to pay such amount within a date to be specified in the notice. And no certificate will be made if such amount be paid within the date fixed.

[*Mr. Dutt.*]

'The sending of such notice may be proved by the production of the Post Office receipt.'

He said:—"My object in moving this amendment is this. In a great many cases defaulters fail to pay the amounts due from them, not because they are unwilling or unable to pay, but because they do not remember that there is such a demand due on a fixed date. Under the Certificate Act we have to deal with a very large class of people, many of whom are in very humble circumstances and are not in the habit of keeping accounts of sums due to them or payable by them. As an instance, I may mention that in the district of Hooghly we realize Road Cess from about 6,000 zamindars and 16,000 rent free tenure-holders, and about 10,000 of the latter hold tenures whose annual value is not more than Rs. 40. If the Road Cess is not paid in due time a certificate is filed and notice is issued under section 10, and the cost of serving the notice is added to the amount of Road Cess to be paid. The property of the defaulter is attached, and he has to pay the Road Cess with the costs incurred. I admit that it is the duty of these people to remember their liabilities, and to send in the amounts by the due date, but it would save a good deal of trouble and of expense to the defaulters if simple Post Office notices were sent to them. My experience is that even if a post-card were sent, probably in 75 per cent. of these cases the money would come in, and there would be no necessity to saddle these people with the cost of a certificate. The Board of Revenue have already recognized the necessity and desirability of issuing post-card notices in certain cases, but the number of cases included in the Circular is very small. It does not include the Road Cess except where the rate of cess has been altered. The Circular is contained in Rule 21, section 3 of the Rules framed by the Board of Revenue under this Act, and runs thus:—

'To obviate hardship, District Officers are directed to notify the existence of arrears before certificates are issued—(*a*) by putting up a list of defaulters in their offices, and (*b*) by sending warnings to defaulters by printed post-cards (see Appendix C) in all cases in which there is no reason to believe that the debtor has had intimation of his liability. In the case of Road Cess and Zamindari Dak Cess collections, this procedure will probably be unnecessary, except in the rare instances in which the amount of the demand has recently been changed.'

"Most of our certificates are issued for realization of Road Cess: I may almost say that the certificate exists for realization of Road Cess. I was looking into the figures in Burdwan the other day, and I found that out of about 10,000 certificates

dealt with in the current year, very nearly 9,000 related to Road Cess. My contention therefore is, that such post-card notices are most necessary in the case of Road Cess. My desire is, that notices should be sent in *all* cases before certificates are made. I may mention that in Burdwan we have travelled a little beyond the letter of the Board's Circular and have issued notices in all cases. The result has been very successful, for I find that within the last five months 1,119 defaulters paid up the amounts they were asked to pay by post-card, and were also good enough to pay in each case an additional pice, being the price of the post-card. So that without any expense to Government, we are able to realize a large amount and save the cost to the people and the trouble to our office, of making certificates. For these reasons I hope this amendment will be accepted, and that it will be made compulsory to send post-cards as a sort of warning to defaulters."

The Hon'ble MR. BUCKLAND said:—"I am afraid that I cannot hold out any hope of this amendment being accepted on the part of Government. All that the hon'ble member has said points to the extension or amplification of the Board's Circular on the point rather than to an amendment of the law. It is a very different thing, as we have heard just now, to issue an executive order and to put a direction into the law and thus stereotype it. Here we have an excellent executive order issued by the Board of Revenue, the object of which is very good as far as it goes; but the hon'ble gentleman thinks it should go further. There is nothing to prevent him from persuading the Board of Revenue to extend the scope of the Circular without putting it into the law. I see no reason why he should not try to influence the Board of Revenue in this way, but it is entirely a different thing for us to put a provision of this sort into law; because if you once put it into the law, it would allow the thin edge of the wedge to be inserted for all kinds of complications. As soon as a certificate is filed it has the force of a decree. It has been deliberately enacted that Government has a right to adopt this summary procedure for the recovery of sums due to itself, and by this procedure all the preliminary steps prior to a decree are waived; and, for this reason, that the demands for which certificates are issued are well known. We must consider how many complications may be introduced directly we begin to introduce any preliminary steps and make them obligatory by law. We should have to prove that the notice by post-card reached the individual to

whom it was addressed, and then we have the suggestion made that preliminary evidence should be recorded—and the hon'ble gentleman will allow me to remind him that in his report he made this suggestion—that no certificate should be issued without this first step being taken. Thus we should have a procedure before the issue of the certificate, and I do not know what other complications might not be introduced. I think I am right in saying that we should have to prove the receipt of the notices. What is there to compel the addressee to give a receipt? [The Hon'ble MR. R. C. DUTT said:—"I meant the receipt of the issuing Post Office."] What guarantee is there that the receipt of the Post Office will be accepted as evidence that the notice reached the addressee? We should have to prove the arrival of the notice at the hands of the addressee; we should have the postmen called in, and they would thus be taken away from the performance of their legitimate duty of serving letters, and would be constantly hanging about the Courts to prove the receipt of a number of preliminary notices with which we now dispense. But the matter will stand on quite a different footing if notices are issued in all cases, including Road Cess, by executive orders in extension of the existing orders. Then, if the notice fails to reach its mark, the certificate process can go on all the same, but it is a serious objection to impose by law all this preliminary trouble upon our already overburdened officers."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"This amendment raises a very important question—a question which, while it combines simplicity and usefulness, strikes at the very root of the complaint raised against the certificate system. The issue of a notice before a certificate is made will tend very largely to avert a great deal of the inconvenience and annoyance which, it is believed, follow in the wake of the certificate procedure. The issue of the notice is in itself the easiest thing imaginable, and no serious objection could be imagined against the proposal for the issue of such a notice. But objections have been raised, and it is necessary, therefore, to see whether the proposal should be entertained. Some of the objections raised by the hon'ble member in charge of the Bill do not appear to me to present serious obstacles against the reception of the amendment. If the issue of a notice is desirable in itself, no Post-Office difficulty need trouble our minds; but I submit that, as a matter of law, no difficulty exists in connection with any steps relating to the issue of the notice, because the receipt given

by the issuing Post Office would, by a natural presumption, lead to the inference that the notice was duly received by the party to whom it was addressed. The question, therefore, not being surrounded by any consideration of embarrassment, we revert to the question itself, and the first matter to enquire is whether a notice is necessary or desirable before the making of a certificate. Upon that, I submit, there should not be two opinions. Of persons who make default in payment, a large body consists of those whose default is not wilful. To such a body the notice would be most welcome, whilst the issuing of the notice would not increase the work of the Collector to any appreciable extent; nay, rather the work of the Collector would be diminished in proportion as the issue of the notice would reduce the list of default, and obviate the necessity of making of the certificate and carrying it through. Even in cases of persons whose default is wilful, the notice would serve to remind them of their default, and therefore in some of those cases also it is possible to imagine that the necessity to make a certificate might be removed. Altogether, I submit, it is in every way desirable that there should be a notice preliminary to a certificate being made."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I have listened attentively to the hon'ble member in charge of the Bill, but I have not been able to follow him in regard to the complications to which he referred. On the other hand, the hon'ble mover of the amendment has made out a very strong case. I know something about the service of these notices. In the year 1888-89 the estate of Sujamutha came under the management of the Court of Wards, and in the Bengali year 1295 I think it was, so many as 12,000 certificates were showered on the devoted heads of the raiyats, and the complaint which they urged in their petition to the Board of Revenue was that they had not in many cases received notices of certificates issued against them, and that their properties had been sold without their having received any intimation of the issue of the certificates. I have with me an extract from their memorial to the Board of Revenue, made in November, 1889, in which they say:—

'Further, in many cases no notices of the issue of certificates or of auction sale are received, and decrees obtained and their holdings put up to sale without their knowledge.'

