

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

“One word more before I conclude. We are all grateful to the Government for allowing us the right of discussing the Budget in this Council, but I think the character and tone of the discussions will greatly improve if we have more detailed information given to us. At present we have only the major heads and the expenditure under those heads. For instance, under the head of ‘High Court,’ the total amount of expenditure is shown. We do not know what the salaries of the Judges are, what the number of the Judges, the establishment of officers, and the like are. The details are not given. If our criticisms are to be of any value, we ought to be able to enter into these details and not confine our remarks to the main outlines under each head. I understand that in the office of the Accountant-General a detailed budget is prepared. Would there be any objection to lay that Budget before this Council? The members of the Bombay Legislative Council are furnished with such a detailed budget, and they are able to criticise the details of Financial Administration far more effectively than it is possible for us to do here with the scanty information before us. Perhaps if such a procedure were followed it may lead to the postponement of the debate on the Budget to the middle of June or July, but as our function is not to sanction or to modify, but only to criticise and discuss, I do not think such a course would lead to any public inconvenience.”

The Hon'ble MR. LYALL said:—“As an old Inspector-General of Police I desire to say a few words on a very important point in the Budget now before us, namely, the increased expenditure under the head of ‘Police.’ While I held the position of Inspector-General I found the efficiency of the Police and their good working very seriously affected by the very large reductions which took place during the time when SIR ASHLEY EDEN was Lieutenant-Governor. I have always looked upon those reductions as the one blot on that Administration. Here, in Bengal, in the absence of any other local agency, we perhaps depend more than in any other Province on the efficiency of our Police, and anything which will raise that efficiency and make the Police less corrupt will be conducive both to the good of the country and to the advantage of the Administration. I rejoice therefore to see that Your Honour has been able to sanction so large an additional expenditure on account of the Police. There are, however, one or two points of Police Administration in regard to which I think further improvement is possible. In the old days the

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post of Court Inspector was very much run after. Men get old, and many get fat, and when a man who had past his prime was found unfit for the active duties of an Inspector, he was given the comparatively easy post of Court Inspector. That post is now held by Sub-Inspectors, most of whom would be equally efficient in the post of Inspector. The change which I advocate can be made without any increased expenditure. Another point to which I wish to refer is the very great run there was at one time for police appointments when SIR RIVERS THOMPSON promised to promote one or two members of the Police Force to the Subordinate Executive Service. When it was found that to enter the Police opened a door to the Subordinate Executive Service, a class of men entered the force who had never entered it before, as they saw before them prospects of possible promotion. We all know what effect the office of Archbishop of Canterbury has in ordinary men to enter the Church, and what effect the possibility of obtaining a seat on the Woolsack has on the Bar, and the promotions from the Police to the Executive Service certainly produced a similar effect. I think it would be well if Your Honour would again open that means of promotion to deserving officers of Police.

“I wish to add one remark with reference to what fell from the Hon’ble Mr. WOMACK as to the reductions under the heads of ‘Stationery and Printing.’ The Department of Stationery is under my immediate control, and I wish to say that it is owing to the judicious expenditure of a comparatively small sum in giving increased accommodation to the Stationery Office that the large reductions which have been made have been found possible, and it is due to Your Honour to state that it is entirely to you that this reduction has been made possible. So long as the Stationery Office was so dreadfully cramped for space, nothing like proper economy was possible.”

The Hon’ble MR. BEIGHTON said:—“As a special appeal has been made to me as possessing perhaps a more intimate knowlege of the work performed by Munsifs, the way in which they are housed, and the inconveniences from which they suffer, especially in remote and malarious subdivisions, than other hon’ble members, I feel bound to say that it is impossible not to sympathise to a great extent with what the Hon’ble BABU SURENDRANATH BANERJEE has said. I believe His Honour is himself aware from personal observation of the extremely rough accommodation with which Munsifs in many unhealthy

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localities have to content themselves. In some places there is no dwelling available at all, even of the rudest description. An instance of this kind occurred not long ago. The Munsif of Baraset was compelled to apply to the High Court for permission to live in Calcutta owing to his absolute inability to find a residence of any kind at this subdivision. The question of supplying houses for Munsifs is one for the consideration of Government, and its complete solution in any satisfactory way must necessarily involve a large outlay. Nevertheless I should be very glad if the Council were to hear to-day from His Honour that Government were prepared by way of a commencement to meet this grievance, to build houses in some selected subdivisions where the greatest difficulty is felt, and allow Munsifs to occupy them on reasonable terms.

“The Hon’ble Member has also made some observations on the amount of work which devolves on Munsifs, and from statistics which he read he came to the conclusion that while the number of the Munsifs in the last few years has increased by 10 per cent., the number of cases disposed of by them has increased by 20 per cent. The Subordinate Judicial Service is no doubt hardworked, but I think a little too much is sometimes made of the amount of labour they have to undergo. As a rule they sit for a considerable number of hours in Court, but it would be a mistake to suppose that the whole of this represents a very large amount of mental strain. The great bulk of their work is not of a complicated or difficult nature. Their judicial work may be roughly divided into three classes : cases under the rent-law, suits under the Small Cause Court Procedure, and suits involving the adjudication of questions of title. The work under the latter head is undoubtedly difficult, and for its proper performance demands intellectual qualities of a high order. The other two classes of suits, however, cannot be said to make much demand upon the mental powers. The distribution of work is generally arranged so that a Munsif may have upon his file a fair proportion of cases of all classes, so that the aggregate of work involving a severe mental strain is not as a rule great. Then, a great deal of the judicial work of Munsifs is uncontested. This practically involves no intellectual exertion. The same may be said of the miscellaneous business to which reference has been made, consisting of the examination of accounts and the supervision of the Nizarat and Copying Departments. The number of hours, therefore, which a Munsif has to sit is not a true criterion of the expenditure of brain power involved.

[*Mr. Beighton.*]

“ I wish to add a few remarks with reference to what fell from the Hon’ble MR. WOMACK on the report of the Calcutta Small Cause Court.

“ The Hon’ble Member seems to me to labour under certain misapprehensions. He complained in the first place that no fees were allowed to a successful plaintiff for the legal practitioner engaged to conduct the case. This is, however, distinctly provided for in section 76 of the Presidency Small Cause Courts Act, except in suits below Rs. 20 in value, and even in such suits the Court may allow a fee, if the Court considers the employment of a practitioner ‘ as under the circumstances reasonable.’

“ Then, again, he complained that no interest was allowed on current accounts before the decree was passed, and also that after decree until the date of realization the Court refuses interest. As to the first point the question involved is one of law and is entirely beyond the control of Government in the Financial Department. The usual practice is that on a running account for goods sold, a merchant or tradesman is not entitled to interest unless there was an actual agreement to pay interest on the part of the purchaser. The Calcutta Small Cause Court, like all other Courts, is bound in this respect, as in others, to follow the law. As regards interest after decree, a provision of the Civil Procedure Code (section 209) has been incorporated in the Presidency Small Cause Courts’ Act, and this provision allows of the Court awarding interest at such rate as the Court considers reasonable. With reference to another observation of the Hon’ble Member that the fees payable on the institution of suits in the Small Cause Court are too high, there can be no doubt that they are somewhat higher than institution fees on suit filed in the ordinary tribunals. With regard to this, it will be within the knowledge of many hon’ble members of the Council that I made a detailed enquiry into the organization of the establishment of the Calcutta Small Cause Court some two years ago, and that I recommended considerable reductions of expenditure, some of which have been already, and others will in time be, carried out. There can be no doubt that these reductions have considerably increased the profits of the Court, and if a representation is made on the subject to Government, this increase in profit should in fairness to the public be borne in mind when the question of reconsidering the amount of institution fees leviable is again taken up. I am not aware whether any such representation has

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been yet made or whether the subject has been discussed in the Financial Department."

The Hon'ble Mr. COTTON said :—" I only wish to trouble the Council with a very few observations in regard to the Budget under consideration. It is impossible, I think, not to sympathise to a large extent with the remarks and criticisms made by the Hon'ble BABU SURENDRANATH BANERJEE, and in one particular I must say I personally sympathise largely with what he said on the subject of the improvement of the salaries of the lowly-paid servants of the Government. I have no doubt whatever that the time is not far distant when some increase of pay will have to be granted, certainly to some of the menial employés of the Administration, and possibly to some of the more under-paid clerks. The practical difficulty on these occasions arises from financial considerations. The Government have in the past year granted a large increase to the lowly-paid officers in the Police. The statement laid before you to-day shows that the total sanctioned increase of expenditure in the Police Department amounts to considerably over seven lakhs of rupees per annum. Such an increase as this involves a heavy strain on the resources of the Administration. Although it is not easy to make an estimate of what it would cost to make a corresponding increase of pay to the Ministerial Establishments in these Provinces, there can be no reasonable doubt that if an increase corresponding to that given to the Police were given generally, it would cost three or four times as much. Funds are not available to the Government for this sort of generosity. I have no doubt that in some measure the demands of the hon'ble member will be complied with ; but that they will be complied with as liberally as the corresponding demand in the case of the Police Constabulary has been met I am afraid is not possible. Then, again, with regard to the Civil Courts, it is impossible not to feel that there is great force in what hon'ble members have told us, namely, that the Munsifs are very indifferently housed. On the other hand, it can hardly be expected that the Government should provide houses gratis for the large number of Munsifs who are scattered all over the Province ; and if suitable accommodation is provided, it will be necessary to charge them a suitable rent for the buildings which the Government may construct. But I am not altogether sure how far the Munsifs themselves will be pleased with such an arrangement. One of the advantages of a Munsif's appointment in the Mufassal

[*Mr. Cotton.*]

is, that he spends very little. It is one of the points in which the Provincial Judicial Service is preferable to the Provincial Executive Service, that Munsifs are able to live more cheaply than their contemporaries in the executive line. If houses are constructed for them, they will have to raise their standard of living, and they will have to pay suitable rents. Again, the amount of work done by a Munsif has undoubtedly increased in the ratio indicated by the Hon'ble Member, but it is right that I should point out that this large increase of work is almost entirely in the Small Cause Court Department. As the Hon'ble Member justly stated, the increase in the number of ordinary contested suits is very slight indeed, namely, from 77,000 suits to 82,000 in the course of five years, and that is an increase which has been more than met by the considerable number (29) of additional Munsifs appointed during the same period. The increase in Small Cause Court work is due to the fact that a few years ago Small Cause Court cases were not triable by Munsifs. They have now, on the recommendation of the High Court, been largely vested with power to try cases under the Small Cause Court procedure, and are so enabled to deal with petty cases with greater despatch and promptitude. It is to the interest of the public that this should be so. But uncontested cases give little or no trouble to the presiding Judge, and even in regard to petty contested cases—I can speak from personal experience as a Small Cause Court Judge—that they give very little trouble. Therefore the department in which the increase of the work of the Munsif is largest does not press very much upon the time of the Munsif. I wish to add that while the Government is fully alive to the necessity for increasing the staff of Munsifs, Munsifs are not the only officers of Government who are hardworked. The executive officers of the Government are also very hardworked. I should be justified in saying that the class of Deputy Magistrates as a whole is as hardworked, if not harder worked, than Munsifs. Certainly I find from my experience that they suffer more largely from ill-health brought about by work and exposure than civil judicial officers. Although it is very easy to urge upon the Government the necessity for increasing these Courts by adding to the number of Munsifs, yet when one takes the question up practically, it is found that financial considerations preclude any very active progress in that direction. The progress which has been made in this direction since I have

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had the honour to be Chief Secretary is greater than that which has been made in most of the other departments of the Government. Look at other departments: look at the Jails, for instance. How easy it would be to spend a few lakhs in improving the prisons in this Province; to rebuild prisons, the construction of which has been condemned, and to construct new jails on the most improved methods where they are required. Look how much money could be spent on the Registration Department, which is expanding by leaps and bounds; look at the public buildings of all sorts and descriptions, Administrative, Medical, Educational; look at the Munsifs' Courts. If we are to house Munsifs properly, it is also necessary that they should have suitable Courts. There are numberless directions in which the Government could spend its money, and this I may state on behalf of the Government that it does spend all the money it can in the directions in which it is most required. If money were available, none of the objects to which the Hon'ble BABU SURENDRANATH BANERJEE has referred would be left unprovided. If money were available, all his prayers would be granted. Much has been done hitherto in these directions, and I am sure that, with the improving condition of the Provincial Finances, more will be done in the future."

The Hon'ble MR. BEIGHTON explained:—"With the permission of the Hon'ble THE PRESIDENT, I wish to make one remark with regard to what has fallen from the Hon'ble the Chief Secretary. In alluding to my observations as to the insufficiency of house accommodation for Munsifs and in expressing his concurrence with these observations, he expressed a doubt whether they would be willing to pay rent for houses if Government provided them. I think that, knowing as I do the views of Munsifs better probably than any other official member of the Council, I can assure my hon'ble friend that they would be only too glad to pay any reasonable rent which the Government might think it right to impose."

The Hon'ble MR. BOURDILLON said:—"Before I proceed to answer in detail the criticisms of the budget statement to which we have just listened, I desire to express on my own behalf and on behalf of the Government my appreciation of the kindly tone of those criticisms; they breathe a spirit of appreciation of the work done by the Government and of sympathy with its difficulties,

[*Mr. Bourdillon.*]

which makes the task of replying to those observations as pleasant as it is easy. The Hon'ble MR. WOMACK commenced by congratulating the Government on the reductions which have been effected in the course of the past year and the year before in the departments of Stationery and Printing: his remarks upon this point were extremely acceptable to myself, as I know how much attention has been given by His Honour the President to the matter, and what pleasure it has given me to aid his efforts in that direction; and it is gratifying to find that a practical member like the Hon'ble MR. WOMACK has appreciated our exertions, and that speaking on behalf of the large and influential body he represents, he has been able to congratulate the Government on its economics under the head of 'Stationery and Printing'. As regards the fees in the Small Cause Court, the Hon'ble the Legal Remembrancer has relieved me of the necessity of giving any answer. The Hon'ble Member can hardly expect me to give him an assurance that the Government will take steps to bring about a reduction of those fees. All that I can possibly say is that the matter will be carefully looked into, and that what can be done will be done. With regard to the purchase of stores, that is virtually a measure which is in the hands of the Government of India; for the Viceroy in Council and the Secretary of State have long since laid down very strict rules as to purchasing in this country articles of European manufacture. The matter has for some time had the personal attention of the Lieutenant-Governor, and as an instance of His Honour's practical support of local products, I may mention that during the last two years large savings have been effected by an order that all the paper used by officials under the Bengal Government should be paper made in this country. The Hon'ble Member concluded his remarks by an appeal to the Government to help the Calcutta Municipality in its efforts to abate the Small-pox epidemic now raging, and to provide relief for the sufferers from that dreadful scourge. I may tell the Hon'ble Member that a similar appeal has been made within the last few days by the Calcutta Municipality, and it has been my duty to reply to them that in the opinion of the Government it is a matter with which they should deal themselves, and that the epidemic being of a local character and the Calcutta Municipality having large funds at its disposal, the Government is not prepared to come forward with pecuniary assistance. It is not perhaps known to the hon'ble member how very large a proportion—

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two-thirds at least—of the cost of the medical institutions in the City is contributed by Government, and in the case of the Campbell Hospital, to which the Municipality does contribute a considerable sum, the proportion of the expenditure which is defrayed from Provincial Revenues is 60 per cent.

“The Hon’ble BABU SURLNDRANATH BANERJEE suggested the propriety of raising the salaries of members of the ministerial establishments, and his representations have been replied to both by the Hon’ble the Chief Secretary and the Hon’ble the Legal Remembrancer. It is admitted that if funds were available, there is hardly any direction in which money could be better spent than in raising the salaries of these low-paid servants of the Government. But this is a very large question, and, unlike other cases in which expenditure is needed, this is a matter in regard to which if a step in advance is once taken, there is no retreat. If the wages of the ministerial establishments are generally increased, the charge becomes a permanent one, and we cannot go back. It is obvious therefore that the matter must be taken up with great care and circumspection. Already in districts where the price of grain is very high, the Government is able under the rules in the Civil Account Code to raise temporarily the pay of such of its servants as draw less than a certain minimum salary, and I may mention that in 1893-94 considerable sums were granted for this purpose in districts where prices ruled exceptionally high.

“With regard to ‘Law and Justice,’ it is unnecessary for me to add anything to what has already been said by the Hon’ble the Chief Secretary, since he dwelt at length on the question of the number of Munsifs and the increase of their work, but I may state that the question of the housing of Munsifs is a matter to which the Lieutenant-Governor in his frequent tours through the Province has constantly paid attention, and it is one to which careful consideration will be devoted within the next few months in connection with the balance at the disposal of Government.

