

[*Sir Henry Harrison ; Dr. Gooroo Dass Banerjee.*]

THE HON. SIR HENRY HARRISON moved that, in section 187, for the words "seven days from the date of the death" the words "seven days of his becoming cognizant of the death" be substituted.

He said:—A medical gentleman represented to me that in many cases a doctor attends, but not having given satisfaction, he has not attended further. The object is not to make him liable under this section unless he knows of the death.

The motion was put to the vote and carried.

THE HON. DR. GOOROO DASS BANERJEE moved that, in line 3 of section 191, after the word "certificate" the words "or entry in a register" be inserted.

He said:—This is a verbal amendment. The object is to make the language of the section harmonise with section 190, which provides that in certain cases an entry in the register is substantially the same as a certificate.

The motion was put to the vote and carried.

THE HON. DR. GOOROO DASS BANERJEE moved that, for section 204, the following be substituted:—

"The Commissioners in meeting may acquire any land required for the purpose of opening, widening, extending or otherwise improving any public street, or of making any new public street, and the buildings, if any, standing upon such land."

He said:—The object of this amendment is to leave out of section 204 those classes which authorize the Commissioners to acquire in addition to any land which may be actually required for the opening or widening of any street, additional land extending to 100 feet on both or either side of the street. That provision, I submit, is wholly objectionable. Private property ought to be held to be sacred, and the compulsory acquisition of it ought never to be allowed unless it is distinctly required for a public purpose. Acquiring land for the purpose of selling it at a profit may be advantageous to the Municipality, but I can hardly persuade myself to say that it is a public purpose which would warrant compulsory acquisition. If the doctrine were true that a public body like the Corporation can increase their funds by acquiring lands in that way, the doctrine will be most dangerous to private property, and I do not think the hon. member in charge of the Bill will rest his case on that ground. I know it may be said that there is further justification. Whenever a new street is opened or an existing street

[*Dr. Cooroo Dass Banerjee; Babu Kali Nath Mitter.*]

is improved or widened, it increases the value of the adjacent land on both sides up to a certain distance, and if the former owners are allowed to retain the land, they will, it is said, benefit at another's expense. But if we examine the point a little more narrowly, it will appear that this argument is more specious than sound; for it is not correct to say that the owners of the adjacent lands derive advantage without paying for it. They do pay by contributing as rate-payers to the funds of the Municipality, and that is the purse out of which the acquisition is made. Nor can it be said that it will be wholly wrong for them to derive an incidental advantage. A street is to be opened or widened for a public purpose. It is a public purpose not merely because a street will be required for public traffic, but because the public will be benefited in other ways, such as by improved ventilation and the like. Therefore the advantage which the owners of adjacent lands derive by the value of their property being raised is one of the necessary incidental advantages to which the public or a portion of the public have a right. And I see no reason why the Municipality should be allowed to acquire these additional lands for the purpose of selling it at a profit.

Again it might be said that for the ornamentation of the town it is desirable that the buildings on either side of large streets should be of a certain form or size. This object would be secured if the Municipality in the first instance acquires land adjacent to a street and sells it under certain conditions. If that is the object, let us provide that the buildings by the side of public roads should, whenever they are taken down, be rebuilt in a certain way. That will be a far more satisfactory way of securing the object in view than this indirect mode.

THE HON. BABU KALI NATH MITTER moved that clauses (b) and (c) of section 204 be omitted, and that the last paragraph of the same section be also omitted.

He said:—This motion is precisely the same in effect as the last. Clause (b) of the section applies to the acquisition of additional lands, and clause (c) gives authority to sell or otherwise dispose of any land or building acquired under clause (b). And then there is a further clause that any reconveyance of land or of a building under clause (c) may comprise such conditions as the Commissioners think fit as to the removal of the existing building, the description

[*Babu Kali Nath Mitter.*]