"That was deliberately stated in their memorial. I had an opportunity of visiting the estate, and discussing the matter with a body of about 5,000 raiyats, and the one complaint they made was that the service of these notices was

[*Babu Surendranath Banerjee; Sir Charles Paul; Maulvi Serajul Islam.*]

made in the most careless and perfunctory manner. I submit that this amendment will afford an easy remedy, and it should be accepted by the Council."

The Hon'ble SIR CHARLES PAUL said:—"I confess that I am in sympathy with the hon'ble mover on this particular motion. It appears to me that the right of the Crown is to take action without previous notice, but inasmuch as it is provided in section 10, to take action without notice when a certificate is made, notice must be given, the mode of giving notice which is here suggested might be given. I do not say that two notices should be given, and I cannot understand that the giving of one notice should lead to any administrative inconvenience. And, inasmuch as one notice must be given, it does appear to me that it would be more logical to give the notice before making the certificate than after doing so. And in regard to the service of the notice, I do not think there will be such difficulty as the hon'ble member in charge of the Bill apprehends. The production of the receipt of the Post Office would be *primâ facie* evidence of the letter having reached its destination. Of course that evidence may be rebutted, but we have no reason to suppose that in every case in which people owe money they will deny the receipt of notice; and as this change of law is likely to lead to no serious administrative inconvenience, I approve of this amendment."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"Section 8 of the Bill gives the mere filing of a certificate the force of a decree; and under section 10 all the judgment-debtor's properties, moveable and immoveable, are attached in pursuance of such *ex-parte* decree, and if the judgment-debtor wants to sell any portion of that property for the payment of the demand, he cannot do so. I think it but fair and reasonable that before having recourse to this harsh procedure, the alleged debtor ought to have the notice which is proposed in this amendment. I can assure the Government from my experience that cases of intentional default are very rare. People do not, as a matter of fact, intentionally omit to pay Road Cess or Government Revenue, but only do so from want of proper information or forgetfulness. Therefore I think that this amendment is a move in the right direction, and ought to be accepted."

[*Mr. Cotton; Mr. Lyall.*]

The Hon'ble MR. COTTON said:—"I should like to say one word to the Council in reference to this proposal. It appears to me that this is a proposal which comes in far more suitably in the form of an executive order than in that of a legislative enactment. I have seen enough of the working of the certificate procedure to be satisfied that in many cases it is an engine of oppression—that is perhaps rather a strong expression to use—but I mean that the certificate procedure is no doubt productive of hardship in many cases. It is, therefore, incumbent upon the Government, which has this powerful engine at its disposal, to avoid issuing certificates whenever it can do so, and I quite agree with the Hon'ble Mover of the amendment that if notices are regularly given before making certificates, it would have the effect of largely reducing the number of certificates. His own experience shows that in the Burdwan district thousands of persons in whose names these notices were issued paid up their dues without being required to do so by the certificate procedure. I therefore entirely agree with him that these notices should be issued, but I fail to see why a provision of this kind should find a place in the Statute Book. It is eminently an arrangement which ought to be provided for by means of an executive order. I desire to point out that if this were made the subject of legislative enactment, and if it were allowed to objectors to come forward and say, 'I did not get this preliminary notice,' it would add immensely to the difficulty of working the Certificate Department and recovering demands. There would be nothing more difficult than to prove to the mind of the Court that a preliminary notice of this nature had been properly served. I look upon this preliminary notice as conferring an advantage upon defaulters by saving them from all the harshness and annoyance of a certificate, and therefore I am in favour of issuing such notices, but I would not introduce such a provision in the Statute Book, as it might lead to a great deal of doubt and difficulty."

The Hon'ble MR. LYALL said:—"I consider that the foundation of this proposal, as stated by the hon'ble mover, is entirely incorrect. He assumes that a great many of the demands covered by certificates are not known to the payees. I assert the contrary. If we go over the list of the dues which can be recovered by certificate procedure. They are all well known; but notwithstanding that, in the majority of cases we issue notices, especially as regards embankment dues. I say that no demand is unknown to those who have to meet them. There is certainly no arrear of revenue or rent due to the Government which is not

[*Mr. Lyall.*]

known to the payee. Then, as regards water-rate, a person who gets his field irrigated must know that he has to pay for the water. In the case of cesses, I am quite aware that there is some hardship, chiefly owing to the number of co-sharers in estates. Then, as to estates under the management of the Court of Wards, as in the case of rents due to the Government, every raiyat knows what he owes, and the amount has been demanded from him over and over again. Then, there are the zamindari dâk cess, famine loans, agricultural loans, land improvement loans, forest dues, and dues under the abkari law. All these are dues which are well known. Every man who takes out a license knows that he has to pay for it is license on the first day of every month. I consider that it is entirely exceptional when a man does not know what he owes. On receiving notice of this amendment I called on the Collectors of the districts in which the greatest number of certificates are issued to report in how many cases notices were issued before the issue of certificates.

"I have received telegraphic replies from the Collectors of six of these districts, in which the greatest number of certificates are issued. In Darbhanga, in 145 cases postal notices were issued--all in embankment cess cases; in Midnapore, 3,542 notices were issued; in Burdwan, 21,473; in Gaya, 16 were issued last year and 7,841 have already issued in the current year; in Cuttack 172, and in Patna 500. These figures show that the orders which have been issued are not a dead letter.