“The Hon’ble Member next asked for the details of expenditure under ‘Education.’ I hold in my hands a statement which shows at one view the whole expenditure upon Education in Bengal, whether from Provincial Revenues, District Funds, Municipal Funds, the Mohsin Fund, or other sources. It is divided into several main heads, showing the expenditure not only in the Education Budget proper, but also that on special and medical instruction, and the public

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works expenditure upon school buildings ; so that the Hon'ble Member will be able to see the amount spent under any head in any year as well as the source from which the funds have been derived. The Lieutenant-Governor caused this statement to be prepared with the express object of laying it before the Council on this occasion, but as this is the first year of its preparation, all the Commissioners of Divisions have not been able to supply the details of municipal expenditure, and so far as that information goes, the statement is incomplete. I shall be very glad to supply the hon'ble member with a copy of this statement as it now is, and also to send him a copy of the statement when it has been completed showing the expenditure upon Education from Municipal Funds.

“The expenditure on ‘Excise’ also came under criticism, and the Hon'ble Member argued that the increase in the receipts must be due to the development of the Outstill system. In answering the Hon'ble Member's second question this morning, I pointed out that during the last three years the Outstill system has not been introduced in any district except only in part of Cuttack, where, in 1893, six Outstills were sanctioned in a jungly part of the district, remote from the sadar distillery. Speaking from memory, I venture to say that the number of sanctioned Outstills has not increased. The Hon'ble Member should bear in mind the distinction between the number of shops sanctioned and the number of shops actually let: the numbers sometimes differ, because shops which have been sanctioned are not let. The number of shops for each district is settled every year, and in the number thus settled little variation takes place from year to year.

“The shops are then let out, and if any one year shows a larger number of shops let than that which preceded it, this result is not due to any effort on the part of the Government to develop the drinking habit among the people: it is rather the barometer of the prosperity or otherwise of the times. When the year is prosperous, the sanctioned shops are all taken, but when times are hard, the sanctioned shops are not all let.

“Lastly, with regard to what fell from the hon'ble member as to the desirability of laying a detailed Budget on the table, I have to inform him that such a Budget is already prepared. What is technically known as the Yellow Book contains in detail all the information the Hon'ble Member desires to have, but

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it refers to actuals, not to estimates. I would also point out that the perusal of such a detailed statement will be extremely irksome to most persons, though perhaps one or two Hon'ble Members might take the trouble to look into the details. However, subject to any remarks which may be made by His Honour the President, I will only say that, if desired, the latest existing detailed statement of the kind described can be laid upon the table, when the annual Provincial Budget is submitted to this Council.

“I desire to add a word more, namely, that in acknowledging on behalf of Government the unanimous approval of the financial arrangements of the Province which has been accorded by this Council, it is only fair to say that the Government has had nothing to do with the increase in the revenues, which is chiefly due to the general prosperity of the country and the operations of the Eastern Bengal Railway. All we can lay claim to is some credit for the very close way in which our expenditure has been kept within the budget sanctions of the year before. This is due to the loyal manner in which the careful instructions issued by the Government of India have been carried out by all the officers to whom they were communicated in 1894-95, and again at the time when the present Budget was being framed. If Hon'ble Members will look at the budget estimates of the year 1894-95 and at the revised estimates of the same year, they will find that the sanctioned grants have not been exceeded under any considerable head. There is only one head in which there has been any considerable increase, and that increase is the best possible proof of the intention of the Government to foster Local Self-Government; for the sum of Rs. 2,30,000 has been taken from Provincial Funds and made over to Local Funds. Of this sum, Rs. 1,54,000 represent the cost of public works of various kinds, which have been entrusted for execution to District Officers and Local Boards, and the large sum of Rs. 60,000 has been taken from under the control of the Director of Public Instruction and made over to District Boards to meet the wants of primary education.

“It is only left for me to congratulate Your Honour that in the last year of your Administration it will be your good fortune to have the control of so large a sum as 11½ lakhs for the execution of many schemes long since approved but delayed hitherto merely for want of funds, and generally for promoting the material progress of this great Province.”

[*The President.*]

The Hon'ble THE PRESIDENT said:—"I wish to associate myself with the remarks which have just been made by the Hon'ble the Financial Secretary with regard to the satisfaction which I myself and every member of the Government must feel at the manner in which our Financial Statement has been treated by this Council. It has been received in a flattering and appreciative way, and the remarks, whether appreciative or critical, clearly showed that the financial control which has been exercised over the Province has been understood and looked into, and that the deliberate feelings of my hon'ble colleagues in this Council support the Government in the measures which it has taken.

"Before going into further details I ask your leave, gentlemen, to make a few remarks upon the subject of interpellations in general, to which I have been partially led by the questions which have been put to-day. You, no doubt, are aware that the project of allowing a greater freedom in the putting of interpellations always accompanied the idea of the enlargement of the Legislative Councils, and while it is not fitting for me to betray the secrets and discussions which took place in the Executive Council, I think I may say that every member of that Council, at different times, expressed the view that interpellations of the kind that we looked forward to would be in the highest degree beneficial to the establishing of good relations between the Government and the people of the country. What our view was cannot, I ventured to think, be better expressed than as put in a Minute of SIR GEORGE CHESNEY to the effect that the Government has nothing to conceal, that it has every desire to explain the reasons for its actions, and it has everything to gain by making those reasons known as fully as possible. I think you will agree with me that the results have not altogether met the anticipations which we formed. Somehow or other—it is difficult to say how—a sort of idea has grown up in the public mind that an interpellation must necessarily be hostile, and that an Hon'ble Member who puts an interpellation may be presumed to have a desire to heckle the Government or to expose its shortcomings in some way or another. I think it is most unfortunate that such a feeling should have grown up. It has been due to criticisms which have been passed on the style of questions put, not so much in this Council as in the Councils of other provinces, and I think in many cases these criticisms, whether

[*The President.*]

applied to other provinces or applied to this Province, have not been altogether reasonable or sympathetic. I certainly feel that I have nothing very much to complain of as regards the spirit with which interpellations have been put here; but I think that we might put interpellations upon a better footing if it were thoroughly understood that the Government desire to deal with all the members of this Council as its trusted Councillors whom it wishes to associate with itself in its policy, and to whom it wishes to impart the information which it possesses. On many occasions interpellations take this form:—‘Does the Government know of a certain action which has been pursued by a certain officer in the mufassal?’ Either the Government says, ‘we do not know, but we shall enquire,’ or else the Government says, ‘yes, we know; the officer in question was acting within his legal and proscribed powers, and it is not desirable for the Government to be always putting its finger into the works of its machinery and making the wheels go round in a different way or in a different direction than the one in which it is intended to go round.’ This feeling that the Government should interfere directly in such matters is perhaps attributed to the oriental notion which has come down to us from antiquity that the Government is all-powerful, and that it is able to redress an injury whenever it sees it. Unfortunately, the Government is not all-powerful, and the limits of human efforts are extremely restricted. There are but 24 hours in a day, and it is impossible to spend all those 24 hours in looking after what is done by officers in the mufassal in regard to matters in which the law or the Government gives them power to act independently. Then, there is another class of questions, of which we have had an instance to-day. My hon’ble friend, BABU SURENDRANATH BANERJEE, who put them, desired to get information on many subjects, and seems to think that the only way of getting that information is to put these questions. What I want to suggest for the future carrying out of the work of the Council is, that it would be very convenient if Hon’ble Members would consult the Secretaries to the Government privately on subjects of this kind before they put their questions in the Council. There are a great many points in the list of to-day’s questions which could have been explained to the Hon’ble Member more quickly and even more clearly if they had been put in the Secretary’s own room, and if he was shown the papers on which the answers had been based. I am afraid that my friends, the Secretaries, might think that a new vista of horrors is opening out to them,

[*The President.*]

if, in addition to their ordinary work, of which no one knows better than I do how laborious it is, they may have to spend hours in explaining these things to the non-official members of the Council. Of course, if my suggestion is followed, you, gentlemen, will not require of them any undue expenditure of time of the kind to which I have alluded. I think it will be quite possible to fix a certain day and a certain hour at which the Secretary would be available, and having received notice beforehand would have the papers ready and explain matters to any member who may desire any information or explanation. I make this suggestion not with the idea of burking any enquiry or putting any restriction upon the power of putting interpellations. Ordinarily speaking, where information is desired, it can be more quickly obtained in this way. If the information that is obtained leads hon'ble members to think that the action or the policy of the Government requires correction or criticism, then would be his opportunity to put his question in Council on a better basis and in a more complete way than he can now. I believe that if this suggestion is taken advantage of, it will, to some extent, lead to a diminution of interpellations, and to a great extent will make the questions more definite, more pointed, more precise, and more useful in drawing out the particular points which are required to elucidate facts or policy which may require discussion.

“Turning to the particular points put before us, there is but little left for me to say after the able manner in which the Hon'ble the Financial Secretary has replied to the different criticisms which have been brought forward, and I wish to say with him how much I appreciate the manner in which these suggestions have been made. I felt it my duty on a former occasion to use words which have been quoted to-day, and which imply a certain amount of complaint that the object of our debators seemed to be to cut down revenue in every direction and to increase expenditure. Nothing that I said on that occasion applies to what has been said to-day. All the suggestions made to-day are useful and practical ones—the suggestions of men who know what they are talking about, and whose views are such as to deserve the serious attention of Government and the sympathetic desire of the Government to meet their suggestions as far as possible.

“With regard to the Hon'ble MR. WOMACK's remarks about the Small Cause Courts, I think those remarks have been fully and completely answered.

[*The President.*]

As the Hon'ble MR. BOURDILLON has said, we will have a careful enquiry made into the question of fees, and ascertain whether it is in the competence of Government to alter them, and whether if it is desirable to do so, it can be done without incurring any financial loss or giving to suitors advantages which would be relatively too large compared with the costs which have to be incurred in other Courts.

“With regard to the question of Stores, the Hon'ble MR. BOURDILLON has already said what we have done in the matter of Stationery. The chief class of stores is, of course, that purchased by the Public Works Department; and, as I mentioned in the Supreme Council on Thursday last, that subject has lately been engaging my attention, and I have been looking with some disappointment to see how little had been done to carry out the policy of procuring them in the country. As I said then, until manufactories are set up in which steel shall be cast or iron wrought in this country, it will be impossible to avoid procuring from England the articles which our Public Works Departments most require, such as steel rails, steel sleepers, rolled joists, angle iron, and articles of that kind. No experienced commercial gentleman would advise us to procure them in this country through middlemen, because obviously the profit of the middlemen would be thrown upon the price put on the article, and no one, with any knowledge of the subject, will deny that it must be cheaper to buy in England and import direct from the India Office than to buy here from merchants in this country, who have to purchase from the manufacturers in England and impose their own profit before they part with the articles to purchasers. But I propose to take steps to have a return prepared annually and laid before the Council on the next recurring occasion to show what the nature of the stores is which are purchased in England and those purchased in India, and from that return it will be possible to draw a conclusion whether anything is done, which at all contravenes the rules of Government or that Resolution which the Hon'ble MR. WOMACK has drawn attention to. It may also possibly have the beneficial effect of pointing out to the people in the trade what the nature and quantity of articles of this kind is, and of encouraging them to get out the necessary machinery for casting steel rails or rolling iron joists in this country. There is nothing which is more to be desired than the establishment of industries of that kind. It was a great disappointment to me that the Barrakur Iron Works, which was handed over to a private Company partly at my

[*The President.*]

suggestion when I was Public Works Member of Council, in the hope that that Company would carry on the works more efficiently than the Government had done—it was a great disappointment to me that the anticipated progress has not been made, but I am still not without hope that we may see iron wrought and steel cast in these Iron Works, and if not there, elsewhere.

“Coming next to the Hon’ble BABU SURENDRANATH BANERJEE’S remarks about the wages of menials, the Hon’ble the Chief Secretary has represented my views upon this subject. I think that the quotation which my hon’ble friend made from my remarks on a former occasion could hardly have been correctly made. I do not challenge it, but it did not seem to me to be anything which I remember to have said, or to express the attitude of mind which I took up with regard to that particular question. I may certainly say that the raising of the wages of the menial servants of Government would be, in my opinion, a very desirable thing if financial considerations allowed it, and if the Hon’ble Member could tell me what it would come up to, or if I was able to form off-hand an estimate, however rough, of the cost of doing it, I would at the present moment give the Hon’ble Member an answer more or less indicating my view as to the possibility of carrying out this matter during the present year. I may point out with regard to the raising of the pay of the Sepoys, which has just been effected, that this is an instance which shows how slowly a reform of that kind is carried out, and how long the applicants have to knock at the unwilling doors of the Treasury. As he himself remarked, the wages of the Sepoys had not been raised since 1796. Indeed, I may say that during the last fifteen years I have been rather intimately acquainted with the financial business of the Government, and I know that this proposal has been continually before the Government of India during that time, and as you see it has only just been carried out. The question of the wages of the menial servants of the Government stands in the same position; it has to knock at the door and continually go on knocking, and I have no doubt that the door will be opened at some time. I should be very glad if it could be opened during my time. One word as to the analogy between this increase of the wages of the menial servants and the Exchange Compensation Allowance to which reference was made by the hon’ble member. I would point out that we do for our menial servants what exactly corresponds with the Exchange

[*The President.*]

Compensation Allowance given to European officers. These menial servants do not send their wives and children to England, and have not to remit money there. What corresponds in their case to the increased expenditure thrown on European officers by reason of the fall in exchange is the rise in the price of food. The compensation for the dearness of food which is constantly given to menial servants by definite rules when the market prices reach certain limits exactly corresponds with the Compensation Allowance when the exchange falls below certain rates. I only mention this as an academical argument, as showing that we have something to say on our side, and not as implying that I wish to contest the propriety of the suggestion which the hon'ble member has made, or as drawing back from what I have said as to my own desire to carry out this suggestion.

“Next, with reference to Munsifs and the supplying of suitable accommodation for them, with regard to which an appeal has been made, which in no degree exceeds my own views as to the hardships which Munsifs in many parts of the country have to suffer. I wish to mention that we are at present engaged in correspondence with the High Court on the subject. I have pointed out that there are three alternatives: first, the one mentioned by the Hon'ble the Legal Remembrancer of constructing houses with public funds, and I fear with the Hon'ble the Chief Secretary that any Government provision made in this way would be considered by Munsifs themselves to be too costly. As all of you know, our Public Works Department builds with solidity and not with cheapness, and if we have to charge so large a sum as will cover the cost of building a residential house which will be suitable and comfortable, the rent which will be fixed will be very much higher than Munsifs are in the habit of paying and much more than they would like to pay. This is one alternative, and even if this alternative is adopted, the work cannot be carried out at once, but will have to be done somewhat gradually, because out of the 289 Munsifs shown in the statement given last week, we may assume that about 200 of those are at outlying stations, and the cost of building houses for them, taking it at Rs. 5,000 per house, would come to about ten lakhs of rupees, so that that cannot be done at once. The other alternatives suggested were that Munsifs should take advantage of the provision which already exists under which any officer can apply for an advance to build his own house, it

[*The President.*]

being understood that the High Court should, in their administrative capacity, see that a due value should be put upon it, and that the incoming Munsif should be compelled to take it at a fair rent; or that we should use our efforts and get capitalists or zamindars and other wealthy people in the mufassal to build houses for Munsifs, and having fixed a fair rent, we should in the same way issue orders that the Munsif should occupy that house and pay the rent fixed. These are the only three ways in which I consider it possible to meet the difficulty, and we are awaiting the advice of the High Court as to which of these courses we should pursue.

“Then, as regards ‘Excise’. I would only mention one point in addition to what the Hon’ble the Financial Secretary has said as to the cause of the large increase of revenue from spirits. There are two ways to account for this increase in the revenue—first, by purchasers paying larger fees, and, secondly, that more liquor was consumed. If Hon’ble Members will read the Resolution on the last Excise Report, they will see that the Government took care to point out, and were able to show, that in almost every case where there had been an increase in revenue it had been accompanied by a relative decrease in quantity, so that the increase in revenue had not been obtained by an increase in the quantity of liquors and intoxicating drugs, but by the duty producing a larger revenue and making it dearer to consumers. I may mention some of the steps we took to raise the price.