of new building to be erected, and such matters. I do not know whether, having regard to the Transfer of Property Act, such conditions can be imposed. That Act regulates the purchase of property in Calcutta, and I am not aware that such conditions can be imposed. Besides that, my opposition to these clauses also rests on the ground that it is altogether inequitable. Section 190 of the existing law provides that the Commissioners, making due compensation to the owners and occupiers of any houses or land which may be acquired for any such purposes, may lay out and make new streets, and may widen, open, enlarge or improve any street; and for the purposes of this section the Commissioners in meeting may purchase any land necessary for houses and buildings to form any public street or for the improvement of any public street. So far as I have been able to understand the present Act, there are three modes by which the Commissioners may take over lands. First, they may do it themselves, under certain circumstances, the Court of Small Causes settling the amount of compensation to be paid; secondly, they may acquire it under the Land Acquisition Act; and thirdly, they may obtain it by purchase or by mutual agreement. I can see no objection to the Commissioners purchasing additional land whenever there is any necessity to do so; that means whenever the owner is willing to part with it. But the section in this Bill alters that, and makes it lawful for the Commissioners to acquire in addition land and buildings outside of the regular line of a street, provided that, without the special sanction of the Local Government, not more than 100 feet shall be acquired on either side of the regular line of the street. I wholly fail to understand this latter clause. Under the law in every instance the sanction of the Local Government is to be obtained, and without the sanction of the Government not a single inch of land can be acquired. The idea, though not stated in the section, is that by acquiring a great deal more land than is required when a locality is to be improved, the excess land when resold will fetch a considerably larger price than was paid by the Commissioners, and thus the cost of the improvement will be very much reduced, and in some cases it will probably be *nil*. That, I submit, is not the policy of the law. The policy of the law is that not only the present generation, but future generations should pay for works of a permanent character. If you drive away a large number of persons from their houses in expectation of re-selling the land at a profit, you virtually make

[*Babu Kali Nath Mitter ; Moulvi Abdul Jubbar.*]

property belonging to a certain portion of the community pay for the whole of the improvement. That to my mind is inequitable. The argument which has been put forward with success—and I have no doubt will be put forward now with a great deal of force—is that by spending a large sum of money the Commissioners improve a certain locality, and why should they do that for the benefit of a limited number of persons; that if this limited number of persons get the largest benefit, they should pay for an adequate share of the improvement—an adequate share by the deprivation of their property. If a loan is raised for the improvement, these persons will have to bear their share of the interest and of the sinking fund for the repayment of the loan; and moreover when the locality is improved, the assessment on the property of these persons will be increased. In the first instance they contribute in the same way as the rest of the public for the payment of interest and for the sinking fund; and secondly, because they enjoy the benefit most their property is made to pay a larger assessment. It strikes me also in another manner. Whenever a particular property is improved, it is improved no doubt in the first instance for the benefit of all, and secondarily for the benefit of the persons who reside in the locality. The improvement of sanitation benefits the town, and these persons expect to share in the improvement. But the secondary object of the improvement is defeated if the property is taken away from these persons, and they are driven out of Calcutta. If the Legislature provides that additional lands may be acquired for improving a locality, and that the excess lands should be re-sold to the parties at the cost price, the objection would be minimised. Of course, no profit would not then be made. But I rest my objection on the higher ground that a violation of the rights of private property should not be tolerated unless it is for the public benefit, and that is the ground on which the Land Acquisition Act is based. The Government has to declare that a particular tract of land is required for a public purpose, and then the acquisition can be made. Traffic in land is in effect declared by this section to be a public purpose, which to my mind is not a public purpose contemplated under the provisions of the Land Acquisition Act. Under these circumstances I move that these clauses of the section be omitted.

The HON. MOULVIE ABDUL JUBBAR said:—I support the motion of the Hon. Dr. Gooroo Dass Banerjee. I do not see any good reason for authorising

[*Moulvie Abdül Jubbar ; Sir Henry Harrison.*]

the Municipal Corporation to acquire more land than what is strictly required for municipal purposes. The only reason which is given for the authority claimed is that the adjacent lands on both sides of the street will command a higher value than they commanded before the street was opened or improved. But I do not think that is an equitable ground for depriving persons of their property. The property on either side of a line of railway is improved in value by its construction, but I do not think a Railway Company is authorised to acquire excess lands on both sides of a railway because their value will be increased by the opening out of the railway.

The HON. SIR HENRY HARRISON said:—I do not propose to argue this question at any length. The section in this Bill is not believed to make any change in the law: legal opinion has declared that clearly; but as some doubts had been expressed, it was thought as well to introduce the wording of the Bombay Act which states the matter clearly. To my mind the first principles of equity show as clearly as possible that what is proposed is right. The section provides that when you are constructing a street, you may take up sufficient land to cover the buildings on either side of the street: to make it possible for proper houses to be built, you must give proper plots of lands. Otherwise you will find here a deep block, there strips of a few feet wide only enough to build godowns. If you wish to ensure success, you must acquire sufficient land on either side; and having got the land, is there anything unjust in selling it for a higher price entirely caused by your improvement? Owners are already paid 15 per cent. in addition to the market value as compensation for the enforced acquirement. Suppose the construction of a street to cost twenty lakhs, and the property on both sides to be enhanced five times in value; our friends contend that the public should get none of the enhanced value, and that the fortunate owners on both sides of the street should get the whole of the benefit? To my mind there is absolutely no equity in such a proceeding. Those who have created the enhanced value of the side lands are the persons to whom the increased value ought to go. The law sufficiently guards the interests and rights of the owners themselves by giving them 15 per cent. as compensation in addition to the market value of their property. Therefore I hope the Council will reject these amendments.