"I turn now to another point. We are asked now to add another stage to the certificate procedure. In other words, we are asked to compel by law Collectors of districts, who are already overburdened with work, to issue as much as 150,000 notices year by year, or in other words, we ask them here to do about 150 times more work they have to do at present. It is very easy for us here to add to the burdens of Collectors of districts, but I know that they have an almost intolerable amount of work to go through, and what is now proposed to be added is, I submit, another piece of useless routine. The hon'ble mover has stated that these notices have been largely responded to. I take the figures of last year's Certificate Returns. I find that in 44,827 cases, which is about one-third of the 143,886 certificates issued, men paid up on the issue of the first notice. Is it probable that more men would have paid on receipt of a post-card than upon receipt of notices which bind their property? I say that the utmost which will be gained will be as much as is now gained under the notices at present issued, that is to say, about one-third of the debtors will

pay up. If this amendment is adopted, our Collectors and their offices, already overburdened with work, will be unable to cope with the large increase. Another point is that the notices now issued under the law bind the whole of a man's property, but the notices now proposed to be issued would bind nothing, but would afford a man the opportunity of disposing of his property, and thus diminish the collection of the Government dues. This is a point which should be taken into consideration before disposing of this motion. And, further, if this motion is adopted, you will throw the cost of these notices on the debtors. At present the notices which are given under executive order are given free of cost; but if this amendment is passed, you will throw the cost of these notices on the debtors, and thus add to the amounts they will have to pay. I maintain that as far as I have been able to look up the records of the last fifteen years, there has been no public demand for these notices, and I fail to see that any intimation of the nature proposed is necessary."

The Hon'ble MR. R. C. DUTT in reply said:—"A suggestion has been made that the addressees will refuse to sign the receipt; but all that will be necessary on my wording of the amendment will be to prove the sending of the notices by production of the Post Office receipt. It has been said by the Hon'ble MR. LYALL that defaulters do know the amounts due by them. I have no doubt that they do know this in regard to the dues to which he referred; but as regards road-cess dues, I believe I am correct in saying that in the case of a large number of petty holders, they do not remember that a small amount is due from them by a certain date. In the Hooghly district we have over 10,000 petty tenure-holders, the annual value of whose holdings ranges from Rs. 16 to Rs. 40 per annum, and the Road and Public Works Cesses due from these ranges from one Rupee to Rs. 2-8. That is a small amount due once a year, and it is possible they may forget to pay it. Under the present procedure they have not only to pay that amount, but a great deal more in the way of costs, and it is to avoid this that I suggest that post-cards may be sent beforehand. The fact that they have taken heed of such notices in many instances shows that it is not an inefficacious mode of recovery. With the permission of the President I will read to the Council a note on this subject, which I made in the course of a recent inspection in Burdwan. I there said:—

'Before sending requisitions for certificates, the Road Cess Deputy Collector sends post-card warnings to the defaulters in every case, under Rule 21, section III of the Board's

Certificate Manual, and the result is that many defaulters remit the money,—with one pice additional, being the value of the post-card,—by money order, and the issue of a certificate becomes unnecessary. I am glad to find that in October last, Road Cess was voluntarily paid by 853 persons on receipt of these post-cards; in January, such payments were made by 77 persons, and in the current month by 189 persons. The Deputy Collector has thus avoided having recourse to the cumbrous and harassing certificate procedure in 1,119 cases, within this half year by the issue of post-cards.'

"I gather from the remarks which have been made by the hon'ble member in charge of the Bill, and by the Hon'ble MR. COTTON that they are not unwilling to accept the amendment, but they would rather have it in the shape of an executive order. If that be so, I shall have no objection to withdraw this amendment on an assurance being given on the part of the Government that they will issue such an order."

The Hon'ble THE PRESIDENT said:—"I must complement the hon'ble member on the excellent way in which he put his case, and I think the Council may be congratulated in having an official in their midst, who has been practically engaged in carrying out the work of this particular Act, and who has given a sympathetic and intelligent consideration to the matter. I do not think, after what he has already stated, that there is considerable difference between the views he holds and those of the Government; and though on the part of the Government I agree with the hon'ble member in charge of the Bill that this amendment, as a motion, should be opposed, yet I am prepared to meet the hon'ble member a long way and to undertake the issue of executive orders that Post Office notices should be sent, though not, I think, in all cases. I will ask the hon'ble member to have confidence in the Executive Government, and give them time to consider the matter with a little more leisure. I think such notices will be of no use in cases of *khas mahals* and Wards' estates. There we have establishments, the members of which go round to every village to collect the dues, and it is only when they fail to collect that they send in requisitions for the issue of certificates. In these cases the parties cannot be ignorant of their liabilities. On the other hand, it would be extremely useful to extend the present orders to all road-cess cases, embankment cess cases, and dâk cess cases—in fact, to all those cases in which a current demand exists, and it is possible that the debtor might forget, and would pay it if he had a reminder. But I think that what has been said by the Hon'ble MR. COTTON

and by the hon'ble member in charge of the Bill has forcibly shown that we should incur some danger by embodying the proposed provision into the law, and I accept with pleasure the proposal of the hon'ble mover of the amendment to withdraw the motion on the receipt of this promise and the assurance of the Government which I have given."

The Motion was then, by leave, withdrawn.

The Hon'ble MR. GHOSE, by leave of the Council, withdrew the motion of which he had given notice that, for section 10, the following section be substituted :—

'Before a certificate is filed in the office of a Certificate Officer under the provisions of sections five, seven or nine, such Certificate Officer shall issue to the debtor a notice in Form No. 4 in the Schedule hereto annexed, calling upon him either to pay the amount claimed from him, or to show cause within thirty days from the date of service of such notice why a certificate should not be filed against him.'

The Hon'ble MR. GHOSE, by leave of the Council, also withdrew the motion of which he had given notice that Form No. 4 in the Schedule and the sections relating to appeals be amended accordingly.

The Hon'ble Mr. R. C. DUTT moved that the proviso to sub-section (*2*) of section 12 be omitted. He said:—

"This is a new provision which has no place in the existing Act, and the operation of this provision is likely to be attended with a great deal of hardship to judgment-debtors. It requires that before a judgment-debtor can file his objection, he may be called upon to pay the full amount which is alleged to be due from him. I do not think there is any real necessity for this provision, and I think the working of it is likely to be attended with a great deal of hardship. I will state a recent instance which will show that the operation of this provision is likely to choke off reasonable objections and compel people to go to the Civil Court. Many villages in the Burdwan and Hooghly districts are irrigated by water from the Eden Canal, for which the Government realises a moderate water-rate. It is impossible for the Government to accept a contract from every particular villager whose fields are irrigated,

and therefore one or two leading men in every village come forward for the whole of the villagers and undertake to pay for all the villagers whose fields are irrigated. Either last year or the year before, a man who agreed on behalf of all the villagers to pay a large sum of money did not pay in advance, and the Engineer stopped the irrigation of that village altogether, and then sent a requisition for the collection of the rate for water which was not supplied. The man said he had been sufficiently punished by not getting water; why should he pay the water-rate over and above that. A case like this ought to be fairly gone into, but this new proviso may compel such a man to pay the whole of the money down before he can raise such an objection. This man had undertaken to pay for a number of co-villagers, and it would be impossible for him to get the money from his co-villagers who had not got the water, and he to pay it within 15 days. The new proviso is likely therefore to be attended with a great deal of hardship, and it is not practically necessary. Under the present Act we are succeeding in getting money from all defaulters who have money to pay, but if this new provision is enacted, it is likely to be very harsh in its operation."