“The still-head duty on rum, which is largely consumed in the country, was raised by one rupee, and the increase of revenue from this source was about one and-a-half lakhs, and again the several classes of license fees for the wholesale and retail sale of liquors in Calcutta were considerably raised, and from this also increased revenue of about half-a-lakh was gained. I am as confident as it is possible for any one to say who speaks without premeditation on a subject which has largely occupied his mind, but without the figures before me, that the increase in the revenue to which the Hon’ble Member alluded has not been due to an increase in the sales of liquors, but to an enhancement of its price.

“I will only add this, that I am entirely opposed to a large increase of Outstills, and I strongly hold to the propriety of the principle of the manufacture of spirits at sadar distilleries and the imposition of still-head duties upon it,

[*The President.*]

and that, although there may be arguments for establishing Outstills in outlying districts and scattered places, I am not inclined to extend the number of Outstills to the prejudice of system of distilleries at head-quarters.

“With reference to the request that had been made by the Hon’ble BABU SURENDRANATH BANERJEE for more detailed information than that given in the budget statement, I shall be glad if he will see the Hon’ble the Financial Secretary and look over what information exists in the office, and if there is anything which is likely to be really useful or meet the wishes of members in general, it will be put before him. But I entirely deprecate anything which would lead to an increase in the labour of writing or in the cost of printing, because, as a matter of fact, information of a most extraordinarily minute and complete character exists in the book issued by the Financial Department, called the Yellow Book, to which I refer the hon’ble member as a standard source of information of the actual expenditure of the country at large, showing that of the whole of India and of each province under very minute heads. When I was President of the Finance Committee I relied almost entirely upon that book for the information we required, and I found that almost everything necessary to examine the state of the finances was to be found there. But that represented past and completed expenditure. Similar information is not supplied as to the details of estimated figures, but I think the Council will agree with me that the Government are wise in declining to take so much labour and expenditure with their estimates, and should incur it only when the books for the year are closed and the expenditure known with absolute certainty.

“The remarks which were made by my hon’ble friend, MR. LYALL, upon the police management were useful remarks made by an officer of great experience, and anything that he said on this subject must receive careful attention. They shall be laid before the Inspector-General of Police, and considered in the Judicial Department, and anything that the Government can do, especially with regard to the suggestion which he made regarding the employment as Court Inspectors of men who are still intelligent and capable, but who are physically inactive, shall certainly be considered with all the attention the subject deserved. With reference to the suggestion of the same hon’ble member that police officers should be appointed to the Subordinate Executive

[*The President.*]

Service, I may say that we have here an example of our old friend 'the better is the enemy of the good.' The Government has adopted a better policy, namely, the restricting the appointments to the Subordinate Service by competitive examinations, and in this way we have obtained, by rules the credit of which is chiefly due to the Hon'ble the Chief Secretary, an excellent body of recruits—quite the flower of the educated young men in the Province, all of whom have graduated, many of whom are M.A.'s and B.L.'s of good families, and sons of men who have either served the Government honourably and well, or hold good positions in the country. These rules were rigidly adhered to and rightly so, and I am quite sure that the policy has been a wise and successful one, and you will see how difficult it would be to deviate from this policy, and make what are called special cases: it will be like the letting in of water. Once make a special case of Police Inspectors who cannot pass the examination, and we shall receive applications from all quarters, and I therefore quite support the rigidity with which the Hon'ble the Chief Secretary has refused applications of this kind. But the Hon'ble MR. LYALL has omitted to notice that we have done more than SIR RIVERS THOMPSON did by promoting Inspectors to the covenanted grades of the Police, two of them being raised to Assistant Superintendents of Police in every three years. The position thus gained in their own service carries with it higher pay than by promotion to the executive service, and I think it will tend more to the good of the Police and to the Executive Service than if we were to revert to the old rule which was good at the time, but which is inferior to the policy now adopted.

“There is only one point on which I can add anything to what has been said with regard to Stationery and Printing. Every reform of this kind is accompanied with a certain amount of loss of efficiency. One of the chief causes of the reduction of expenditure has been a strict adherence to the rule that if an improvement is made in the form of a return, it should not take effect at once as a zealous officer would, no doubt, desire it should take effect, but the carrying out of the improvement should wait until the printed copies of the old form were exhausted. On the one hand, it will be seen that a saving is effected by first using copies of the old form in stock, while others may contend that the loss in efficiency by the postponement of the improvement is greater relatively than the gain effected by utilising the forms already in

[*The President.*]

stock. Taking the strong economical view I have always taken, I am inclined to think that the carrying out of the reform should, in such a case, be postponed. Many reforms which are in themselves good are better for being postponed, and gradually introduced, and I think we are right in doing so, even though it has caused a slight postponement of the improvement in administrative procedure, which is desired.

“I will only trespass upon your attention further by remarking on one other subject, and I must apologise for doing so. My chief reason is that I spoke on this subject two days ago, when the Reporters were so tired in the course of a long debate that what I said failed to reach the public ear, at any rate in the manner in which I wished it to reach the Public. At last Thursday's meeting of the Viceregal Council I referred to the speech made by the Right Hon'ble MR. FOWLER, and the optimistic view which he took of the state of the Imperial Finances. He went on to show that while the whole of our public debt was over 200 millions, almost the whole of that debt was covered by our assets in the form of railways, canals, and public works of that kind. No sooner had he said that than an answer was put in by a well-known English writer who holds a very influential position in England as the Editor of the *Investor's Review*, who replied:—‘What nonsense are you talking? Do we not find that in every bankruptcy the assets are greater than the liabilities, but the man is a bankrupt because his assets cannot be realized?’ I confess I saw with great regret how greedily that was taken up by a certain class of Journalists in the country as an effective answer to what the Secretary of State had said, and, as an illustration of the futility of the reply, I drew attention to the railway with which we are most concerned, and to which more than anything else our good financial position is due, namely, the Eastern Bengal State Railway. I had then with me, as I have now, the accounts of that Railway for the last five years, and I showed that the net receipts of that Railway had risen from 67 lakhs to 70 lakhs in 1893-94, and to 87 lakhs estimated in the present year. The capital of that Railway has, during the same period, increased from 10 to 10½ crores, while the net returns on that capital have increased from 5·1 per cent. to 8·2 per cent. Now you all, as practical men and men of business, know very well that a working concern of that kind which brings in 8·2 per cent. per annum is an extraordinarily good

[*The President*]

investment. If we went into the market and wished to sell that Railway, we could get not ten or ten and-a-half crores, but almost double that amount. And therefore, I assert that our assets in the form of railways, and canals and public works, so long as they produced returns of that kind, are not merely equal to our liabilities as the Secretary of State has said, but are worth much more than the money actually spent upon them,—worth far more than would cover the whole of the public debt in India. I can hardly conceive how a gentleman in the position of the Editor of a great financial paper in England came to utter a criticism like that, except by an explanation which impugns either his intelligence or his honesty.

“I will only say, in conclusion, that I congratulate myself, and I congratulate the Council, upon the turn which the debate has taken to-day. It has not only been eminently useful and practical, but I am satisfied that it will raise the reputation of this Council in the eyes of the Provincial Councils of India in general.”

The Council adjourned to Saturday, the 6th April, 1895.

GORDON LEITH,

Assistant Secretary to the Govt. of Bengal,

Legislative Department.

CALCUTTA ;
The 29th April, 1895. }

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

The Council met at the Council Chamber on Saturday, the 6th April, 1895.

Present:

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

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

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

The HON'BLE D. R. LYALL, C.S.I.

The HON'BLE C. E. BUCKLAND.

The HON'BLE T. D. BEIGHTON.

The HON'BLE H. H. RISLEY, C.I.E.

The HON'BLE R. C. DUTT, C.I.E.

The HON'BLE RAI DURGA GATI BANERJEA BAHADUR, C.I.E.

The HON'BLE SURENDRANATH BANERJEE.

The HON'BLE L. GHOSE.

The HON'BLE MAULVI SERAJUL ISLAM KHAN BAHADUR.

The HON'BLE J. G. WOMACK.

The HON'BLE MAULVI MUHAMMAD YUSUF KHAN BAHADUR.

The HON'BLE C. E. SMYTH.

NEW MEMBERS.

The Hon'ble MR. RISLEY and the Hon'ble RAI DURGA GATI BANERJEA BAHADUR took their seats in Council.

LICENSES FOR ARMS.

The Hon'ble BABU SURENDRANATH BANERJEE asked :—

Will the Government be pleased to lay on the table the report of the Commissioner of the Dacca Division, with reference to the question asked in Council on the 23rd March last, regarding licenses granted for the carrying of arms? Is it the case that licenses granted by the Magistrate of Dacca permit the carrying of arms only in the village or the town where the holder of the license may happen to reside, and not throughout the whole district? Does the

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

Government approve of this restriction? If not, will the Government be pleased to direct that the restriction be withdrawn, and the holder of the license be allowed as before to carry arms throughout the whole district, and with the permission of the Commissioner throughout the whole Division?

The Hon'ble MR. COTTON replied :—

“It appears that this subject was under enquiry before the Hon'ble Member's original question was put, the Commissioner of Dacca having on the 12th January last asked the Magistrate of Dacca his reasons for restricting a license to carry arms to the limits of the village within which the licensee resides.

“The Magistrate of Dacca explained on the 3rd February that the great majority of persons who ask for gun licenses state that they require guns either for the protection of their homes from robbers or of their fields from pigs and deer. He considers that for such persons a license to use a gun within the limits of their own village is sufficient, and that it is undesirable to allow them to carry their guns round the country with the danger of their being used in agrarian disputes. He adds that the limitation of the license to a village is not enforced in the case of zamindars, whose interests extend over several villages, or of travelling traders or persons of position generally.

“The Lieutenant-Governor does not think that the action of the Magistrate as thus explained has been injudicious, and he is not aware that any complaints have been locally made, but he has authorised the Commissioner, if any application is made to him, or if he thinks it necessary to interfere in any particular case, to extend the operation of any such license to a larger area than the village or to the whole district.

“When a gun license is countersigned by the Commissioner of a Division it is valid not in the Division only, but throughout all the districts in Bengal which are subject to the Lieutenant-Governor.”

THE LAND RECORDS MAINTENANCE BILL.

The Hon'ble MR. BUCKLAND in presenting the Report of the Select Committee on the Bill to provide for the maintenance of Records of Rights in Bengal, and for the recovery of the cost of Cadastral Surveys and Settlements, said :—

[*Mr. Buckland ; Mr. Risley.*]

“I do not propose to make any remarks on the present occasion, but will reserve what I have to say until the next meeting of the Council. I will only mention that a copy of the Report was sent to the Hon'ble THE MAHARAJA OF DARBHANGA, who has left Calcutta, and that this morning I received a telegram saying that he authorised me to sign the Report on his behalf, reserving to himself the right of moving amendments.”

THE CALCUTTA PORT ACT, 1890, AMENDMENT BILL.

The Hon'ble MR. RISLEY moved for leave to introduce a Bill to further amend the Calcutta Port Act, 1890. He said:—

“It will be convenient that I should explain at the present stage the provisions of the Bill and the nature of the alterations it will make in the Act. The Act itself is a consolidating Act which incorporates the old Act of 1870, gives certain powers to the Port Commissioners, lays down their constitution, and gives them all the powers which are requisite for the working of the Port. The amending Bill, which I have the honour to introduce, contains two kinds of sections: *first*, it contains amendments, which may be described as ordinary amendments, embodying those changes which experience in the working of the Act has shown to be necessary. Some little time ago the question of amending the bye-laws of the Port Commissioners arose, and those bye-laws were sent for opinion to the then acting Advocate-General. He held that in some respects the bye-laws went beyond the section of the Act which gives the power to pass bye-laws. That section belonged to the original Act, X (B.C.) of 1870, and had been repeated, unaltered, in the more recent Act of 1890.

“The necessity for amending the Act having arisen out of these bye-laws, a Committee of the Port Commissioners was appointed to look through the entire Act and see what other amendments were needed, and on their proposals were based the sections of the Bill which I have described as ordinary sections. With respect to these sections there is no urgency in point of time : and if they were not passed till two or three months hence, no practical difficulty would arise. But besides these there is another class of sections, in respect of which considerable urgency may be claimed. These sections are intended to relieve the very important petroleum trade from certain legal difficulties with which it is now

[*Mr. Risley.*]

beset—difficulties which are causing considerable hardship, and may cause something approaching to actual embarrassment. Fortunately for the necessity of passing an amending Act quickly, the ground has been very thoroughly cleared for us by the action which has been taken by the Port Commissioners and the Chamber of Commerce. Negotiations went on between the two bodies for some time last year; a representative Committee was appointed by the Chamber of Commerce, which went into the matter very thoroughly, and all the questions which arose were discussed between them and the Port Commissioners, and an agreement was arrived at. The best legal advice was obtained, and since then action has actually been taken and money has been spent by the Port Commissioners on the faith that their action would be legalised, and this we are pledged to do as early as possible.

“I will now go through the amending sections of this Bill as briefly as I can, taking first those which are in the nature of ordinary amendments, and then taking the sections which are specially framed to relieve the petroleum trade.

“Section 2 of the Bill corrects a verbal error in section 13 of the Calcutta Port Act, III (B.C.) of 1890. It will be seen that section 12 of the Act gives power to the Local Government to grant leave of absence to the Vice-Chairman and to appoint a person to officiate as Vice-Chairman during such absence on leave, and sub-section (2) of section 13 enacts that ‘the person appointed under this section to act for the Vice-Chairman’ shall have certain powers; but this reference should be to the preceding section 12, under which a person is appointed to officiate as Vice-Chairman, and not to section 13; so that the amendment to be made in sub-section (2) of section 13 is a purely verbal amendment.

“The next section we have to deal with is section 32 of the Act, which confers upon the Port Commissioners, among other things, the power of fining their officers and servants. It is proposed to form these fines into a fund from which it should be open to the Commissioners to grant compassionate allowances to their officers and servants, and to utilise the same for purposes other than those which are contemplated by section 57 of the Act. It has been held by Counsel that all sums collected as fines by the Port Commissioners would be merged in the general revenues of the Port, and could not be formed into a fund such as that which is now contemplated.

[*Mr. Risley.*]

“The 4th section of the Bill amends sub-section (2) of section 35 of the Act, the wording of which has been slightly altered. The only point, however, which arises is that the Port Commissioners wish to take power to carry passengers in their tramways, which, as the section stands, they have no power to do now. It is not contemplated to initiate a large passenger service, but under certain circumstances the Port Commissioners may consider it desirable to take passengers which they have no power to do now.

“I will for the present pass over section 5 of the Bill, which I shall refer to later on in connection with the sections of the Act relating to the trade in petroleum.

“Section 8 of the Bill amends section 106 of the Act, which deals with passenger boats which ply for hire within the Port, that is to say, boats, steam-ferris and the like which have been registered under the Act. Section 106 empowers the Port Commissioners to levy tolls on such vessels, but for a long time past the Commissioners have been levying charges for certain services, such as surveying, issuing licenses, painting numbers, giving tickets, and so forth. It has been pointed out by Counsel that the section is limited to the levy of tolls on such boats, and does not include charges for such services; it is therefore desirable that the existing practice should be legalised.

“The next sections of the Bill, 9 and 10, amend sections 108 and 109 of the Act. These sections provide for the imposition of additional tolls to meet a deficit in the income of the Port Commissioners which is liable to arise, and which has in fact arisen by reason of their liability to the payment of interest upon their debt; and the way in which the deficit has hitherto been met is by the imposition of a uniform rate of 4 annas per ton on all goods landed and shipped in the Port. The Port Commissioners represent that this uniform rate of charge is not a convenient arrangement, that it is liable to bear hardly on some articles of Commerce and nominally upon others; they therefore want full power to distribute this burden equitably according to the character of the goods which are landed or shipped. They accordingly propose to take power to levy additional, general, or differential rates of toll with reference to all goods, according to weight, measurement, number of articles, value, and so forth, and, if necessary, to distinguish between imports and exports. The section looks a somewhat complicated one, but I understand that it has been very carefully considered and drafted by MR. WOODROFFE, which, I think, should afford a sufficient guarantee of its correctness.

[*Mr. Risley.*]

“Section 16 of the Bill, amending section 126 of the Act, is the section empowering the Port Commissioners to make bye-laws. As I said in the first part of my statement, when these bye-laws came up, it was found that a great many of them were not covered by the sections of the Act, and the Advocate-General proposed that the section should be amended in the manner suggested. The second part of the section, sub-section (b), has reference to the petroleum sections.