[Dr. Mahendra Lal Sircar ; Sir Henry Harrison ; Dr. Gooroo Dass Banerjee.]

The HON. DR. GOOROO DASS BANERJEE'S motion being put, the Council divided r—

Ayes 4.

The Hon. Dr. Gooroo Dass Banerjee.
The Hon. Dr. Mahendra Lal Sircar
The Hon. Babu Kali Nath Mittar.
The Hon. Moulvie Abdul Jubbar.

Noes 8.

The Hon. H. Pratz.
The Hon. C H. Moore.
The Hon. Sir Alfred Croft
The Hon. Sir Henry Harrison.
The Hon. T. T. Allen.
The Hon. C P. L. Macaulay.
The Hon. H. J Reynolds.
His Honour the President.

So the Motion was negatived.

The HON. BABU KALI NATH MITTER'S motion was put to the vote and negatived.

The HON. DR. MAHENDRA LAL SIRCAR moved 'that, after clause (c) of section 204, the following words be added :—“ Provided that the profits accruing therefrom be devoted to the purpose for which the land is acquired.”

He said :—The object of the amendment is to prevent the profits derived from the construction or improvement of a street being applied to any other purpose. The amendment is so clear and just that I do not see what possible objection can be taken to it.

The HON. SIR HENRY HARRISON said :—I do not see any reason for this amendment. The Municipality does not derive any profit in such cases. If, for instance, the construction of a road cost 20 lakhs, and 15 lakhs are recovered from the sale of surplus land, the 15 lakhs are set off against the 20 lakhs.

The HON. DR. MAHENDRA LAL SIRCAR said in reply :—The proviso will serve as a check upon the Corporation acquiring more land than is necessary for a specific purpose, and it will prevent any surplus being applied to any other municipal purpose.

The motion was put to the vote and negatived.

The HON. DR. GOOROO DASS BANERJEE moved that, in line 7 of section 205, after the words “ compensation to ” the words “ and providing sufficient means of ingress and egress for ” be inserted.

[*Dr. Gooroo Dass Banerjee ; Sir Henry Harrison ; Babu Kali Nath Mitter.*]

He said:—The section as it stands only provides for the grant of compensation, by which I understand pecuniary compensation for the inconvenience caused by the closing of the road. The section says nothing about provision being made for means of ingress and egress of which in all probability the person will be deprived by the closing of the road. It may be said that, strictly speaking, under the ordinary law he would be entitled to means of ingress and egress, which is technically termed a way of necessity; but seeing that the section makes mention of the word “compensation,” there should be provision for a way of necessity. The amendment does not provide any additional obligation.

The HON. SIR HENRY HARRISON said:—The words “making compensation” are extensive. Compensation is to be given for every advantage which a person had, and the means of ingress and egress are usually matters which are included. It is perfectly certain that such provision will be made, otherwise the Corporation will have to pay enormous compensation, because the person’s house would be hermetically sealed. If the amendment is adopted, what will be included within the words? Will it mean that in every case there must be a carriage way? It will be for the Court to decide in each case. Even by the common law a person cannot be shut up in his house.

The HON. BABU KALI NATH MITTER moved that, for section 205, the following be substituted:—

“When any public street is permanently closed under section two hundred and three, the Commissioners may, with the consent of the owner or owners of the property situated on either side of such street, dispose of the site of so much of the roadway and footpath as is no longer required, making due compensation to such owner or owners. And if any dispute shall arise touching the amount or apportionment of such compensation, it shall be settled in the manner hereinafter provided for the settlement of disputes respecting damages and expenses:

Provided that in determining such compensation, the Court shall make allowance for any benefit conferred on the same premises or any adjacent premises belonging to the same owner by the construction or improvement of any other public street, at or about the same time that the public street, on account of which the compensation is paid, is closed.”

He said:—It is possible to conceive of many cases where a money payment will not compensate an individual for the closing of a road. Suppose

[*Babu Kali Nath Mitter ; Sir Henry Harrison*]

a part of a street is closed or diverted, and there are twenty houses on one side of it? The road may now be 20, 30, or 50 yards off, and the land between the new street and the house is bought by a stranger. The injury done to the owners of the property which was situated on the side of the old road will be so great that it will be impossible to compensate them by a mere money payment. Each owner should be allowed to take up the land in front of his house at a reasonable value and to advance his premises to the new street. There would then be no objection; but if strangers are allowed to come in, great injury will be done. The section should be so worded as to render it impossible for the Commissioners to commit such injury. By a resolution of the Commissioners in meeting, the individual is always offered the land in front of his house at a fair valuation. Before that resolution was passed, the land was always sold by public auction, and I know of an instance where such land of the value of Rs. 500 a cottah was with some ulterior object bought by a man's next-door neighbour for Rs. 2,400 a cottah. Since then the resolution to which I have referred was passed, and no difficulty has occurred. Practically the object of my motion is to retain the present state of things.