The Hon'ble MR. BUCKLAND said:—"I do not know whether the hon'ble member who moves this amendment has noticed that it is not meant to be a compulsory provision, and the wording makes that very clear. In the case to which he referred I cannot imagine it possible that a deposit of the full amount would be demanded. But there may be cases in which a merely frivolous petition is put in to gain time, and in a case of that sort the Select Committee were of opinion that some reasonable course of action should be open to the Certificate Officer with the view of preventing the certificate procedure being practically laughed at. We have therefore provided that if the Certificate Officer sees fit he may call upon the judgment-debtor to deposit the amount, but not when the petition alleges payment in full, as the petition has to be verified in a special way and the verifier renders himself liable to very serious pains and penalties if he makes a false verification. Therefore, in that particular case we do not require the Certificate Officer to act on this provision, but we think it sufficient for the Certificate Officer to possess this power with a view to prevent the filing of frivolous objections. I cannot, however, suppose that it will often lead to such hardships as occurred in the unique case which the

hon'ble member has just mentioned. Therefore I think we ought to take this power in the Act, although it may not be necessary to often use it."

The Hon'ble MR. R. C. DUTT in reply said:—"The hon'ble member thinks it is not likely that the Certificate Officer will use this power in cases of the nature to which I have just referred. We should, however, remember that the Certificate Officer is responsible for the collections, and that he is naturally inclined to look to the collections first, and to leave other questions for consideration later on; he may, therefore, be tempted to ask the man to pay the amount before he will listen to the objection. It is better, therefore, to omit this proviso, and, as I have said, under the present Act we do not feel any inconvenience."

The Hon'ble Mr. LYALL said:—"I wish, with Your Honour's permission, to say a word in regard to the slur which the hon'ble mover of the amendment has cast upon the officers who are working the Certificate Act. I have found those officers do their duty strictly and in a straightforward way, and I should be wrong to pass over such an imputation as has been cast upon them by the hon'ble member."

The Hon'ble MR. R. C. DUTT explained:—"I certainly had not the least intention to cast any slur upon these gentlemen. I only said that an officer whose duty it is to collect is naturally inclined to look to the collections first. I have the highest respect for the class of Deputy Collectors from among whom Certificate Officers are appointed, and many of them are my personal friends, and I certainly never meant to cast any slur or imputation upon them."

The Hon'ble THE PRESIDENT said:—"The proviso which it is proposed to omit was suggested to us by the High Court, but I cannot say that I feel very strongly about it, and what has fallen from the hon'ble mover of the amendment shows that there is just a possibility of hardship attending its operation. I am sure, however, that the hon'ble member did not mean to cast any aspersions upon the officers who will have to exercise the proposed power. The Government would wish in respect of this amendment to be guided by the feeling of the majority of the Council."

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

The Motion being put, the Council divided :—

Ayes 7.	*Noes* 6.
The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.	The Hon'ble Mr. Wilkins.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.	The Hon'ble Mr. Buckland.
The Hon'ble Mr. Ghose	The Hon'ble Mr. Bourdillon.
The Hon'ble Babu Surendranath Banerjee.	The Hon'ble Mr. Lyall.
The Hon'ble Mr. Dutt.	The Hon'ble Sir John Lambert.
The Hon'ble Mr. Collier.	The Hon'ble Sir Charles Paul.
The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.	

So the Motion was carried.

The Hon'ble BABU SURENDRANATH BANERJEE, by leave of the Council, withdrew the motion of which he had given notice that in line 3 of the proviso to section 12, after the words "alleged in the petition" the words "or when he is satisfied that the objection is made in good faith" be inserted.

The Hon'ble MR. R. C. DUTT moved that the proviso to sub-section (*2*) of section 13 be omitted. He said :—

"This proviso enables the Collector to suspend proceedings for six months in cases of doubt. My only reason for proposing its omission is, that the proviso seems to me to be very vague. It does not lay down any special procedure, and it is not quite clear what is to be done after the proceedings before the Collector are suspended for six months. I may point out that there is a parallel provision in the Land Registration Act, to the effect that when a Collector has any doubt as regards a point of law, he may suspend his orders and refer the issues for the decision of the Judge, and then, on receiving the decision of the Judge, he may proceed accordingly. I do not find that such a provision has been made in this Bill, nor is there anything to show the intention of this proviso. Is it intended that the judgment-debtor should go to the Civil Court and prove a negative, namely, that nothing is due from him, or is it intended that the Collector should go to the Civil Court and find out whether any claim

can be legally made or not? If, on the other hand, it is proposed to make provision like that in the Land Registration Act, I shall be very glad to accept it."

The Hon'ble MR. BUCKLAND said:—"The form which this proviso should take was a matter of considerable discussion in Select Committee. We at one time thought of adopting almost exactly the words of section 55 of the Land Registration Act, that the Collector should refer the petition to the Civil Court. We discussed all the alternatives, but for some reasons we thought it better to adopt the present language. The Collector may refer the petitioner to the Civil Court, but the man may not go; so we thought the best form of provision to adopt was that the Certificate Officer should suspend proceedings, and that will give the petitioner the opportunity of considering the situation and going to the Civil Court during the six months. If the judgment-debtor does not go to the Civil Court during that time, then the certificate will become absolute. I am not particularly enamoured with the wording of the proviso, and if something better is suggested, I shall be happy to accept it; but I will repeat that, with section 55 of the Land Registration Act before us, we deliberately adopted these words as being the best under the circumstances."

The Hon'ble MR. LYALL said:—"I desire to add a word or two in explanation of the reason which influenced me as a member of the Select Committee in leaving the proviso as it is. Both the hon'ble speakers have referred to section 55 of the Land Registration Act. Under that Act a case is referred for the decision of the Civil Court, but under the Certificate Act there is no case to refer. We also had section 24 of the Partition Act before us, and under that section the proceedings are simply hung up for a certain time. All that we provide in the Bill is that the Collector, if he considers a case is a fit one for the decision of the Civil Court, shall hang up the proceedings and allow the parties to take it to the Civil Court, and himself go on with the proceedings under section 16 after that time lapses."