“This disposes of the first class of amendments, ordinary amendments with reference to which, as I said, there is no claim to urgency. These in themselves are quite sufficient to justify legislation, but they would not warrant my asking for a suspension of the Rules of Business. The sections relating to petroleum stand on quite a different footing. They authorise the Port Commissioners to provide facilities for the petroleum trade at Budge-Budge. When the Budge-Budge warehouses were originally started, I think in 1888, they were treated in effect as bonded warehouses. Importers were allowed to put their cases of oil into these warehouses, and to keep them there until they wanted them for delivery to purchasers, and the duty was only collected at the time when the goods were taken out for sale. The time during which petroleum was kept in these warehouses was more than what was allowed in the case of ordinary bonded warehouses, where goods cannot be kept for indefinite periods of time; but here there was no limit of time. About this time last year the Collector of Customs discovered that the system of bonding petroleum at Budge-Budge was illegal; that the Budge-Budge warehouses were not a ‘bonded warehouse,’ and that the procedure then existing was altogether bad in law. The Collector accordingly enforced the law, and the result was that duty had to be paid on all goods brought into these warehouses within four months of their being landed. This caused considerable hardship to the importers of petroleum, because the trade in petroleum having been conducted on the assumption that oil could be bonded for an indefinite period, prices were adjusted to that state of things. Obviously you can sell cheaper if you can spread the interest upon your money over a long period of time. About the same time there was a very remarkable increase in the imports of petroleum; an enormous quantity of oil was brought in, and there was no warehouse accommodation. The Port Commissioners had to direct where the oil should be stored; and, for want of room, large quantities of it were stacked in the

[*Mr. Risley.*]

open, and I imagine there must have been some considerable damage done. Not very long after that a special Act was passed in this Council to relieve the Port Commissioners from the legal liability which, it was understood, attached to them in respect of the landing and storing of petroleum, and that Act was passed at a single sitting of the Council. The difficulties which had arisen in connection with the petroleum trade were taken up by the Chamber of Commerce, who appointed a Special Committee to consider and report on the question. The report of this Special Committee was adopted by the General Committee of the Chamber, negotiations took place with the Port Commissioners, and an agreement was come to on the subject. It was agreed that in future, instead of importers landing petroleum themselves, the Port Commissioners should land all petroleum. Not only should they land it in the technical sense, which, I understand, is merely receiving it after it is put over the vessel's side, but they should also undertake the process known as 'stevedoring;' that is to say, they should send men into the hold and pass it over the side of the vessel. Importers, it was said, were not always very desirous of landing petroleum quickly, and it was desirable to have the means of putting pressure upon them. It was also settled that the Port Commissioners should not do the work themselves, but should do it by the agency of Contractors, or at any rate that they should have the option of doing so; that bonded warehouses should be provided for the storage of petroleum; that the oil should be stored there as long as the Commissioners thought fit; that the Port Commissioners should give a security bond to the Customs for any duty due on imports of petroleum; that they should issue warrants specifying that so much petroleum had been received, and that such warrants should pass from hand to hand when the goods were transferred; finally—and this is an important condition—it was agreed between the Port Commissioners and the Chamber of Commerce that the Commissioners should be exempted absolutely from liability for damages arising from fire, however caused; while they should be liable for loss arising from deterioration, and so forth, only so far as it could be shown to arise from the negligence of the Commissioners' servants. The agreement thus arrived at was understood to be satisfactory to both parties. The Port Commissioners were at first under the impression that no legislation would be required, except for the purpose of creating bonded warehouses. They thought all the other measures contemplated could be carried out under

[*Mr. Risley.*]

the existing law, and they acted on that supposition. Subsequently, however, they found that the landing of petroleum by them and its custody also required amendment of the law.

“It will now be convenient if I take up in order the sections which refer to the petroleum trade, and in the course of my explanation I shall be able to show what the legal questions are which have to be met. The first section which is intended to relieve the petroleum trade is section 5 of the Bill amending section 90 of the Port Act of 1890. This section will in fact enable the Port Commissioners to land all goods through Contractors, and in the special case of petroleum, but not in the case of other goods, it will enable them to do what is known as ‘stevedoring’. Next come sections 6 and 7, which amend section 104 of the Act, and they add a fresh section—104A. Under section 104 of the Act, the Port Commissioners have only authority to employ Contractors or other outside agency to land cargo from boats or vessels which are known as inland vessels, and the object of the new section is to extend this power to all vessels, including sea-going vessels. Obviously it is necessary to make this change, as the vessels by which petroleum is imported are all sea-going vessels.

“The next petroleum sections are sections 11 to 14 of the Bill, which amend sections 113 to 116 of the Act; and here come in the legal difficulties to which I have referred. I stated just now that the Port Commissioners were originally under the impression that, as far as the landing and custody of petroleum are concerned, no legislation is required. They thought they would simply have to waive certain privileges conferred upon them by sub-section (2) of section 113, which provides that ‘if any owner, without any default on the part of the Commissioners, fail to remove any goods from the premises of the Commissioners within two clear working days from the time of landing, such goods shall remain on the premises at the sole risk and expense of the owner.’ It was explained that the legal effect of the section is to relieve the Commissioners of any liability which attaches to them as Warehousemen. They cannot incur liability as Warehousemen for any period exceeding two days. The view taken by the Port Commissioners acting upon legal advice was that this was a privilege attaching to them, and therefore one that they could waive. They said in effect there is no necessity to legislate; we will waive our privilege and take your petroleum. But the view subsequently taken by Counsel was that this is not enough, that it was a privilege conferred upon them by way of trust, and that the Port Commis-

[*Mr. Risley.*]

sioners, as representatives of the public, were bound to strip themselves as soon as possible of their liability as Warehousemen, and therefore they could not get out of the position affirmed by the Act. Acting on the assumption that they could take action without legislation, the Port Commissioners have spent Rs. 1,50,000, and they have committed themselves to an expenditure of Rs. 3,00,000 for extension of their warehouses, and since the 15th of January they have been taking in large quantities of petroleum, although, technically speaking, they are not entitled to do so under the law; and it is clear that their position must be legalised as soon as possible.

“The next set of sections begins with section 15, which introduces four new sections, 122A to 122D. These sections provide, first, that, with the consent of the Local Government, the Port Commissioners may, by notification in the *Calcutta Gazette*, declare any warehouse belonging to the Port Commissioners to be a bonded warehouse for the purposes of this Act. I understand that under the Customs Act, when such a notification has been made, all the conditions which arise with regard to bonded warehouses will apply to such warehouse. Section 122B empowers the Commissioners to store goods in such warehouses as long as they think fit, but in the case of petroleum it frees them absolutely from any liability for loss by fire, however arising, or for any deterioration or diminution in quantity by leakage or otherwise, unless caused by negligence of their servants. This was settled by agreement between the Port Commissioners and the representatives of the trade in petroleum. Section 122C authorises the Port Commissioners to give a bond for payment of the import duty due on goods stored in their bonded warehouses or for the due exportation of such goods, and when such security has been given, no further security shall be required by the Customs. Section 122D enables the Port Commissioners to issue warrants in a form laid down by the Act, which shall be negotiable by endorsement, and shall entitle the persons to whom they may have been endorsed to receive delivery of the goods. These sections contain provisions which I may say are absolutely necessary to carry out the agreement come to between the Chamber of Commerce and the Port Commissioners. The Commissioners, so far as they could undertake to do so, undertook to obtain legal warrant for the construction of bonded warehouses for the convenience of the trade, and the trade, I understand, counted upon this, and they are certainly, as far as I can judge from the course of the negotiations, entirely justified in looking to the Legislature to restore what was the ordinary practice in consequence of which the trade

[*Mr. Risley ; Mr. Smyth.*]

in petroleum grew up ; and if there is any delay in passing this Bill through the Council, there will be great disturbance and considerable embarrassment to the trade.

“I might remind the Council that last year they took very speedy action to relieve the Port Commissioners from certain liabilities under which they lay in consequence of the state of the then existing law, and I think they are equally bound on the present occasion to pass any measure which may be necessary, having regard to the agreement which has been come to between the representatives of the petroleum trade and the Port Commissioners. Fortunately there is the less difficulty in passing this Bill, inasmuch as in regard to those portions of the Bill which may possibly be considered contentious, the interested parties are agreed, the best legal opinion has been taken, and the Bill has been actually drafted in accordance with that opinion.”

The Hon'ble MR. SMYTH said :—“I beg to support the motion proposed by the Hon'ble MR. RISLEY.

“I may mention that in June last year, the Chamber of Commerce appointed a Sub-Committee, representing the various interests connected with the kerosine-oil trade, to enquire into the working of the kerosine-oil depôt at Budge-Budge.

“For some considerable time it was felt by those connected with this trade that the working of the depôt at Budge-Budge was not wholly satisfactory. On several occasions ships and steamers loaded with kerosine-oil had to be delayed outside the limits of the Port, there being no accommodation for them at Budge-Budge. The mercantile community thought that the accommodation should be increased. The Port Commissioners showed that full advantage was not taken of the accommodation already provided. It was then decided by the Chamber of Commerce to appoint the Sub-Committee I have before mentioned. The Sub-Committee reported to the Chamber, who addressed the Port Commissioners on the state of affairs at the Budge-Budge depôt, pointing out that the arrangements for working the discharge, loading and storing of kerosine-oil were extremely unsatisfactory, and that a radical change should be made. And the Chamber pointed out that the only satisfactory solution of the difficulty, as far as they could see, was for the Port Commissioners to become responsible for the loading, unloading and delivery of the oil. In other words, for the whole working of the depôt at Budge-Budge precisely in the same manner as

Mr. Smyth; Mr. Womack; Mr. Risley; the President.

they are responsible for the unloading of goods at the jetties. And they further urged that it was necessary for the requirements of the trade that the Budge-Budge depôt should be constituted a bonded warehouse:

“It is to enable the Port Commissioners to carry out the recommendations of the Chamber of Commerce that this Bill is now introduced into Council. The matter is an urgent one, as large shipments of oil are shortly expected in Calcutta. I would, therefore, cordially support the amendment of Act III of 1890.”

The Hon'ble MR. WOMACK said:—“I also wish briefly to support this motion. Speaking as a member of the Port Commission, I know that the provisions of the Bill before the Council are extremely desirable and extremely urgently needed. They have been very carefully considered both by a Sub-Committee and by the full body of the Commissioners, and the amendments have been all carefully drawn by the best legal advisers, so I trust that no time will be lost in passing the Bill into law.”

The Motion was put and agreed to.

The Hon'ble MR. RISLEY also applied to the President to suspend the Rules of Business to enable him to introduce the Bill, and to move that it be read in Council.

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

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

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble MR. RISLEY also moved that the Bill be referred to a Select Committee consisting of the Hon'ble MESSRS. LYALL, WOMACK and SMYTH, the Hon'ble RAI DURGA GATI BANERJEA and the Mover.

The Motion was put and agreed to.

The Council adjourned to Saturday, the 13th instant.

CALCUTTA; }
The 29th April, 1895. }

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

Legislative Department.

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

The Council met at the Council Chamber on Saturday, the 13th April, 1895.

Present:

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

The HON'BLE SIR GRIFFITH EVANS, K.C.I.E., *Offg. Advocats-General.*

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

The HON'BLE D. R. LYALL, C.S.I.

The HON'BLE J. A. BOURDILLON.

The HON'BLE C. E. BUCKLAND.

The HON'BLE T. D. BEIGHTON.

The HON'BLE H. H. RISLEY, C.I.E.

The HON'BLE R. C. DUTT, C.I.E.

The HON'BLE RAI DURGA GATI BANERJEE BAHADUR, C.I.E.

The HON'BLE SURENDRANATH BANERJEE.

The HON'BLE L. GHOSE.

The HON'BLE MAHARAJA SIR LUCHMESSUR SINGH BAHADUR, K.C.I.E., OF DARBHANGA.

The HON'BLE MAULVI SERAJUL ISLAM KHAN BAHADUR.

The HON'BLE J. G. WOMACK.

The HON'BLE MAULVI MUHAMMAD YUSUF KHAN BAHADUR.

The HON'BLE C. E. SMYTH.

NEW MEMBER.

The Hon'ble SIR GRIFFITH EVANS took his seat in Council.

PROMOTION OF JOINT-MAGISTRATES TO DISTRICT JUDGESHIPS.

The Hon'ble MAULVI SERAJUL ISLAM KHAN BAHADUR asked:—

Whether it is a fact that, under the existing system, Joint-Magistrates of a few years' standing and with no experience of civil work are promoted to the office of District Judges, and have to hear appeals against the decisions of Subordinate Judges of long standing and varied experience? Whether the working of the system is found satisfactory?

[*Mr. Risley ; Mr. Buckland.*]

The Hon'ble MR. RISLEY, in the absence of the Hon'ble MR. COTTON, replied :—

“All the permanent Judges in Bengal are senior officers and vary in standing from fifteen to thirty-four years' service. But it is occasionally found necessary to appoint junior officers to officiate as District Judges during the absence of the permanent incumbent on leave or deputation, and acting Judgeships for temporary periods are therefore held in some cases by officers of only eight or nine years' service who have not yet made their choice between the Judicial and Executive branches. The Lieutenant-Governor is always careful to select officers as senior as possible to act as Judges, and proposals which have been made to strengthen the hands of Government in this direction, by postponing the date at which the selection of the Judicial or Executive line is made, are now under consideration.”

THE LAND RECORDS MAINTENANCE BILL.

The Hon'ble MR. BUCKLAND moved that the report of the Select Committee on the Bill to provide for the maintenance of the Records of Rights in Bengal and for the recovery of the cost of Cadastral Surveys and Settlements be taken into consideration in order to the settlement of the clauses of the Bill. He said :—

“I intimated at the last meeting of the Council that I would reserve the observations which I had to make till the present occasion, so that Hon'ble Members might have time to read the report of the Select Committee and make themselves better acquainted with the provisions of the Bill. It therefore now devolves upon me to explain briefly what is stated in the Committee's report. But before doing so, I wish to offer some remarks on the speech of the Hon'ble the Maharaja of Darbhanga at the meeting of the Council, which was held on the 9th of March last, and which was published for the first time in the Calcutta Gazette of the 10th instant. When his remarks were made in Council on the 9th of March, I replied at the time that I was not able to hear all that the Hon'ble Member said, and that I would reserve to a future occasion such answers as I might have to give to what was then said. The objections which were taken by the Hon'ble Member to the Bill, have, as he will find, been met in several very important particulars. The Hon'ble the Maharaja complained that there were

[*Mr. Buckland.*]

two omissions in the early portion of the Bill to which he felt he should call attention. The first of these omissions was, that there was no provision for the procedure to be followed by the Registrar of Mutations. I can say now that we have provided amply sufficient procedure for the Registrar of Mutations to follow. We have in doing so adopted mainly the provisions of the Indian Registration Act, III of 1877. The next omission to which the Hon'ble the Maharaja drew attention was the omission of any provision for abolishing patwaris as they now exist under Regulation XII of 1817. That was no doubt a very fair criticism for the Hon'ble the Maharaja to offer on the Bill. At that moment our tongues were tied and we could say nothing upon this point, but since then, as is known to the Council, there have been published in the Calcutta Gazette of the 27th March last, some forty pages of printed correspondence between this Government and the Government of India with regard to the repeal of Regulation XII of 1817, which is the law relating to patwaris. Any one who has read the papers which are contained in that correspondence will see at a glance that any hopes held out by the Lieutenant-Governor to the landed interests in Bihar that the patwaris would be abolished have, so far as this Government is concerned, been amply redeemed by the efforts we have made to get this Regulation repealed. The patwari has been there described in various terms. He has been termed a pestilent fellow, a political pawn, and a potential nucleus of a village community. His merits and his shortcomings have been set out and regarded from every point of view. He has perhaps not been aware of all that was being written about him. If he had been, he would, I think, have been astonished to find that he had become a person of so much importance. It would not be becoming on my part on this occasion to offer one word of comment on this correspondence. A decision has been arrived at by the Government of India on a full consideration of all that has been said for or against the patwari, and I take it that it is becoming to this Government, as it is their duty, to bow loyally to that decision. But this is a sufficient explanation, I venture to think, of the omission to which the Hon'ble the Maharaja drew attention in his speech on the 9th March. The Hon'ble Member also on that occasion suggested that the Rules made under the Act, before being put into force, should be published in the Calcutta Gazette for a period of at least three months. We have endeavoured to meet his wishes by providing in the present revised Bill that the Rules published under the Act should, in accordance with section 190 of the Bengal Tenancy Act, be published for one

[*Mr. Buckland.*]

month before they are confirmed. The Hon'ble Member also drew our attention to section 16 of the original Bill in which we provided for a penalty on persons who fail to do their duty by giving notice of transfers or successions, and said that he thought that liability to such penalty should be safeguarded by some such words as 'voluntarily' or 'negligently.' It will be found that the words 'voluntarily' or 'negligently' have been introduced into section 24 of the Bill as now revised. The Hon'ble the Maharaja also drew attention to section 21 of the original Bill, an important section, which provided for payment of the Cess by tenure-holders and raiyats and for its recovery through zamindars. The objections taken by my hon'ble friend were primarily that it was a distinct violation of the conditions of the Permanent Settlement. I venture to think that that is an objection which has long since been disposed of, but we have more than met the Hon'ble Member's wishes by striking out all reference to a Cess from the Bill. As I said in Council on a previous occasion, there is a bill to be paid, and all that has to be done is to settle the simplest way of paying it. There is no occasion now to call it a Cess, because we have, in deference to the wishes of the proprietary interest in the land which my hon'ble friend so ably represents, struck out all the provisions of the original Bill for collecting the charges through the zamindars. These are the main criticisms which the Hon'ble the Maharaja levelled at the Bill at the meeting of Council to which I have referred, and I think I may claim that steps have been taken to meet his wishes to a great extent.