The Hon'ble MR. GHOSE said:—"It seems to me that the last suggestion made by the hon'ble member in charge of the Bill will meet the requirements of the case. The mere omission of the proviso will not attain the object which my hon'ble friend, the mover of the amendment, has in view. The proviso in the Bill is so worded that it makes no provision for the reference of the

petition to the Civil Court. In the Report of the Select Committee this matter is put thus:—

'The idea of referring hard cases to a Civil Court, which found place in the proviso to section 13, sub-section (2) of the original Bill, has been maintained in the corresponding provision of this Bill, but it is considered necessary to limit to six months the period within which the opportunity of bringing a suit may be taken'

"The proviso does not say that a reference is to be made to the Civil Court, but the idea was that such a reference should be made in any case which, in the opinion of the Collector, is a fit case for the decision of the Civil Court. I cannot see any objection to say that the Collector when he thinks fit may refer a case to the Civil Court."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"I think this is a very wholesome provision, and that it ought to be retained. The reasons urged by the hon'ble mover of the amendment do not point to the omission of the proviso but to an alteration of its wording. If section 55 of the Land Registration Act can be made applicable, then the Collector would have power to refer the matter to the Civil Court. The existence of this proviso in the Bill will show that the hon'ble member in charge of the Bill is anxious to give the judgment-debtor every opportunity to show that he is not liable to the payment demanded from him."

The Motion was put and negatived.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in line 5 of section 15, the words "from the date of the determination of the objection" to the end of the sentence be omitted, and that in their place the following be substituted:—

'from the service upon him of notice under section ten, or, if he files a petition of objection under section twelve, from the date of the determination thereof, or, if he appeals under section eighteen, from the date of the decision of such appeal, bring a suit in the Civil Court to have the said certificate cancelled or modified on the ground that the arrears stated therein were not due by him.'

He said:—"There are two classes of judgment-debtors referred to in this Bill—one mentioned in section 6, the other in section 8. Section 6 of the Bill lays down the conditions as regards time within which a judgment-debtor may

bring a suit in the Civil Court to contest the certificate. Section 15 does the same as regards judgment-debtors mentioned in section 8. But the conditions are not the same. There is an important omission in section 15 of the Bill, which does not occur in section 6. Under section 6 a judgment-debtor may bring a suit to contest a certificate in a Civil Court within six months from the service of notice, or from the determination of the objection or the decision of the appeal by the revenue authorities. Under section 15, he may bring a suit within six months from the determination of the objection. What if six months elapse before the determination of the objection by the revenue authorities? Then he loses his right of contesting the certificate in a Civil Court. The object of this amendment is to place both classes of judgment-debtors as regards the time within which they are to bring a suit in the Civil Court on the same footing, so that section 15 may follow the lines of section 6. I hope the hon'ble member in charge of the Bill will see his way to accept this amendment."

The Hon'ble MR. BUCKLAND said:—"I am prepared to accept the greater part of the hon'ble gentleman's amendment, the object of which, as he rightly said, is to bring the sections 15 and 6 into harmony. On looking over the sections more carefully, I am not quite sure if I can accept the whole of the amendment. The last few words say, that a suit may be brought in the Civil Court to have the certificate cancelled or modified on the ground that the arrears stated therein were not due by him. Section 17 goes on to state the grounds upon which certificates can be cancelled or modified. I quite see that in section 6 (*2*) we have left in these words, but I am inclined to think that they ought to come out of section 6 (*2*) and not be inserted in section 15 as proposed by the hon'ble mover of the amendment. I think it will be bad drafting to adopt in other sections a different wording suggesting the possibility of other grounds on which a certificate may be cancelled or modified. There is also another point to which I should refer. The amendment refers to appeals under section 18, but it should be section 19."

The Motion was put and agreed to in the following amended form:—

That in line 5 of section 15, the words "from the date of the determination of the objection" to the end of the sentence, be omitted, and that in their place the following be substituted:—

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

'from the service upon him of notice under section ten, or if he files a petition of objection under section twelve, from the date of the determination thereof, or if he appeals under section nineteen, from the date of the decision of such appeal, bring a suit in the Civil Court to have the said certificate cancelled or modified.'

The Hon'ble BABU SURENDRANATH BANERJEE also moved that the following be added after clause (*b*) of section 17:—

'That in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged by a Collector or a public officer under the provisions of any Regulation or Act for the time being in force, the proceedings of such Collector or public officer were not in substantial conformity with the provisions of such Regulation or Act, and that in consequence the judgment-debtor under the certificate suffered substantial injury from some error, defect or irregularity in such proceedings.'

He said:—"Section 17 states the grounds upon which certificates may be cancelled or modified. Commenting upon this section in the present law, the Select Committee observe that they have amplified its spirit. My amendment follows the spirit of the modification recognized by the Select Committee. What I contend for is, that the certificate should be cancelled when there have been grave irregularities on the part of the Certificate Officer, attended with substantial injury to the party concerned. This is the existing law. I do not ask for the creation of technical difficulties in the way of the Certificate Officer, nor do I wish that the judgment-debtor should obtain any technical advantage, but what I venture to urge is, and I am perfectly certain that the Council will agree with me, that where there has been any grave irregularity on the part of the Certificate Officer, and the judgment-debtor has suffered any substantial injury therefrom, he should have some remedy. It cannot be the intention of the Government that irregularities of this kind entailing serious hardship or even loss should hold good in law, and I am sure the principle will commend itself to the Council."

The Hon'ble MR. BUCKLAND said:—"I am afraid I cannot promise to meet the hon'ble member quite so readily in regard to this amendment as I did on the last occasion. He asks us to restore a section of the existing Act, which has been deliberately cut out, more in deference to the opinion of the High Court than that of any other authority who has reported upon the Bill. The opinion of the High Court was that directly after a certificate has been filed the Civil

Court should intervene to enforce it. I wish to bring this clearly to the notice of the Council and that they will bear it in mind. They say:—

'If the intervention of the Civil Court be thus made before and not after the certificate is enforced, there would seem to the Judges to be no reason for setting aside the certificate on the ground of any irregularity; for if any irregularity has occurred of such a kind as to place the judgment-debtor at a disadvantage, the remedy would naturally be to delay the execution for a reasonable time.'

"We do not propose on behalf of Government to allow the Civil Court to undertake the execution of the certificate. We have always been of opinion that the Revenue Courts are just as capable as the Civil Courts to execute decrees; therefore we have accepted the principle of the High Court's suggestion that a certificate should not be set aside on the ground of irregularity, and we consider that the Revenue Courts will take as much care in the enforcement of decrees as the Civil Courts do. When we addressed the Government of India on the 29th May, 1893, on the subject of this Bill, we stated that we could not accept the High Court's suggestion, that execution should be carried out by the Civil Court, but we went on to say that:—

'The rest of the suggestions made by the High Court under this head appears to the Lieutenant-Governor to be eminently wise and sound. He further concurs in their objection to the double series of litigation which is now open to parties—one before the Revenue Authorities and another before the Civil Courts; and he adopts their view that there should be no setting aside of the certificate after it has been carried into effect, on the ground of irregularity, and that no objection should be taken on the ground of jurisdiction. No suit should be allowed to lie for the purpose of questioning the certificate or invalidating the sale thereunder. It is true that the Hon'ble Judges recommend this course only on condition that the execution case should be transferred, as above explained, to the Civil Courts; but Sir Charles Elliott submits that the same arguments apply to the present system, so long as the procedure in the Revenue Courts is as careful and accurate as that of any Civil Court, and follows the same procedure.'

"The proposal of the Bill is, that all these matters connected with the issue of certificates should be dealt with by the Revenue Courts who are perfectly competent to examine these questions thoroughly and carefully. There will be an appeal to the Collector, or to the Commissioner from original orders of the Collector, and there will be the revisional power of the Commissioner to ensure perfect regularity with regard to the issue of certificates. Therefore

[*Mr. Buckland; Mr. Ghose.*]

we propose that in section 17 the grounds for cancelling or modifying certificates which will be open to the Civil Court should be confined to the grounds of previous payment or non-indebtedness. The use of the little word 'duly' in the beginning of the section will enable any Court to interfere if there has been any substantial irregularity. The section provides that no certificate duly made shall be cancelled, &c. If there has been any substantial irregularities in the making of a certificate, it can hardly be said to have been duly made, and if it has not been 'duly' made, it will be liable to cancelment or modification. There is of course the section in the Code of Civil Procedure which admits of a sale under a certificate being set aside on the ground of material irregularity in publication, but that refers to sales. We are dealing now with the question of cancellation or modification of a certificate, and we say that we have made sufficient provision to prevent any injustice or harm being done to the judgment-debtor when we provide that questions of irregularity should be considered by the Revenue Courts, the plea of non-indebtedness being dealt with by the Civil Court. I am therefore unable to accept this amendment.'

The Hon'ble Mr. Ghose said:—"I desire to point out that the suggestion of the High Court in regard to this matter is conditional on the Civil Court being allowed to intervene in the first instance."

The Motion being put, the Council divided:—

Ayes 9.	*Noes* 5.
The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.	The Hon'ble Mr. Wilkins.
The Hon'ble Mr. Womack.	The Hon'ble Mr. Buckland.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.	The Hon'ble Mr. Collier.
The Hon'ble Mr. Ghose.	The Hon'ble Mr. Lyall.
The Hon'ble Babu Surendranath Banerjee.	The Hon'ble Sir Charles Paul.
The Hon'ble Mr. Dutt.	
The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.	
The Hon'ble Mr. Bourdillon.	
The Hon'ble Sir John Lambert.	

So the Motion was carried.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that the following be added to section 17 and marked clause (*d*):—

'Want of jurisdiction.'

He said:—"I move that section 17 be so modified that a certificate may be cancelled if it is made by an officer without jurisdiction. A certificate made without jurisdiction is really a certificate not 'duly' made: it is carelessly and perfunctorily made, and is therefore liable to be attended with hardship and injustice to the judgment-debtor."

The Hon'ble MR. BUCKLAND said:—"This provision was struck out of the law on the suggestion of the High Court. In making the remarks I made just now, I particularly drew attention to the fact that the High Court had coupled their suggestion about certificates irregularly made with a condition, and that we proposed to omit the condition while preserving their suggestion. I say this by way of explanation, because the Hon'ble MR. GHOSE appeared to think that I had not borne that point in mind, but in regard to this particular suggestion of the High Court, I may observe that they say nothing about the intervention of the Civil Court. They remark as to this point:—

'Nor would the Judges allow any objection to be taken on the ground of jurisdiction. They do not see why a debtor to the Crown should be permitted to raise questions, often very difficult to solve, as to the boundaries between administrative districts; and they would therefore limit his right strictly to disputing his indebtedness. If this system were adopted no subsequent suit should be allowed to lie for the purpose of questioning the certificate or invalidating the sale thereunder by reason of one or the other not being warranted by the Act.'

"That is quite a different matter to the question of jurisdiction which the hon'ble mover of the amendment has in view. 'Want of jurisdiction' is a comprehensive term which may include several things, but I understand that the High Court mean that if a certificate is 'duly' made, this plea of 'want of jurisdiction' should not be allowed to be urged, and there I intended to leave it."

The Hon'ble MR. WILKINS said:—"I think the High Court may have referred solely to territorial jurisdiction, not to the jurisdiction of an officer who has no power. I find it has been ruled by the High Court that the procedure laid down by Act VII (B.C.) of 1880 must be very strictly followed, and therefore

[*Mr. Wilkins; Sir Charles Paul; Maulvi Serajul Islam; Mr. Lyall; Babu Surendranath Banerjee.*]

it is absolutely incumbent on the Court, in criticising the validity of a sale, to insist upon compliance with formalities, and one of the formalities is, that the officer has power to do certain acts which justify him in issuing a certificate. A certificate not 'duly' made is not only liable to be set aside, but is absolutely void, and the Hon'ble Judges are supported in that view by a decision of the Privy Council. Therefore a certificate issued by an officer who has no power to issue it is absolutely null and void, and we do not want this clause regarding 'want of jurisdiction'."

The Hon'ble SIR CHARLES PAUL said:—"To insert the words 'want of jurisdiction' will be to have a contradiction of terms. How can a certificate be made if there is no jurisdiction? Every certificate 'duly' made is made with jurisdiction: if it is not made with jurisdiction, it is not 'duly' made."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"With great respect to the learned Advocate-General, I will point out that the words of the original Act are [section 8 (*b*)]:—'Provided that no certificate duly made under the provisions of this Act shall be cancelled by the Civil Court otherwise than under one or more of the following grounds,' and one of those grounds is 'want of jurisdiction.' As the learned Legal Remembrancer said, 'want of jurisdiction' will no doubt make everything null and void, and it may not be necessary to mention this particular ground in the Act, but the difficulty is that this is one of the grounds specified in the original Act, and the omission of these words may create a difficulty."

The Hon'ble MR. LYALL said:—"As a member of the Select Committee I desire to state that I agreed to the omission of these words solely on the ground of tautology. We have the words 'duly made,' and we do not require the same thing stated again."

The Hon'ble BABU SURENDRANATH BANERJEE in reply said:—"If these words are omitted from the law now, the inference will be irresistible that 'want of jurisdiction' is not one of the grounds on which a certificate can be cancelled. If, under the present Bill, a certificate made without jurisdiction must necessarily be cancelled as a certificate not 'duly' made, I have nothing further to say; but

[*Babu Surendranath Banerjee; the President; Maulvi Serajul Islam; Mr. Buckland.*]

it has been pointed out that there would be a difficulty unless 'want of jurisdiction' was specifically stated as one of the grounds which would make a certificate null and void."

The Hon'ble THE PRESIDENT said:—"I think this motion stands in a very different position from the amendment which the Council has just accepted. There it would have been possible that grave and substantial injury might have been suffered; here we have only the removal from the mouth of the objector of a technical objection. No real injury will be suffered by the judgment-debtor, but he will have this technical advantage which I do not think he should have."