"With these preliminary remarks I will now turn to the report of the Select Committee. We purposely drafted the report fully and amply, and I think we have dealt with nearly every section of any importance; it will not therefore be necessary for me to take up the time of the Council by going through all the sections of the Bill. The main changes which have been made in the Bill, if I may so say, consist in making certain omissions. We have, for instance, omitted sections 4 and 5 of the original Bill, which provided additional facilities for the operation of the Land Registration Act. The idea of Government was, as advantage was not taken of the benefits of the Land Registration Act as generally and completely as might have been, to afford facilities for the better carrying out of that Act by the multiplication of small registration offices; but it has been on the whole thought better to drop those provisions, and the result therefore is that this Bill now assumes the form of providing for the maintenance of the record of tenant rights and not of proprietary rights also.

[*Mr. Buckland.*]

“We have also omitted section 8 of the original Bill which provided for proprietors of land being called upon to state whether they omitted or refused to admit transfers which it was proposed to register. That section has been omitted in deference to the views of landlords whose interests my hon'ble friend the Maharaja of Darbhanga represents.

“We have also struck out section 9 of the original Bill, which provided for the presumptive force to be given to mutations in rent suits. It has been thought better to leave the Courts to decide what force entries in these registers should have. It would of course be very difficult to say beforehand what force they should have. That they will have some force in evidence is certain, having regard to section 35 of the Evidence Act, as they will be entries in a public register and therefore they will be relevant facts.

“We have also struck out the old section 13. I said so much on the last occasion on this point that I need only mention that that was the section which provided that the Civil Courts should forward to the Sub-Registrars memoranda of decisions arrived at by the Courts affecting rights in land.

“These are the chief changes which we have effected by way of omissions.

“We have also introduced some changes of importance in the Bill which I will briefly recapitulate. From paragraph 7 of the report of the Select Committee it will be seen that we have provided that notices of transfers may be received after the expiry of four months. Notice would not be absolutely shut out by that period. The proposal now is that, if a notice of transfer is not given within four months, then a somewhat higher fee must be paid, and the person giving the notice will be liable to a penalty; but here again we propose that he shall be saved from being penalised if he comes forward and gives notice of the transfer at any time before proceedings are instituted against him. We have also provided that a notice given by any one person releases all other persons from giving notice of the same transfer or succession, and that registration under the Indian Registration Act of an instrument transferring a tenant right releases all persons from giving to the Registrar of Mutations separate notice of the same transfer. I think that this will be appreciated as a very reasonable concession to the public convenience.

“We have also in section 15 of the Bill now before us provided, as far as one can provide, for continuity in the registration of mutations. The marginal note to this section is:—‘Procedure when transferor's name not in record of rights.’ The idea is that we should do our best, by notice in the village and by

[*Mr. Buckland.*]

beat of drum, to get hold of the alleged transferor, and if nobody comes forward to deny that the alleged transferor or deceased person through whom succession is claimed was at the time of the alleged transfer in possession, then the name of the alleged transferor will be inserted in the register of mutations. By this means we hope, as far as possible, to maintain continuity of registration. It will be a very difficult thing to do, and possibly there may be blanks in the register, but we have endeavoured to do all we can in the matter.

“We have also dealt in section 23 of the present Bill with what have been called the automatic sanctions of the measure. In dealing with these sanctions we have endeavoured to make it as easy for both parties as we can, and by an amendment, of which notice has not been given, we propose to make the penalty less severe to persons failing to do their duty under the section; or rather we propose to give more opportunities for getting off the penalty. We have provided that a person who would otherwise lie under a disability is to be freed from the disability if he can show that he has given the notice. We do not now make it necessary for a party to prove that the transfer has actually been registered; we exculpate him if he has given notice and done all that was in his power to do. We have also at the end of section 23 provided that the Court in which any suit is filed shall give the defendant sufficient time to enable him to give such notice. In fact, as the section now stands, and as I propose to further amend it, sufficient opportunities will be provided for any person who is at all anxious to do his duty under the Act to escape without being penalised. But we maintain, and we must maintain, that there must be some pressure on the parties to do what is required, and as much concession is being made as is compatible with the maintenance of some pressure on landlords and tenants respectively to do their duty under the Act.

“I do not propose to detain the Council by running over the sections which now form Part II of the Bill relating to the procedure which has been adopted, as will be seen from the marginal references given in the Bill, from the Indian Registration Act. I will therefore pass on to Part III, the Part which provides for the recovery of the expenses of survey and of the preparation of a record of rights. As I said just now, all reference to a Cess has been removed, and this Part of the Bill really assumes now the form of an amplification of section 114 of the Bengal Tenancy Act. We do not propose to strike out that section or to repeal it. What is proposed is that we should take power to adopt an alternative procedure—a procedure not alternative in its main

[*Mr. Buckland.*]

principles, but alternative so far in that it supplies details which have been found in the actual experience of the working of the section to be wanting. For instance, in section 28 we propose to take power to recover not only from proprietors, landlords and tenants the cost of survey and settlement, but also from rent-free owners and occupiers. It is obvious that they will also derive benefit from survey and settlement proceedings, and it is but fair that they should pay their quota of the expense.

“In section 29 also we have provided for a small point in which some difficulty has been experienced. It has sometimes been held that when a local area, say a district, has been notified for survey and settlement proceedings, the recovery of the charges of such proceedings can only be effected over the same area as was originally notified. We propose therefore to take power to recover the charges of survey and settlement over any part of that notified area in which the survey-settlement proceedings have arrived at a stage to admit of recovery being made. The intention is, of course, that such recovery shall not be made over a very small area such as a field or two, but over some large areas, such as a thana or sub-division, as may be found most convenient.

“The last section to which I shall have to allude now is section 32, in which we propose to take power to recover from the successors in interest of those who were living at the time the survey-settlement proceedings were being carried out. The question has been raised whether, if the persons who were alive at the time when the proceedings were being carried out are not alive or are not forthcoming when the charges for the survey-settlement proceedings have to be paid, their successors in interest should be liable for those charges. We propose now to provide that they should be, so that persons having interests in the land should know that if the charges for survey-settlement proceedings have not been paid by their predecessors, they will have to pay them.

“There is hardly any other change of importance to which I need allude, except perhaps the appellate provisions in section 34. We have provided for an appeal from every order of a Registrar of Mutations affecting any entry in the register of mutations, within one month from the date thereof, to the Collector of the district, and that the latter's decision on such appeal shall be final. We have thought over this provision very carefully in Select Committee, and we considered that, having regard to the smallness for the most part of the operations with which this Act will deal, it will be quite sufficient to provide for one appeal to the Collector of the district. I presume that it would

[*Mr. Buckland; Maharaja of Darbhanga.*]

always be open to any person aggrieved by such decision on appeal to seek relief in the Civil Court. It is not necessary for us to say so.

“I do not propose to detain the Council any longer, but before sitting down I should like to thank my hon'ble colleagues in the Select Committee for all the trouble they took and the great assistance they afforded in arriving at the conclusions embodied in the revised Bill. The Committee sat nine times, and I think I may say that every word, every syllable and every letter in the Bill was carefully considered.

“With these remarks I beg to move the motion that stands in my name.”

The Hon'ble MAHARAJA SIR LUCHMESUR SINGH BAHADUR OF DARBHANGA said:—“I take this opportunity to thank the Government and the Members of the Select Committee for the very conciliatory way in which they have treated the suggestions made by the various Associations representing the landholders of Bengal, and I only wish to say a few words against the principle of making the landlord and tenants liable for the payment of the cost of the survey. Not only the land lords, but many of the representative Associations of the raiyats as well, including the Indian Association, have submitted representations to the effect that Cadastral Surveys ought to be undertaken only in special cases of agrarian disputes, or in those cases where the zamindars or the raiyats specially ask for them. I do not wish to question in any way the right of the Government to have a Cadastral Survey even in those cases in which the raiyats or zamindars do not need it for their own purposes, but in all those cases I have always maintained that the expense of making such a survey ought to be borne entirely by the Government as was done in the Benares Division. When it comes to the question of the bill being paid, it is only just and equitable that the classes of persons, who have to pay that bill, should first be asked as to their willingness to pay it. No doubt the Government was actuated by the best of motives in ordering the Cadastral Survey of Bihar, but it is a question of difference of opinion; and in a matter of this sort I think the persons most interested, that is to say, the raiyats and zamindars, ought to be in a position to know their own interests far better than the Government. In a purely technical matter of this sort professional opinion ought to be considered to be of greater value than any theoretical knowledge of the land question or the opinions of the highest Governments Officials. It may be that in cases some benefits are likely to be derived from a Cadastral Survey. I would however, have

[*Maharaja of Darbhanga ; Mr. Buckland.*]

liked some provision inserted in the Bill to the effect that where the majority of the raiyats of a village object to the survey, and where they think that the expense and vexation that a survey is likely to entail far outweigh the benefits they are likely to obtain, the raiyats should be exempted from the payment of the expense. The landlord and the tenants ought at least to be allowed the chance of saying whether they consider the expenses that they will have to incur and the unrest, litigation and ill-feeling that is likely to be created, are at all adequate to the so called benefits. In a great many cases there exists even now certain record of rights. These records may not give as much information as the Government wishes: but they are quite sufficient to satisfy the requirements of the zamindar and the raiyat. And if in such cases the Government wishes to have a Cadastral Survey, the only inference that can be drawn is that they wish it for the sake of obtaining statistical informations only, consequently the Imperial Exchequer ought to bear the whole cost for obtaining these statistics. The non-introduction of any provision of this sort seems to me the best proof of the fact that there are many cases in which the raiyats themselves object to a survey.

“These are the only remarks I wish to make on the speech which has just been delivered by my hon’ble friend, the Mover of the Bill. The other minor points contained in my former speech have been met by the alterations which have been made in the Bill by the Select Committee, but the portion of the speech which refers to this point has not been touched. I therefore take this opportunity to enter my most strong protest against this policy of meddling Philanthropy which considers all technical opinion to be beneath contempt, though no doubt the Government has been actuated by good motives. I am not speaking here simply as the representative of the landlords alone, but I speak after having consulted such men as the Hon’ble Babu Surendranath Banerjee and others, who are supposed to be representatives of the raiyats as well.”

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 Motion was put and agreed to.

The Hon’ble MAHARAJA SIR LUCHMESSUR SINGH BAHADUR OF DARBHANGA moved that, after section 1, the following section be inserted:—

‘On the commencement of this Act in any district or part of a district so much of Regulation XII of 1817 as has not been repealed shall be repealed in such district or part of a district.’

[*Maharaja of Darbhanga ; the President.*]

He said :—“ My object in moving this amendment is that after the Cadastral Survey of a district or part of a district has been completed, the work of the patwari practically ceases as far as his submission to Government of any statistical papers are concerned, because, with such an elaborate system of registration of the record of rights, I think all the papers the Government are likely to need will be forthcoming from the office of the Rural Registrars. Over and above this, when the Cadastral Survey of Bihar was first undertaken, a very important section of the community which was represented by the Bihar Planters' Association agreed to the Cadastral Survey on the distinct understanding that the patwari was to be abolished and that they would get certain facilities for the recovery of rents. They did not accept the Cadastral Survey unconditionally. In other words they accepted it only as a part of a bargain. Now I simply ask the Government to fulfil its part of the bargain. Although we are very thankful to the Bengal Government for having done their very best to have the patwari abolished, still I humbly submit that unless the patwari is abolished, there will be a sort of feeling among certain classes of the community—it might be an ill-founded feeling—that the Government had broken its promise. I am not one of those who would for a moment believe this, but still I think that the feeling is likely to be created. And every possible precaution ought to be taken to prevent the creation of any feeling amongst any section of the community of breach of faith on the part of Government. The creation of such feeling is likely to cause disastrous results. The best thing therefore, that can be done under the circumstance is, if possible, to abolish the patwari altogether. Then as regards the information that zamindars are called upon to furnish to the Government in the shape of Road Cess Returns, we find very often that we have to work through these patwaris, and we have no other alternative but to make these patwaris do our work; and very often these patwaris for their own purposes, and knowing very well that zamindars have no power to dismiss, purposely delay in submitting these Road Cess Returns, and in such cases it is not the patwari who is punished but the zamindar who is fined for the delay; whereas really the delay is not caused by the zamindar but by the patwari. However, if the Government still thinks that the zamindar should be made liable for the submission of Road Cess Returns, it is only fair that they should give the zamindar the power to dismiss the patwari, through whom work has to be done, for his contumacy.”

The Hon'ble THE PRESIDENT said :—“ I am obliged to announce to the Council that I cannot allow this amendment to be put. The Council is bound by the Rules which are laid down by the Government of India with regard to the

[*The President ; Mr. Ghose.*]

scope or limitation of any Bill which is brought before it or is discussed in it. A clause to abolish this Patwari Regulation was embodied in the Draft Bill which was sent up by the Government of Bengal to the Government of India, but it was struck out by the orders of His Excellency the Viceroy and Governor General of India in Council. It is impossible therefore for the Government to re-introduce a section which has been struck out by the Government of India, and what the Government cannot do a private Member of this Council cannot do. Recognising the great authority of the Hon'ble the Maharaja of Darbhanga, both on account of his personal character and the interests which he represents, I thought it right not to interfere until he had finished his speech, but I am obliged to say that I cannot permit any further discussion of the question, and I cannot allow the amendment to be put.

"The same remarks apply to the amendment No. 19 in the List of Business which stands in the name of the Hon'ble Mr. Ghose with the object of providing a summary procedure for the recovery of arrears of rent. It is well known to Hon'ble Members and to the Council how entirely I sympathize with the proposal that he has made. But it would be an alteration in the substantive provisions of the Bill which we have received the sanction of the Government of India to introduce, and it is beyond the power of this Government to introduce a substantive change of this kind while the Bill is under discussion. I shall solicit the assistance of my hon'ble friend in preparing a draft of future legislation to carry out the object which both he and I have in view, but I am obliged to say that I cannot allow these amendments to be put to the Council on the present occasion."

The Hon'ble MR. GHOSE moved that section 5 of the Bill be omitted. He said:—

"I do not think it is either necessary or desirable for the purposes of this Bill to retain section 5. It has been pointed out by every public body which has been consulted in reference to this Bill, including the British Indian Association, the Property Defence Association, and last, but not least, the Bengal Chamber of Commerce, that under the Road Cess Act landlords are required to furnish periodical returns showing the names of holders of estates and tenures, and also of raiyats and giving various other particulars. It is difficult to see what useful object is to be obtained by insisting upon the submission of certain additional returns under this Bill. I am bound to say that the other day, when I had the advantage of a conversation on this subject with the learned Officiating Advocate-General, he was good enough to point out that there is one particular item of information which was not contained

[Mr. Ghose ; Mr. Buckland.]

in the Returns under the Road Cess Act, and that is the number and description of the particular plots and fields which may be in the possession of various tenants. I submit that even if this additional information is obtained, in my humble opinion it will be of very little use to the Government, and I say with reference to the observations of the Hon'ble Member in charge of the Bill with regard to the presumption of relevancy, that in most parts of Bengal transfers of tenant rights *inter vivos* have no legal validity whatever without the assent of the landlord ; and therefore when you have this additional information you will find that, except in the very few cases in which the landlord has acknowledged the transfer for a consideration, and may have made the necessary mutation of names in his own books, his returns will not show these transfers at all. In the majority of cases the names of the old tenants will continue to be retained in spite of any transfer which may have taken place ; therefore you will have these zamindari returns mostly in conflict with the official register of mutations, and it is difficult to see how such returns will be of any use. But in spite of this, if the Government still think this information will be of any use, I submit that the better course will be, instead of insisting upon two sets of returns under two different enactments, to facilitate matters the additional information required may be included within the returns furnished under the Road Cess Act, and for that purpose the form given in the first schedule of that Act may be amended. By adopting this course landlords will be saved a great deal of trouble and worry and expense, and instead of their submitting two different sets of returns, one return will suffice. With that view and to spare all unnecessary hardship, I move that section 5 of the Bill be omitted."