The Motion was put and negatived.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, moved that in line 1 of sub-section (*1*) of section 19, after the words "an appeal from any order" the word "whatsoever" be inserted. He said:—

"I am not sure that I am happy in the wording of my amendment. My object is to make the law self-contained, as the hon'ble mover of the Bill himself desires. If that is our object, then section 19 ought to provide for appeals against orders of every kind. It has been decided by the Board of Revenue and by the High Court that the words 'any order' in section 16 of the present Act refer to orders under the preceding sections—appeals against orders passed upon a petition filed under section 12—and that it gives no jurisdiction as regards proceedings under section 19. That being so, the words 'an appeal from any order' will not cover an appeal against an order of sale. We are in this position that this section does not give a right of appeal against an order of sale; therefore I submit that some words should be added which will provide a right of appeal against an order of sale."

The Hon'ble MR. BUCKLAND said:—"It is simply a question of language whether the words 'any order' meant any order or not. I should have thought that 'any order' ought to be sufficient. I cannot find any difference between 'any order' and 'any order whatsoever.'"

[*Maulvi Serajul Islam; Mr. Lyall; the President.*]

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, in reply said:—"I will refer the hon'ble member to the Resolution of the Board of Revenue. Section 16 of the present Act is the same as section 19 of this Bill, the only difference being that an appeal from an original order of the Collector should be presented to the Commissioner within thirty days. But the true meaning of the section is to be ascertained by comparing it with the section of the old law which it superseded, namely section 23 of Act VII of 1868. The place of the section in the Act shows clearly that the appeals referred to there are appeals against orders passed on petitions filed under section 12, and that section 16 gives no jurisdiction as regards proceedings under section 19; so that a doubt is thrown as to whether the words 'an appeal from any order' refer to orders directing sales."

The Hon'ble MR. LYALL said:—"I venture to think that there is no real difference between the hon'ble member and the Select Committee. I fancy it is not his wish that every *ad-interim* order given by a Deputy Collector, in the course of granting a certificate, should be appealable: that no one can desire; but all the hon'ble member wishes is, that the provision should be so drafted that there shall be an appeal against orders of sale. I submit that there is no objection to that, and that it is only a question of drafting."

The Hon'ble THE PRESIDENT said:—"I understand the Hon'ble the Advocate-General's opinion to be that the addition of the word 'whatsoever' will not affect the question at all; that nothing will be gained by so doing, and that the words 'any order' necessarily include orders of sale or attachment, or order for imprisonment, or any order that may be passed."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, in conclusion said:—"My object has been very correctly explained by the Hon'ble MR. LYALL, namely, to give an appeal against an order of sale. If the language of the Bill gives a right of appeal in the case of orders of sale, I am willing to withdraw the motion."

The Motion was by leave, withdrawn.

[*Mr. Dutt; Mr. Buckland; Mr. Lyall.*]

The Hon'ble MR. R. C. DUTT moved that in sub-section (*1*) of section 19 for "15 days" the words "thirty days" be substituted. He said:—

"This is a re-enactment of section 16 of the Act, which allows an appeal from the Deputy Collector to the Divisional Commissioner. It has been thought necessary to make these orders appealable to the District Collector. I do not think that will make any difference in the working of the Act. Section 16 allowed thirty days to the judgment-debtor to prefer an appeal, but that has been cut down to fifteen days, presumably because the appeal now lies to the Collector and not to the Commissioner. That will make no difference to the judgment-debtor, because appeals made to the Commissioner from districts other than the Commissioner's head-quarters are made through the Post Office; so that an appeal to the Commissioner really does not require more time than an appeal to the Collector, and I do not see why the time should be reduced in the case of an appeal to the Collector."

The Hon'ble MR. BUCKLAND said:—"I am afraid the hon'ble member who moved this amendment can hardly have made a careful reference to the original Act. If he compares it with section 19 (*1*)(*a*), he will see that appeals from the officers named may be preferred to the District Collector within fifteen days. Then the section goes on to say that appeals from a District Collector's original order may be made within thirty days. I think the hon'ble gentleman is labouring under some mistake. I am not aware of any necessity for altering the existing law with regard to the number of days allowed for appeals."

The Hon'ble MR. LYALL said:—"On receiving notice of this amendment I looked up the time allowed in similar cases. I find that the general rule (Board's Rules, page 118) provides a period of fifteen days where the period is not regulated by law. Then, looking into certain enactments, I find that under the Land Registration Act (section 85) the period is fifteen days; in the Agrarian Disturbances Act the period is fifteen days; in the Partition Act, when the matter is simply a question of fact, the term is fifteen days, but when a question of law is concerned and the party has to consult his legal advisers, the term is extended to thirty days. In the present case it is well to have a rapid appeal to decide the question whether money is payable or not, and I see no reason for extending the period of appeal from fifteen to thirty days."

[*Mr. Dutt; the President; Babu Surendranath Banerjee; Mr. Buckland.*]

The Hon'ble MR. R. C. DUTT in reply said:—"I am afraid I did not sufficiently explain myself. Under the existing law, 'Collector' means a Deputy Collector in charge of certificate work. That is the definition of 'Collector.' Under section 4 of the Act, any Deputy Collector who performs the work of a Certificate Officer is a 'Collector,' and appeals from his orders are preferred to the Commissioner within one month. Under the wording of this Bill, the Deputy Collector in charge of certificate work is not a 'Collector,' but only a 'Certificate Officer,' and the appeal to the District Collector from the Certificate Officer must be made within fifteen days. That will be really tantamount to reducing the time of appeal from the orders of the Certificate Officer from thirty days to fifteen days. I submit that this reduction of time should not be allowed, and that this amendment should be accepted."

The Hon'ble THE PRESIDENT said:—"I think it must be admitted that although there has been a change in the name of the Certificate Officer, the person who will be the Certificate Officer will be the same as at present. An appeal within the district is to be made within fifteen days; an appeal to the Commissioner outside the district is to be made within thirty days. In that respect no change has been made."

The Motion was put and negatived.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in clause (*b*) of sub-section (*1*) of section 19, the word "original" be omitted. He said:—

"The object of this amendment is to give a right of appeal from orders passed by the Collector as an Appellate Court to the Commissioner of the Division. Under the Bill, only original orders passed by the Collector are appealable. I want to give the judgment-debtor double protection—first by allowing him a right of appeal from the Certificate Officer to the Collector, and then an appeal from the Collector to the Commissioner of the Division. I think he enjoys that privilege now, and no case has been made out for depriving him of it."

The Hon'ble MR. BUCKLAND said:—"I must oppose this motion. There will be ample provision for the prevention of injustice if one appeal from the orders of a Certificate Officer is allowed to the District Collector, and a

[*Mr. Buckland; Babu Surendranath Banerjee; the President; Maulvi Serajul Islam; Mr. Dutt.*]

revisional power is vested in the Commissioner, with a right of appeal from the original order of a District Collector to the Commissioner. The matter has been carefully thought out, and it is considered most desirable that such cases should be brought to a conclusion, and that when opportunity for one appeal is given, there should be an end of it. The idea of allowing two appeals should not be encouraged by the Legislature. It is not that I wish in the least to prevent people from getting their rights, but when a man has had an appeal and can move the Commissioner for a revision, I think he has had ample opportunity for getting justice done to him. I think it would do more harm than good to multiply opportunities for appeal. If I thought there would be a greater chance of justice being done, no one would be more ready than myself to accept this amendment, but I think the judgment-debtor is sufficiently protected by one appeal to the Collector and the revisional power of the Commissioner. He has also power to file a suit in the Civil Court."