The Hon'ble MR. BUCKLAND said:—"The Government are not prepared to accept the Hon'ble Member's amendment. The point of the Hon'ble Member's remarks, if I rightly apprehend them, is that all that is necessary will be supplied by an amendment of the Road Cess Act. I do not know whether the Hon'ble Member is aware that under the Road Cess Act returns are not made annually, as we may desire to have them made under the Maintenance of Records Bill. Ordinarily, valuations and re-valuations of districts do not take place until after periods of five years, and it may be longer, and it is considered much better that this Act should be self-contained rather than that another Act should be amended so as to work into the purposes of this Act. There is nothing at all novel in the principle of this section. Ever since the passing of the Patwari Regulations of 1817, it has been within the power of the Government to get very similar information from zamindars. A provision very much to the same effect as section 5 of this Bill found a place in the draft Bill appended to Sir Antony MacDonnell's Minute of the 20th of September, 1893, and a provision similar

[*Mr. Buckland ; Maulvi Muhammad Yusuf.*]

to this was recommended by the Calcutta Conference of experts in settlement matters, which assembled in the cold weather of 1893-94. I may also point out, as perhaps the Council are not aware of the fact, that in other Provinces power has been taken by the Government to procure similar information from the owners and occupiers of lands. I hold in my hand a selection from the Revenue Laws of the North-Western Provinces, the Central Provinces, Oudh and the Punjab; and I find that by section 9 of Act XIII of 1882, the North-Western Provinces and Oudh Kanungos and Patwaris Act, provision has been made for such information to be furnished by the owners and occupiers of land. I will read an extract of this section to the Council:—

‘For the purpose of preparing the registers or accounts prescribed by the said Oudh Land Revenue Act, 1876, or by any rule made thereunder, every owner or occupier of land in any Patwari’s Circle, and the agent of every such owner or occupier, shall furnish to the patwari of such circle, the kanungo or such person as the Deputy Commissioner may appoint in this behalf, such information, at such times, as the Chief Commissioner may from time to time by rule prescribe.’

“Again, similar provision is to be found in section 128 of the Central Provinces Land Revenue Act, XIII of 1881, and also in section 40 of the Punjab Land Revenue Act, XVII of 1887. What we want to obtain (and I think it will be very beneficial to landlords to have on record their view of the state of affairs in their estates as it appears in their own papers), is to have mutations of the record of rights, as they are known to and acknowledged by proprietors, brought into comparison with the transfers brought to our notice by tenants. I know it has been said, and it was said in Select Committee, that it will be impossible for the statements furnished by proprietors to afford any check on the lists of transfers of which notice has been given by tenants. It may be so or it may not be so; but we think we should get from both sides all the transfers that are effected and acknowledged: and that is the ideal at which the Bill aims. At any rate it is out of the question to amend the Road Cess Act for this purpose and to postpone the filing of these statements for five years or more when we shall want them to be furnished annually. It is therefore my duty to oppose this amendment.”

The Hon’ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—“In the observations which have been made by the Hon’ble Mover of the amendment in support of this amendment, I agree to a very considerable extent. The Council will remember that the question raised by this amendment is one of

[*Maulvi Muhammad Yusuf.*]

the questions which were largely discussed at the time when the Bill was referred to the Select Committee. On that occasion I ventured to make a full statement of my objections to this section, or rather to the corresponding section in the original. I still entertain the opinion that the section under discussion is out of place in a Bill, the ostensible object of which is to maintain the record prepared under the operation of Chapter X of the Bengal Tenancy Act. That record deals with the details and particulars relating to the tenant's rights. This section is therefore foreign to the principal subject of the Bill. But quite apart from that view, the section is open to objections of a more serious nature. This section is calculated to force the hand of the zamindar in a most unsatisfactory manner. There is some little difficulty in ascertaining the precise law relating to the transfer of a right of occupancy, but I think I stand upon safe ground when I say that, unless there is a custom to the contrary, the transfer of a right of occupancy by the tenant is not valid unless such transfer is effected with the consent of the landlord. Now, if a landlord has to make a return, and you ask him to state who are the present tenants, and whether occupancy rights have been transferred or not, what is the landlord to say? Is he to state in his return, for instance, with reference to a particular tenure which has changed hands, that the old tenant is still his tenant, or is he to state the name of the transferee, or is he to state nothing and keep quiet under that head. If he is to state the name of the old tenant, he makes a false return; if he notices the fact of transfer and states the name of the transferee, then he will be looked upon as having consented to the transfer; if he is to notice the transfer with a note of his objection to the transfer, he will still be held to have treated the transferee as at least in present possession under the transfer, and he will prejudice himself in regard to his rights in various ways; if he says nothing under that head in his return, he will not have complied with the requisition. This objection is sufficiently serious to render it inexpedient that a section like the present should be introduced in a Bill which does not profess to deal directly with the relative rights of the landlord and tenant, but which deals with the register as framed under section 114 of the Bengal Tenancy Act. Of course this objection will not arise if you ask the zamindar to make a return relating to tenant's right in accordance with his own register; but that is probably not what is intended by the Government.

“Again, it is quite clear that other existing enactments contain sufficient provision to enable the Government to obtain every information from the zamindar-

[*Maulvi Muhammad Yusuf; Mr. Beighton.*]

dar, and under the machinery of those enactments all necessary information is available, and no possible good is likely to result in multiplying modes of getting information.

“But there is still another objection of a still more serious character. There will be enormous practical difficulty in carrying out this section. The section provides that the zamindar is bound to make a return on the issue of a notification in the Calcutta Gazette. The issue of a notification in the Calcutta Gazette constitutes all the notice he has of the intentions of the Government that he is called upon to make a return; and if he omits to make a return, certain penal consequences arise. Now, I ask, how many of the ordinary landlords in the Mufassal subscribe to or read the Calcutta Gazette: their number is exceedingly small, and the large majority of them are even unaware of the existence of the Calcutta Gazette. The notice therefore is wholly insufficient. In other existing enactments in the matter of returns, greater facilities are afforded to the zamindars for informing themselves in regard to the intentions of the Government. In the Road Cess Act, section 14, a proclamation is contemplated, and when a revaluation takes place, the matter is not left to the mere issue of a notification in the Calcutta Gazette, but the information is brought nearer home to the zamindars by the issue of a proclamation which is the next best mode of conveying information, the best mode being a special notice issued to every individual zamindar. I submit that this section should be omitted altogether from this Bill, or if it is retained, then some better mode of giving notice should be prescribed, or at all events the question of notice should be considered in connection with the provision relating to a penalty for omission to make a return. I may state that I had an amendment upon this section and also several other sections of this Bill, but I am precluded from bringing forward my amendments in consequence of some little delay in giving notice of those amendments.”

The Hon'ble MR. BEIGHTON said:—“With regard to the present amendment and the numerous others which will be placed before us, I desire to remind Hon'ble Members of this Council of the valuable remarks which fell from the President on the last occasion on which His Honour presided, with regard to the mode in which the Council should deal with the labours of Select Committees, the measure of confidence which the Council should extend to the

[*Mr. Beighton.*]

results of their deliberations, and the reliance that should be placed in the conscientious and painstaking efforts that have brought about these results.

“Perhaps, as a Member of the Select Committee, I ought to have left it to some other Member of Council to make these observations, but I have no wish to eulogise the outcome of our labours beyond repeating what has fallen from the Hon’ble Member in charge of the Bill that there is no portion of the Bill which has not received most anxious attention, and no suggestion in the voluminous papers referred to us which has not received full consideration. I desire therefore to associate myself with the remarks made by Your Honour on the occasion to which I referred, and further to emphasize very strongly that there could be no Bill to which they are more strictly applicable than the present one. There is no great question of principle involved in this Bill. We have merely endeavoured by a series of details closely interwoven with each other to provide a system which will work automatically for securing a record of transfers of tenant right. The Bill is like a complicated piece of machinery of which the working is stopped if a single pivot be moved. If we deprive ourselves of the additional means of testing the accuracy of the tenants’ notices of transfer which is provided by the statements to be submitted by landlords under section 5, we seriously jeopardise the success of the measure. It is essential that we should obtain data from both sources of information. Criticisms have been made by both the Hon’ble Members who have spoken as to the effect of those statements in embarrassing landlords who wish to protect themselves against the creation of unauthorized rights of occupancy by their tenants. I wish to state most emphatically that the rights of landlords will not in the least degree be affected either by section 5 or any other section of the Bill. Section 5 in no way requires landlords to include in their statements anything except a ‘change’ in their tenants’ rights, and if they do not recognise the validity of a transfer they need not report it. At the same time, if I heard correctly what was said by the Hon’ble Mover of the amendment, he appears to think that no transfers are valid anywhere unless made with the consent of the landlord. This is hardly correct; for in some parts of the country transfers are valid as being authorised by the custom of that portion of the province of which the district of Rangpur is an example. The landlord has, however, as I said above, every right to resist encroachments of this kind, and the Bill leaves his rights unimpaired.

[*Mr. Beighton ; Sir Griffith Evans.*]

“With regard to the mode of publication otherwise than in the Gazette, a suggestion which fell from the Hon'ble Maulvi Muhammad Yusuf, I must confess that, speaking for myself, I regret that the proposal did not reach us sooner, but upon the whole I think we ought to retain section 5 as it stands in the Bill.”

The Hon'ble SIR GRIFFITH EVANS said:—“I have one or two observations to offer on the question now under consideration. I do not take the same view of it which the Hon'ble Maulvi Muhammad Yusuf has done. I put it to the Council that it will really be to the benefit of the landlord that this reference should be made to him. The return he makes will be a public record, and will be considered to be a statement made under compulsion of law, and will be admissible as evidence of relevant facts. It may be that there will be a large number of transfers of occupancy rights recorded, although the zamindar may truthfully say that no changes have taken place in his tenants' rights, because in parts of the country where transfers are not possible without the assent of the zamindar, he would have a right to say that no changes have taken place in his raiyats' rights, notwithstanding that there may have been all sorts of invalid documents made. Therefore, the result would be, as far as the landlord is concerned, that there may be from time to time a large number of transfers registered, which are invalid as not being allowed by custom. Transfers without the consent of the landlord are invalid unless validated by the custom of the place; therefore, in such cases there would, under this section, be the protest of the landlord as evidenced by such transfers not being entered in the statements filed by him under this section. We know that as a rule landlords consent to transfers being made where the transferees are proper persons, and if they are willing to take upon themselves the payment of all arrears due by the transferor, and the landlord does not as a rule take any fee except a sort of registration fee. Wherever this state of things prevail, that is to say, wherever a right of occupancy is not transferable without the consent of the landlord, there the landlord has every right to see that transfers are only made to really *bonâ fide* raiyats. If I were a landlord myself I should take all the care I could to see that a *mahajan* did not come in, and I should, in any case, take care that a tenant who is likely to harass me in many ways should not come in. Moreover, it is very desirable for the Government to know what is the real position and how the Act works, but if transfers are registered by only one of the interested

[*Sir Griffith Evans ; Maulvi Serajul Islam ; Mr. Ghose.*]

parties, there will be nothing to contradict the register of mutations. The provisions of section 5 of the Bill will enable the landlord to contradict every one of these attempted transfers which he is unwilling to recognise: he need not take any notice, but in effect he will simply say—I do not acknowledge these transfers. Therefore, to my way of thinking, the furnishing of these statements by landlords will be better for the interests of the landlords, and it will undoubtedly better enable the Government to see how the Act works."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"I have one observation to make. I think the apprehensions entertained by the learned Mover of the amendment may be removed if he will only refer to the provisions of sections 8 and 9 of the original Bill. Section 9 of that Bill provided for service of notice of transfer on the landlord, and section 8 required that the Sub-Registrar should notify to the landlord the fact of such transfer having been recorded, and it was further provided that the entry should be presumed to have been correctly made until the contrary is proved. This matter was well considered in Select Committee, and, after much deliberation and consideration, those two sections were omitted, the result being that there was now no longer any provision for notice being served on the zamindar, and no entry in the register of mutations would be evidence against the zamindar that such transfer had been made; and in place of sections 8 and 9, section 5 has been introduced, which is merely an enabling section to help the Government in checking entries in the registers, but it would not be binding upon the zamindar to acknowledge any transfer. Therefore the apprehensions which are entertained by the Hon'ble Member are misplaced and have no foundation."

The Hon'ble Mr. GHOSZ in reply said:—"I only desire to correct a misapprehension into which the Hon'ble the Legal Remembrancer fell as regards my observation as to the invalidity of transfers of tenants' rights. There are of course parts of Bengal in which by custom such transfers are made. Having made that correction and having regard to the opinions which have been expressed by several Hon'ble Members, I would ask the permission of the President to withdraw this amendment."

The Motion was, by leave, withdrawn.

[*Maharaja of Darbhanga ; Mr. Ghose ; Mr. Buckland.*]

The Hon'ble MAHARAJA SIR LUCHMITSUR SINGH BAHADUR OF DARBHANGA, by leave of the Council, withdrew the motion of which he had given notice that section 5 of the Bill be omitted.

The Hon'ble Mr. GHOSE moved that in line 4 of section 6, after the words "or any part thereof" the words "bearing a separate number in the Record of Rights" be inserted. He said:—

"This is a small matter, but nevertheless it is a matter of some importance. This Bill is intended more or less for the benefit of raiyats, but I venture to think that if you insist on every fractional transfer which may take place being registered, you will, instead of benefiting the class you want to benefit, throw a burden upon the people which they are ill capable of bearing. It is quite right and proper that where a raiyat holds two or three plots of land bearing different numbers in the record of rights, if he parts with plot 1 or with plot 2 or with plot 3, it is quite right and proper that he should give notice of such transfer, and that the change should be noted in the register of mutations. But I can well conceive a case of a poor tenant parting with one bigha or with half a bigha of land out of a particular parcel, and it will be hard if in cases of such small fractional transfers he is obliged to go through all these formalities. Besides, what would be the result? I do not know if, when another tenant comes into a portion of a plot, his name is to find a place in the register or how it is to work. This is the commencement of a new reform connected with land registration, and I think we ought to be satisfied with having entire plots registered. That, I think, is as far as it is desirable to go."

The Hon'ble MR. BUCKLAND said:—"The result of this amendment, if it is accepted by the Council, will be that it will be necessary to give notice only of transfers of land which bear separate numbers in the record of rights. I think that perhaps the Hon'ble Member does not quite know what a survey number is. I am not sure that anything which fell from him would lead me to suppose that he is aware of the technical definition of a survey number. I ought therefore to enlighten the Council as to what is the meaning of this term. It corresponds with a field number and is thus defined in page 7 of the Director of Bengal Survey's Report for 1893-94:—

'A field or survey number is an area of which the ownership is separate and the occupant is separate. Each parcel of land lying in one spot, in the occupation of one person or of

[*Mr. Buckland.*]

several persons holding jointly, so held under one title, provided it is all of one soil and is all rented at a uniform rate, shall have a separate number.'