The Hon'ble BABU SURENDRANATH BANERJEE in reply said:—"I am not convinced. Opportunities for appeal mean so many safeguards. I am not in favour of multiplying appeals; but as this privilege is one that I understand is allowed under the existing law it appears to me that no case has been made out for withdrawing it."

The Hon'ble THE PRESIDENT said:—"I think the hon'ble member is making a mistake. Under section 19 of the existing law no appeal is allowed as a matter of right from the Collector in appeal, and we are maintaining the existing state of things."

The Motion was, by leave, withdrawn.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, by leave of the Council, withdrew the motion of which he had given notice, that the following proviso be added after sub-section (*1*) of section 19:—

'Provided that in either case the time requisite for obtaining a copy of the order shall be excluded.'

The Hon'ble MR. R. C. DUTT, by leave of the Council, withdrew the motion of which he had given notice, that sub-section (*2*) of section 19 be omitted.

[*Babu Surendranath Banerjee ; Mr. Ghose ; Maulvi Serajul Islam ; the President ; Sir Charles Paul.*]

The Hon'ble BABU SURENDRANATH BANERJEE, by leave of the Council, withdrew the motion of which he had given notice, that in line 1 of section 20, for the words "no appeal as of right" the words "an appeal to the Commissioner of the Division" be substituted, and that the concluding words of the section, commencing with the words "but the Commissioner may" to the end of the sentence, be omitted.

The Hon'ble MR. GHOSE moved that at the end of sub-section (*2*) of section 19, the words "other than the officer against whose order such appeal is preferred" be added.

The Motion was put and agreed to.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, moved that in sub-section (*1*) of section 21, for the words "section eight" the words "this Act or any person claiming through him" be substituted.

The Hon'ble THE PRESIDENT said :—"Perhaps it will save time if I explain that the substitution of the words 'this Act' for 'section eight' is accepted by the Government. We have some doubt as to the utility of the words 'or any person claiming through him'."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, continued :—"The necessity for this amendment has arisen in consequence of a Full Bench ruling of the High Court concerning section 174 of the Tenancy Act, that the word 'judgment-debtor' mean judgment-debtor alone, and do not include an assignee or transferee. Therefore I wish to provide that either the judgment-debtor or his transferee or his heir should have the privilege of depositing the money, that is to say, that the privilege should extend to the judgment-debtor or his representatives."

The Hon'ble SIR CHARLES PAUL said :—"I think that, under these circumstances, the amendment should be accepted."

The Motion was put and agreed to.

[*Mr. Dutt; Mr. Buckland; Mr. Lyall.*]

The Hon'ble MR. R. C. DUTT moved that in section 22, the words beginning with "with interest" and ending with "and costs" be omitted. He said:—

"There has been some correspondence on this subject. The Legal Remembrancer was referred to, and he gave his opinion that interest falling due after a certificate is made cannot be included in it, and therefore the necessity arises of making a fresh certificate. I think the object of this provision is to avoid the making of a fresh certificate and to enable us to realize the amount due under a certificate with interest up to the date of realization. The difficulty is that when we make a certificate, we do not know when the money will be realised. It may take six months, it may take only one month. When the peon goes to the spot and the man pays the money, who is to calculate the amount of interest due up to that date and how is it to be realised? On enquiry I find that at present interest for small periods is not realised. If the money is paid within a month or two, we do not charge interest; but when the period extends over a year, a fresh certificate for the interest may be filed. But this section authorises the realization of any interest which may fall due between the date of the certificate and the date of the recovery of the money."

The Hon'ble MR. BUCKLAND said:—"The point of the objection raised by the hon'ble member is as to the calculation of interest up to the date of realization. I am quite willing to accept any form of words which will require the interest which has accrued to be specified in the certificate. I would certainly not leave it to be calculated by the peon from the date of the issue of the certificate up to the date of realization."

The Hon'ble MR. LYALL said:—"I think the object of the alteration proposed in this section has not been understood by the hon'ble mover of the amendment. He has quoted the opinion of the Legal Remembrancer. The change now proposed was made at the instance of the Board of Revenue in the interest of debtors in consequence of the opinion quoted. It seemed to the Board quite unnecessary to saddle debtors with the cost of two certificates when it is so easy in cases of delay in realisation to include the interest in the original certificate. It was never intended to allow a peon to realize interest up to the date of payment. All that was intended was that any sum entered in the certificate as interest and costs should be realized. That is the object of the alteration, but if the object has not been properly expressed, this wording of

[*Mr. Lyall; the President; Mr. Buckland; Babu Surendranath Banerjee.*]

the section be amended. There is no reason why the Government should lose interest when it is due. At the same time it is hard that on account of interest a man should have to pay the whole cost of a second certificate."

The Hon'ble THE PRESIDENT said:—"Perhaps the hon'ble member's object will be met if we undertake to issue orders confining the charging of interest to some considerable period of time, say six months. At present first a notice is served, then follows attachment and sale; when property is sold the nazir calculates the interest and realizes it from the proceeds. I think the hon'ble member's object will be satisfied if the Board will issue orders carrying out the idea he has in view."

The Motion was then, by leave, withdrawn.

The Hon'ble MR. BUCKLAND moved that in sub-section (*2*) of section 23, for the words "Chapters XIX and XX" the words "Chapter XIX (with the exception of section 310A) and Chapter XX" be substituted. He said:—

"I made some remarks on this subject this morning, and there is not much left to say. Section 310A was passed last year as an addition to the Code of Civil Procedure. It provides for an application by the judgment-debtor to set aside the sale on deposit of the debt, and the Council will find that section 21 of this Bill is very much on the same lines as section 310A, though it varies in some small details. We cannot have two sections of very much the same character on very much the same subject; we prefer section 21 of our Bill, and therefore we propose to omit section 310A from the incorporation in section 23 of Chapters XIX and XX of the Code of Civil Procedure. As I have already mentioned, it is within the competence of this Council to do this with the sanction of the Governor General previously or subsequently received under section 5 of the Indian Councils Act of 1892. I think this amendment will commend itself to the Council."

The Motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in sub-section (*2*) of section 23, for the words "to enforce such certificate and realize the amount recoverable thereunder" the following be substituted:—

'for enforcing such certificate and realizing the amount recoverable thereunder, and for setting aside any sale held in the course of such execution proceedings, for such reasons for which execution sales are set aside under the provisions of the Civil Procedure Code.'