"I may also inform the Hon'ble Member that, by the adoption of this definition, in practical working, fresh survey numbers are given to every small parcel of land which corresponds to the definition of a holding. I will not go through all the instructions upon the point, but I will refer to the survey handbook by Colonel Barron, which I hold in my hand, containing instructions for cadastral survey parties. One of the rules provides that the several portions of one enclosure should be mapped and numbered separately, when there has been a legal partition and the partition papers show the location and direction of the shares: this is also required when a portion of an enclosure is held by a sub tenant: also, when a garden is held rent-free by a tenant: also, when part of a field is fallow or grass, and part is cultivated: also, when on the side of a field, there is a piece of waste sufficiently large to be shown separately from it. I need not state them all; there are ten illustration cases given in which separate survey numbers are now attached to parcels of land which may be very small. As I mentioned at the meeting of the Council on the 9th March last, there are on an average $2\frac{1}{2}$ of these plots, that is, separate survey numbers to an acre of land, which is equivalent to an average of 1,936 square yards for each survey number, or about 45 yards each way. It is very easy for the Council to imagine what very small plots of land are, under the existing rules and instructions of the Survey Department, treated as separate survey numbers; and it is therefore not very much to ask that whenever any raiyat thinks it necessary to sub-divide his, possibly very small, plot of land, the sub-division should be placed on record. These transactions will be of as much concern to these raiyats as very much larger plots of lands to other persons. The object of the Bill is not only to keep a record of large transfers, but to have also a record of all these smaller transfers which are of as much importance to the raiyats as larger transfers are to the zamindars. I therefore think it right to oppose this motion on behalf of the Government. I will also ask the Council to look at the question in another way. An average plot of land may be 50 yards by 40 yards, but there are also some very large plots of acres and acres in extent: is it to be held that, when one of these technically so-called survey numbers or plots is of large size, sub-divisions of it ought to be registered, but that in the case of the splitting up of small plots no record of the fractional

[*Mr. Buckland ; Maulvi Muhammad Yusuf ; Mr. Beighton ;
Maulvi Serajul Islam.*]

transfers is necessary? Where is the line to be drawn? What we want is that all these transfers should be registered, and not only transfers of whole survey numbers. I must therefore oppose the amendment."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"I do not know what good this amendment will be productive of to the raiyats. If it is expedient to provide for the registration of transfers in connection with entire plots of land which bear entire survey numbers, surely reasons do also exist for the registration of portions of such plots."

The Hon'ble MR. BEIGHTON said:—"I have only one word to say supplementary to the remarks which fell from the Hon'ble Member in charge of the Bill. Section 7, clause (d), provides that 'the notice shall contain such further particulars as the Local Government may from time to time prescribe.' It will be quite possible for the Local Government to prescribe for the notice giving such a description as will secure the identification of particular portions of a plot which have been transferred. For instance, when a portion of a particular survey number has been transferred, 'such further particulars' may include the area of the portion of the plot so transferred, and also the situation of the portion transferred with reference to the points of the compass. So I think the confusion which the Hon'ble Member anticipates is not likely to arise. Moreover, unless the register of transfers is to include portions of plots, it will not be exhaustive, and the Record of Rights will be imperfect and therefore valueless."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"Although I was a Member of the Select Committee I am inclined to support this amendment, and I do so on this ground. I do not think it will be convenient or expedient to register these petty transfers of portions of a plot of land. The holding of a raiyat may consist of several survey numbers, and if he transfers a portion of any lands which are included in any one of these survey numbers, it will be very inconvenient and very difficult not only to register the transfer, but at the same time it will be hard on the raiyat to go to the expense of registering it. It was said by the Hon'ble the Legal Remembrancer that under section 7 (d) a specification of the interest transferred must be given. By the term 'nature of the interest' in clause (b) I understand is meant whether it is a right of occupancy or a tenancy with occupancy rights at a fixed rent, but it does not

[*Maulvi Serajul Islam; Mr. Dutt; Mr. Lyall.*]

mean the boundaries of the portion of the holding which has been sold. Therefore I submit that having regard to the great inconvenience and expense to which this provision would put the poor raiyats, the Government ought not to insist upon so much detail. It is, of course, very desirable to have the record complete and perfect, but it is not possible to make everything perfect. I think it will serve the purposes of the Government and of the public if only transfers of entire holdings be entered in the register, and I submit it will not be convenient to go beyond that."

The Hon'ble MR. R. C. DUTT said:—"As a Member of the Select Committee to which the Bill was referred, I desire to say a very few words to explain the reasons which influenced me in keeping the section as it stands. The question which has been raised now was raised in Select Committee, and was very thoroughly discussed, and we came to the conclusion that it would be impossible to keep the Record of Rights complete unless we provided that transfers not only of tenures and holdings, but also of parts thereof, should be duly recorded. The object is to keep the Record of Rights complete and correct up to date, but if we accept this amendment, I do not see how that object can be attained. The Hon'ble Member in charge of the Bill has said that what is one plot now may, after transfer of a portion of it, become two plots, and therefore, unless we provide for the registration of such transfer, the record will not be correct up to date, and the object we have in view will be lost."

The Hon'ble MR. LYALL said:—"I had not intended to speak upon this amendment, but there is one point that I think it necessary to bring to the notice of the Council. I have very serious doubts whether the amendment, as it is worded, will carry out the intention of the Hon'ble Mover. If the Hon'ble Members will look back to section 2, they will see that by the term 'Record of Rights' shall be understood the Settlement Record of Tenant-rights, called the *khatian*, or such new edition of such record as may be prepared under rules made under this Act. It is clear that the Hon'ble Mover does not mean a separate Record of Rights (*khatian*), but that he means a separate survey number. [The Hon'ble Mr. Ghose said:—"I meant 'survey number.'"] On the point at issue I am at one with the Hon'ble Members who expressed the views of the Select Committee."

The Motion was, by leave, withdrawn.

[*Babu Surendranath Banerjee.*]

The Hon'ble BABU SURENDRANATH BANERJEE moved that in line 8 of section 6 the words "or of intestate or testamentary succession" be omitted. He said:—

"In moving this amendment, and having regard to some observations which fell from the Hon'ble the Legal Remembrancer, I wish to say that I do not in the remotest degree wish to imply any reflection upon the labours of the Select Committee. I am grateful to the Select Committee for the way in which they have dealt with this Bill, and I am also grateful to the Government not indeed for having introduced the Bill, but for its conciliatory attitude in regard to this matter which made it possible for the Select Committee to revise the Bill in the way which they had done. But there are some matters of detail in which the Bill is susceptible of improvement. Under section 6 the transferor or the transferee is bound to give notice of the fact of the transfer to the Registrar of Mutations within four months of the date of such transfer. As far as the transferee by succession is concerned under section 15 of the Bengal Tenancy Act, he is required, in the case of a mukarrari tenure, to give notice of the transfer to the Collector. Thus a double duty is imposed upon him by this Bill. *First*, he has to give notice to the Collector, and *secondly*, he has to give notice to the Registrar of Mutations. It is a very serious matter to ask a raiyat to give up his work to dance attendance in our Courts of Law and to come in contact with all their demoralizing influences. Section 15 of the Bengal Tenancy Act provides that when a succession to a permanent tenure takes place, the person succeeding should give notice of such succession to the Collector. The section says:—

'When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form and shall pay to the Collector the prescribed fee for the service of the notice on the landlord, and the landlord's fee prescribed by section 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.'

"Therefore, so far as permanent tenures are concerned, provision is made for notice of transfer, and the object of my amendment is to obviate the necessity of giving a second notice in respect of the same transaction. Nothing could be easier than for the Collector to send a copy of the notice to the Registrar of Mutations."

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

The Hon'ble MR. BUCKLAND said :—“ The Hon'ble Member has referred the Council to section 15 of the Tenancy Act, and has stated that that section provides for notice being given to the Collector of successions to permanent tenures. I have always understood the meaning of that section and its object to be to ensure, not only that notice should be given to the Collector, but that a fee should be paid to the landlord. That, I believe, was the main object of that particular section. It is not so necessary that the Collector should know about the succession. The object was that the fee should be taken and paid over to the landlord. But this does not touch the point at which we aim by section 6 of the Bill, which requires that notice of transfer of all tenures (not only permanent tenures) should be given. Therefore I do not see that any case has been made out for the amendment. The Hon'ble Member wants us not to do what is proposed, on the ground that it is provided for in section 15 of the Tenancy Act; but we say that that section has a very different object, and does not cover the whole field which we are trying to cover by our section. I shall therefore oppose this amendment and any amendment which aims at limiting the number of transfers we can possibly get into our net.”

The Hon'ble MR. R. C. DUTT said :—“ I have one word to say on this point. I desire to oppose this amendment for the same reason which I mentioned just now. The Hon'ble Member in charge of the Bill has pointed out that the section of the Tenancy Act which the Hon'ble Mover of the amendment quoted, does not cover the whole field intended to be covered by section 6 of this Bill. The object of the Bill is to have a complete record of transfers of all holdings. The section quoted relates to the transfer of permanent tenures only. I believe that, as a fact, there are 50 or 100 transfers of ordinary holdings to one transfer of a permanent tenure; therefore section 15 of the Tenancy Act does not cover the object we have in view. We have therefore provided for the registration of all successions; otherwise the record would not be complete and correct up to date.”

The Hon'ble MR. BEIGHTON said :—“ I am bound to say that both the Hon'ble Member in charge of the Bill and I feel that there is some force in what has been urged by the Hon'ble Mover of the amendment, and, with the permission of His Honour the President, I will move an amendment which, as far as sections 12 and 15 of the Tenancy Act are concerned, will meet

[*Mr. Beighton ; Babu Surendranath Banerjee ; Mr. Ghose.*]

the object of his amendment. In section 20 of this Bill we have provided that the fees payable to the Collector under sections 15 and 18 of the Bengal Tenancy Act may be paid to the Registrar of Mutations when notice is given under section 6, and such payment shall be held to be payment to the Collector. I must confess that we omitted to notice that although we are legislating in a way that will prevent the payment of double fees, the wording of the section still leaves it obligatory on the tenant to give notice to two separate officials, and I think therefore we ought to add to section 20 the words 'and such notice to the Sub-Registrar shall be held to be a notice to the Collector under sections 15 and 18 of the Bengal Tenancy Act.' If the Hon'ble Mover of the amendment will accept my proposal and withdraw his amendment, I will undertake, with the permission of His Honour, to move to add these words at the end of section 20, which will, I think, meet the Hon'ble Members' views."

The Hon'ble BABU SURENDRANATH BANERJEE having accepted this suggestion and withdrawn his amendment—

The Hon'ble MR. GHOSE moved that in line 9 of section 6 the word "six" be substituted for the word "four" between the word "within" and the word "months." He said:—

"The idea is this, that as regards the mutation of names in proprietary rights, the time allowed is six months, and as regards this new measure calling upon the raiyats to register transfers of their rights, I think the same term ought to be given to them as is now allowed to landlords under the Act of 1876. Although this is not a matter of any great importance, it is a matter which has been noticed by every one of the Associations. The Bengal Chamber of Commerce say:—

'The Committee do not understand why in section 4 (which is now section 6) the reference is to section 23 of the Registration Act limiting the time for report to Sub-Registrars of the acquisition of proprietary right to four months, when such a report is equivalent to an application for mutation of names under section 42 of Act VII of 1876. They would represent that the time should not be reduced to four months, but that the precedent of the Act of 1876 is the more correct and more just to follow.'

"I submit that though transfers of proprietary rights are removed from this Bill, still it holds good as to tenant rights. Raiyats are engaged in the cultivation of their fields, and it must be sometimes hard upon them to do a

[*Mr. Ghose ; Mr. Buckland ; Maulvi Muhammad Yusuf.*]

thing which is altogether novel to them, and it will take them sometime before they get accustomed to it. I therefore think it will be more reasonable to allow the same period, namely six months, as is allowed to landlords for similar registration on their part."

The Hon'ble MR. BUCKLAND said:—"This amendment aims at making this section conform to the period of time prescribed in the Land Registration Act, whereas we have in drafting the section deliberately followed the procedure of the Indian Registration Act of 1887, which has been followed almost entirely throughout this Bill, whereas it has little or nothing to do with the Land Registration Act in the matter of procedure. Therefore, in the matter of giving notices of transfers we have been guided by the time allowed by the Indian Registration Act for the presentation of documents for registration. In Part IV of that Act, sections 23 and 25, the period allowed for the presentation of documents is four months from the date of the execution of the document or of its arrival in India, and if that period is thought sufficient for the large number of documents registered every year under that Act, it is surely enough for tenants to give notice at very short distances of transfers effected by them. We have thought this over very carefully, and have come to the conclusion that there is no reason for altering the term. I must therefore oppose the amendment."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"I submit that the analogy from the Registration Act does not hold good. The Registration Act aims at one thing, this Bill aims at another. Under the Registration Act four months run from the time of the execution of an instrument, whereas in this Bill time is to run from the date of possession; and under the last proviso of this section, if an instrument has been registered, there need be no notice given at all by the tenant, because that proviso releases parties from the obligation to give notice if an instrument has been registered. No notice is necessary under section 6 of this Bill if the instrument is registered: that section will only come into operation if an instrument has not been presented for registration. The question being thus set free from any analogy to the Registration Act, the analogy of the Land Registration Act should govern, and six months should be allowed from the date of possession for giving notice to the Registrar of Mutations."

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

The Hon'ble THE PRESIDENT said:—"I wish to point to a mistake in the remarks which have been made in introducing this amendment. The Bengal Chamber of Commerce were quoted as objecting to the old section 4 of the Bill, but that section has gone out altogether and was not identical, as the Hon'ble Member thought, with new section 6. It was the section in which we proposed to deal with the transfer of proprietary rights. We do not propose to alter the law with regard to such transfers; we propose to make a new law with regard to transfers by tenants, and we give them four months to give notice of such transfers, and the reason for doing so is that four months is the time under the Indian Registration Act. All transfers under sections 15 and 18 must be carried out by deed, and must be presented for registration, and the raiyats know perfectly well that four months is the time for such registration. Surely it will be inconvenient if in a certain class of transfers the deeds have to be presented for registration within four months, and in another class of transfers of a very similar character notice can be given within the extended time of six months. It will be much more convenient if they have one period of four months for both classes of transfers."

The Hon'ble MR. GHOSE said:—"After the explanation which has been given by the Hon'ble the President, I beg leave to withdraw the amendment."

The Motion was, by leave withdrawn.

The Hon'ble MR. BUCKLAND said:—"I ask permission to move two verbal amendments, the necessity for which has been brought to my notice by the Hon'ble the Advocate-General and the Hon'ble Maulvi Muhammad Yusuf. They relate to certain matters of drafting which the Legal Members of the Council think necessary. In the revised Bill, in line 10 of sub-section (1) of section 8, after the word 'transfer,' where it first occurs in that line, I beg to move that the words 'or in the case of the death of both parties if their respective representatives admit the transfer' be inserted. The case of the death of either party is provided for in this section; the words I propose to insert will provide for the case of the death of both the parties. Then, again, after the word 'both' in the same line, I have to move that the words 'transferor or transferee or their respective representatives' be inserted. These are merely verbal amendments to carry out what has always been the intention of the section. Similarly, in line 3 of sub-section (2) of the

[*Mr. Buckland ; Maulvi Muhammad Yusuf ; the President ;
Babu Surendranath Banerjee.*]

same section, I move that the words 'or their respective representatives' be inserted after the word 'transferee.' These three little amendments all stand on the same footing, and are considered desirable to complete the sense and intention of the section."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:— "I am extremely thankful to the Government and to the Hon'ble Member in charge of the Bill for having accepted the suggestion I have made. I was late in giving notice of my amendments, and I therefore placed the list of my amendments by way of suggestions before the Hon'ble Member, and I am gratified to find that a large number of my suggestions has met with the approval of the Government."

The Motions were severally put and agreed to.

The Hon'ble MR. BUCKLAND said:— "I have another motion of a similar character to make. I move that in line 13 of section 9, after the words 'one month' the words 'from the date of the last-mentioned notice' be inserted. It is desirable to add these words to show from what date the period of one month should run. And in line 13 of section 15, I move to insert the same words 'from the date of the last-mentioned notice' after the words 'one month.'"

The Hon'ble THE PRESIDENT said:— "I will only add that we are indebted for these amendments to the careful examination of the Bill made by the Hon'ble Maulvi Muhammad Yusuf, whose suggestions have been approved by our Legal Advisers."

The Motions were severally put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in the proviso to section 11 for the words "exempt by law" the words "exempt by notification issued by the Government and persons exempt by the custom of the country" be substituted. He said:—

"This is a very small amendment. It is in the nature of a verbal amendment, and does not involve any question of principle. Persons are exempted from attendance at Courts either by a notification specially issued by the Government in that behalf, or according to the custom of the country. Rajas and

[*Babu Surendranath Banerjee ; Mr. Buckland ; Sir Griffith Evans.*]

Maharajas and the like are exempted by notification issued by Government; zanana ladies are exempt by the custom of the country. The amendment seeks to state in clear and distinct terms the grounds of exemption."

The Hon'ble MR. BUCKLAND said:—"If the Hon'ble Member will look at the margin of section 11, he will find there a reference to section 33 of the Indian Registration Act, and if he will compare section 11 of our Bill with that section, he will find that we have adopted the exact wording of the Registration Act. We have adopted to a very considerable extent the procedure of the Registration Act, and we saw no reason to depart from it in this particular. I am not aware of any objection being taken to the working of that particular section of the Registration Act, and I see no reason to alter the wording. I must therefore oppose the amendment."

The Hon'ble SIR GRIFFITH EVANS said:—"The wording of this section as it has been adopted from the Indian Registration Act, is absolutely correct. The exemption from attendance at Courts is given not by the custom of the country, but by the Civil Procedure Code, sections 640 and 641. So the exemption is given by law. And in the case of individuals it is the same; special exemptions are made by Local Governments under sanction of the law. There is therefore no necessity for this amendment."

The Motion was, by leave, withdrawn.

The Hon'ble MR. BUCKLAND said:—"I have another amendment to propose of exactly the same nature as those which have already been made. I move that in line 4 of section 14, after the word 'transferee' the words 'or in the case of the death of either if his representative' be inserted."

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND said:—"I will now ask the Council to add a few words in section 15, which my hon'ble friend the Advocate-General has brought to my notice as being desirable. I move that in line 19 of section 15, after the word 'shall' the words 'if the other provisions of the Act are complied with' be inserted. The object of this amendment is to make it clear that section 15 is not meant to override in any way the rest of the Act. It had escaped my notice that these words were necessary, but on the

[*Mr. Buckland ; Mr. Beighton.*]

advice of the learned Advocate-General the Government is quite prepared to accept the amendment, and I trust it will also meet with the approval of the Council."

The Motion was put and agreed to.

The Hon'ble MR. BEIGHTON said:—"I have already explained to the Council the reasons for which I wish to move an addition to section 20 of the Bill in lieu of the amendment proposed by the Hon'ble Babu Surendranath Banerjee in section 6, and which he withdrew on my suggesting the amendment which I now move. It was a matter which escaped the notice of the Select Committee, but the omission was discovered almost simultaneously by the Hon'ble the President and myself. I therefore now formally move that at the end of section 20 the following words be added:—

'and such notice to the Registrar of Mutations shall be held to be a notice to the Collector under sections 15 and 18 of the Bengal Tenancy Act, 1885.'

"I must ask the Council to notice that these sections deal only with permanent tenures and to tenures held at fixed rates, and do not cover the whole ground of section 6 of the Bill."

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND said:—"I will now ask the Council to look carefully to the proviso to section 24 of the Bill which runs thus:—

'Provided that no person shall be fined under this section who at any time prior to the institution of proceedings thereunder has given notice under section 6.'

"I alluded to this proviso this morning as being intended to give a tenant who had omitted to give notice a means of escaping the penalty; he can come forward before the institution of proceedings and confess that he has not given notice. It has been brought to our notice that a proviso to a similar effect should be added to section 25, which is the section that penalises a landlord who, under section 5, is required to file a statement and does not do so. It has been brought to our notice that we ought to allow a landlord the same right of coming forward at any time before proceedings have been instituted against him, and by filing the statement escape the penalty. The Government are quite prepared to go to that length and to give landlords the same privilege of escaping penalty as is afforded in the proviso to section 24 to

[*Mr. Buckland; Sir Griffith Evans.*]

tenants. But, even more than that. We are quite prepared, in dealing with the proviso in section 24, to insert words which would give a tenant a further opportunity than is given in that proviso for escaping the penalty to which he is liable. We propose to introduce the words 'or in the discretion of the Collector at any time after such institution.' The proviso in section 24 gives tenants the opportunity of escaping a penalty by coming forward before the institution of proceedings. We propose to extend that power of escaping the penalty by inserting a few words which will at the discretion of the Collector allow a tenant to escape a penalty even after the institution of proceedings, and we are willing, in extending the proviso to that extent, to make it applicable to both sections. It seems to me that when we do that we make the pressure on the tenant, and in certain cases on the landlord, as light as it can be made compatible with the application of some pressure. I do not see how we can go further without whittling away the whole of the pressure, except such as is of an automatic character. Therefore I move that the proviso to section 24 be struck out, and that at the end of section 25 the following proviso be inserted:—

'Provided that no person shall be fined under this or the last preceding section who at any time prior to the institution of proceedings thereunder, or in the discretion of the Collector at any time after such institution, has filed the statement required by section 5 or given the notice required by section 6.'

"I am not prepared to relax the pressure upon the landlord or upon the tenant any more than this."

The Hon'ble SIR GRIFFITH EVANS said:—"The object of this amendment is shortly this: There are several amendments connected with these sections on the agenda, but I only refer to them for the purpose of explanation. One of these amendments relating to section 24, which relates to tenants, has for its object that no fine should be inflicted until notice to comply with the provisions of section 6 has been served upon the raiyats. But it should be remembered that it will be impossible to know whether the raiyat has complied with the provisions of that section or not, because in 99 cases out of 100 nobody knows except himself and his transferee whether he has made a transfer of his tenancy or not, until in the course of some proceedings connected with the tenancy it transpires that that has been done. Moreover, it will be exceedingly difficult in practice to serve landlords with these notices, and the same remark

[*Sir Griffith Evans.*]

which applies with regard to landlords applies to small tenure-holders. It has been thought that we might also give a discretion to the Collector, when he institutes a prosecution, to dispense with the imposition of a fine when the statement has been filed or the notice given. Considering that the object of the fine is to put pressure upon the landlord or tenant, as the case may be, that what is wanted is in the case of the landlord to get the return, and in the case of the tenant what is wanted is for him to give the notice, there is no intention to inflict a fine when the object of the law has been complied with. It is necessary to put some pressure on raiyats beyond the automatic pressure. As has been pointed out, the disabilities under the automatic sections will be two-fold. First, we say to the landlord-raiyat, you shall not be allowed to sue for rent until you have given notice, so that the landlord-raiyat will not be able to recover or get a decree against his under-tenants. Next, we say to the ordinary occupancy-raiyat you shall not give evidence of your right of occupancy until you have given notice; but there are many cases in which tenants would not be much affected by this pressure, because, after the *khatian* and record of rights, there will not be much room for doubt. No doubt in the case of occupancy-raiyats, who are at variance with the landlord, and those who have under-tenants, the automatic pressure would apply to a certain extent, but in all other cases, which will probably be the majority, the pressure would not be felt. There was therefore no other pressure except the power of fining. But I am exceedingly anxious that we should not harass the raiyats, because our attempts to benefit them have not always succeeded. In this case we desire that it should be understood, and appear on the face of the law, that the intention is to provide a means of threatened pressure, and that it is not desirable that punishment should be enforced except where it is absolutely necessary, and to show those concerned that there is a means of enforcing compliance with the law, if they will not otherwise comply with it. We do not want to enforce the penalty, but we want to have the power to tell them—you must do this or you will be fined. And that is what His Honour the President meant when he said that the amendment proposed by the Hon'ble Member in charge of the Bill should be first considered, so that Hon'ble Members, who have given notice of other amendments, might consider whether they would not be satisfied with what is proposed to be done and withdraw their amendments. That was a matter which would come on afterwards. The motion now was the acceptance of the Hon'ble Mr. Buckland's amendment."

[*Maulvi Muhammad Yusuf ; Mr. Ghose ; Babu Surendranath Banerjee.*]

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"In this instance also I am thankful to the Government for having accepted my suggestion, the reasons for which have been so fully stated by the Hon'ble Mover of the amendment. But there is one reason which also weighed with me, namely, that the object is to secure registration and not to secure a conviction for non-compliance with the provisions of the law. When the alternatives are registration or prosecution with certainty of conviction, tenants will no doubt accept registration, and thus this amendment will promote the object which this Bill has in view, namely, the registration of tenures."

The Hon'ble MR. GROSE said:—"It seems to me that the amendment proposed by the Hon'ble Member in charge of the Bill is probably sufficient to meet the views of those Hon'ble Members who think the Bill is defective in this respect as far as section 24 is concerned. There may be some difficulty in knowing what transactions have taken place between raiyats, and as the learned Advocate-General observed they may only transpire in the course of some other proceedings long afterwards. But I venture to think that section 25 stands on a different footing. The only notice the landlord is supposed to receive is by a notification in the Calcutta Gazette which is referred to in section 5 of the Bill, and, as pointed out by the Hon'ble the Advocate-General, there are many landlords of various degrees, including small tenure-holders and others, who do not read the Calcutta Gazette very assiduously ; therefore I think that in the case of zamindars who are required to submit returns of changes in their estates, some notice should be given to them personally, rather than that the law should provide that a notification in the Calcutta Gazette is sufficient for the purpose of imposing a penalty. In connection with this amendment I would ask the Government to consider whether, in the case of landlords, a mere notification in the Calcutta Gazette ought to be held to be sufficient for the purpose of imposing a penalty for non-compliance with an order of which the landlords would be wholly ignorant."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I am very grateful to the Hon'ble Member for introducing this amendment. It takes the matter a stage further; but I am not prepared to abandon the amendment of which I have given notice. I would appeal to him to look at the matter from the point of view I desire him to look at it. The Hon'ble the Advocate-General has

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

asked how are we to know whether a tenant has made a transfer or not. I am not prepared to accept that argument, because, preparatory to the institution of proceedings, the Collector must know that notice has not been given. If the Collector institutes proceedings against the tenant, it must be on the basis of his knowledge that notice has not been given by the tenant. If he knows that the tenant has not given notice, would it not be the simplest thing for the Collector to serve notice on him to comply with the provisions of section 6, and then, if the tenant omitted to comply with the requisition, there would be time enough to prosecute him. With reference to landlords, so far as the provisions of the Local Self-Government Act are concerned, I understand that notice is given by beat of drum in the locality, but a similar concession is not shown to the landlord under the provisions of this Bill. This is a new measure, and it ought to be worked in such a manner as not to operate with severity on raiyats and landlords. I would therefore ask the Hon'ble Member to reconsider the matter from the point of view to which I have referred."

The Hon'ble MR. BEIGHTON said:—"The arguments of the Hon'ble Mr. Ghose and of the Hon'ble Babu Surendranath Banerjee would, it appear to me, if accepted by the Council, be absolutely destructive of the Bill. The whole principle of the Bill is that the initiative should be taken by the raiyat and not by the Collector. But the Hon'ble Members want that the only real penalty imposed by the Bill should not be put into force until notice to the raiyat has emanated from the Collector. In that case no raiyat will ever come forward to give notice of any mutation until he is aware that he is about to be fined for not doing so. Such a provision will, I think, absolutely stultify the whole object of the Bill, for it is only in an infinitesimal number of cases that the Collector can possibly become aware of the transfer of any holding or part of a holding. With regard to the observations which fell from the Hon'ble Mr. Ghose as to the ignorance of zamindars as to notifications which appear in the Calcutta Gazette, I must remind the Hon'ble Member that ignorance of the law is never held to be an excuse for non-compliance with its provisions, and it would be altogether subversive of any system of law if it were so held. But the Hon'ble Member knows as well as I do that in practice no injustice is really perpetrated. He must be familiar, for instance, with the vast number of penalties for technical breaches of the law which have been imposed by recent legislation in England under the Corrupt

[*Mr. Beighton ; the President.*]

Practices Act for the election of Members of Parliament and Members of Municipal Corporations. It is impossible for any human being to be cognizant of all the complex details which modern ingenuity has devised in order to protect the purity of Local Administration, and these are constantly being violated by candidates who have not the least idea they are doing anything wrong. But what is the result? The Hon'ble Member must have seen reports in English newspapers which show how leniently such cases are dealt with in the Courts. In such cases of innocent transgression, either the offender is exempted from any penalty or a merely nominal fine is imposed. Similarly, if any case of hardship should arise under this section, I have no doubt that the Magistrate would take into consideration the fact that it was virtually impossible that a petty landlord could have heard of the notification in the Calcutta Gazette, and would impose a nominal fine. I trust the Hon'ble Member will see that the motion which the Hon'ble Member in charge of the Bill now proposes is really quite sufficient to meet all that can be expected from the Government."

The Hon'ble THE PRESIDENT said:—"I am sorry to perceive that the speech of the Hon'ble the Advocate-General has not had the effect which I expected it would, but perhaps the additional weight of the remarks which fell from the Hon'ble the Legal Remembrancer may have carried conviction. I was surprised to find on the agenda the amendment No. 8, to the effect that 'no person should be fined under section 24 except after notice served upon him to comply with the provisions of section 16,' because it is to my mind absolutely destructive of one of the important principles of the Bill. It will be perfectly fatal to the scheme if, in addition to the small automatic pressure provided by the preceding clause, no penalty is to accrue until the Collector has sent a notice warning the raiyat that he has failed to give notice of mutation. And with regard to zamindars, I would remind Hon'ble Members how numerous they are and how difficult it would be to issue notice to all of them. Time after time the Legislature has attempted to find means to reach them, but we know that the efforts of the Legislature have generally been a failure, and we should not succeed in having notice served upon everybody. I ask Hon'ble Members to accept this view and to trust to the discretion we place in the Collector. We are drawing special attention to the fact that defaulters are not expected to be fined in every case. I think, looking at it as reasonable men, we ought to be satisfied that the provision

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

is one which in all probability will meet the case as far as any legislative procedure can meet the case of future events which never actually accord with our anticipations."

The Motions were put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE said:—"After what has fallen from Your Honour, it would have been a matter of very great gratification to me if I found it consistent with my duty to withdraw both the amendments of which I have given notice, but I feel it incumbent on me to move first that the following further proviso be added to section 24:—

'Provided further that no person shall be fined under this section except after he has been served with a notice to comply with the provisions of section 6.'

"It has been observed by the Hon'ble the Legal Remembrancer that ignorance of law is no excuse, but in applying this principle to this country, you must take into consideration the condition of the people, and especially the position of the agricultural population. They live in little hamlets of their own—in a little world of their own—and in utter ignorance of what is taking place in the world outside and in this Council. They do not know what their legal obligations are, and it would be cruel to punish them for an offence which is the creation of law. What I contend for is that they should be allowed the opportunity of complying with the law before they are prosecuted, or, in other words, a notice should be served upon them, before they are prosecuted. I have heard it stated that we ought to put some sort of pressure upon them. I think this notice will serve as a sort of pressure, and in the course of time they will become aware of their duty under the law."

The Hon'ble MR. BUCKLAND said:—"After the lengthened argument which has taken place upon the motion which I put before the Council, there is really not much to say. I entirely object to the principle which this amendment tries to incorporate into the Bill, namely, that when a man has neglected his duty and has rendered himself liable to punishment, he has to be given notice before he can be punished. If that principle is to be adopted, we shall never get any notices of mutations except after the service of such notice. An attempt to introduce such a principle was made the other day in connection with another measure, and it was successfully resisted. I therefore hope we shall not accept this amendment, but retain what I consider ample provision for allowing innocent people to escape the penalty."

[*Sir Griffith Evans ; Maulvi Muhammad Yusuf.*]

The Hon'ble SIR GRIFFITH EVANS said:—"I have one word more to say in connection with this matter. These raiyats, as we know, will not do anything new unless there is pressure. It is a matter of history what occurred when an attempt was made to enforce an exchange of *pottahs* and *kabuliyats*. The Regulation stood for fifty years uncomplished and was then repealed. We know perfectly well and we sympathise with the strong feeling they have against any innovation. It is inconvenient for a raiyat to leave his work; it is inconvenient for him to go near any of these offices at all, and that for various reasons: he will not do it without real pressure being put upon him. It is clear that we are not able to serve separate notices upon millions of raiyats, and yet the proposal is made to tell the raiyats that if they are not affected by the automatic pressure provided in the Bill, there will be no pressure put upon them, and there is no reason for them to give notice of mutations; it will be time enough, they will be told, for you to go when you receive an order from the Collector announcing to you that a prosecution is about to be instituted against you. To accept this amendment will be as much as to say that this attempt to enforce registration of mutations is to be abandoned."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"After all that has been said and done in connection with this subject in Council to-day, I submit that this amendment ought to be rejected. What is reasonable and proper in connection with this amendment has already been provided in the amendment to section 24. The gist of the present amendment is that there should be notice before conviction; but that is already provided for in a much better form in the amendment which has been adopted in connection with section 24; so that the Collector is authorised, even after the institution of proceedings, to refrain from imposing a fine: the summons gives the tenant notice of his default: he can cure the default by complying with the law even after receiving the summons; if he does not care to cure his default, he must be fined. What further notice should be given to him before the imposition of a fine I fail to comprehend: in the summons with which he has been served, he has already got a notice that he has been in default. After having received the summons, knowing that he has to receive no further notice, the defaulter will not assume a defiant attitude, but on the other hand he will be repentant, and he will rather hasten to comply with the law than run the risk of a conviction in the prosecution. But if he knows that a further notice would be necessary before