The HON. SIR HENRY HARRISON said:—I cannot admit that the Commissioners are not to be allowed to close a street except with the consent of the owners of property on either side of it. The words in the Bombay Bill are, “with the sanction of the Council the Commissioners may permanently close all or any part of a public street,” and in Select Committee they added:—“Provided that the sanction of the Council shall not be given unless at least one month before the meeting notice has been given informing the residents of the said proposal in order that objections may be received.” I have no objection to a provision of that kind. But under the amendment now proposed, the Commissioners will be unable to dispose of the site without the consent of the owners of the property situated on either side of the street. The section in the Bombay Bill provides that “the site may be disposed of and sold as land belonging to the Corporation.” If you construct a new street, you must sometimes close another street or part of a street. The right of selling the site must be given, compensation being paid for the injury done to owners of property, to such amount as may be determined by any independent tribunal.

[*Dr. Gooroo Dass Banerjee; Babu Kali Nath Mitter; Dr. Mahendra Lal Sircar, Sir Henry Harrison; The President*] /

THE HON. DR. GOOROO DASS BANERJEE said in reply :—The remarks of the hon. member in charge of the Bill go fully to show the necessity of inserting the words in my amendment. First he said that due compensation may be taken to include provision for ingress and egress. He may be of that opinion, but others may think differently. The word “compensation” means pecuniary compensation. At the same time he admitted that it is a common law right that a way of necessity must be given, and there can therefore be no objection to provide for it expressly by mentioning it in the law itself. The only word in my amendment which is considered objectionable is “sufficient,” but whether that word be inserted or not, the amount of compensation must be determined by a court of law. That, however, is no reason why no provision should be made in the Bill.

THE HON. BABU KALI NATH MITTER said in reply :—The hon. member in charge of the Bill is under some misapprehension as to the effect of my amendment, as he thinks it will interfere with the power of the Commissioners to close streets. Suppose the Commissioners close up a street, and the land between the houses in front of such street and the new street is sold to strangers; the owners of such houses will not have the means of ingress and egress? There is no provision in the existing law authorising the Commissioners to sell a street. [Sir Henry Harrison—The Commissioners may, under section 137, sell any land vested in them which is not required for the purposes of the Act.] That will not apply in these cases. I submit that section 205 of this Bill is a new provision, and it has actually been marked in the Bill as a new section; and before such a power is conferred there must be a safeguard as to the disposal of the land, having reference to the rights of the persons interested.

THE HON. DR. MAHENDRA LAL SIRCAR said :—I cannot understand under what circumstances a street can be closed without interfering with the sanitation of the town.

THE HON. SIR HENRY HARRISON replied :—The closing of a street is always undertaken in connection with some other improvement.

HIS HONOUR THE PRESIDENT said :—While I can perfectly see the objection to the motion of the Hon. Babu Kali Nath Mitter, I cannot understand what the objection to the amendment of the Hon. Dr. Gooroo Dass Banerjee

[*The President; Babu Kali Nath Mitter.; Sir Henry Harrison.*]

really is. I cannot see why this section, giving legal authority to dispose of the site of a closed-up street, should conflict with the resolution of the Commissioners under which the sale of land in front of private property is now conducted. The Commissioners now dispose of such land to the owners on either side of it, but if they cannot come to terms with them, they must give it to an outsider. But I do think a provision for ingress and egress very reasonable.

The HON. DR. GOOROO DASS BANERJEE'S motion being put, the Council divided:—

Ayes 5.

The Hon. Dr. Gooroo Dass Banerjee.
The Hon. Dr. Mahendra Lal Sircar.
The Hon. Babu Kali Nath Mitter.
The Hon. Sir Alfred Croft.
His Honour the President.

Noes 7.

The Hon. H. Pratt.
The Hon. C. H. Moore.
The Hon. Moulvie Abdul Jubbar.
The Hon. Sir Henry Harrison.
The Hon. T. T. Allen.
The Hon. C. P. L. Macaulay.
The Hon. H. J. Reynolds.

So the Motion was negatived.

The HON. BABU KALI NATH MITTER'S motion was put to the vote and negatived.

The HON. BABU KALI NATH MITTER moved that, in line 3 of the proviso of section 207, the word "direct" be omitted; and that the last clause of the same section be omitted.

He said:—Under the Land Acquisition Act damages are already allowed, and I cannot see why compensation should be limited by this Bill to "direct" damages. The Land Acquisition Act distinctly states what damages should be allowed. Indirect damages are as a matter of law never allowed.

The HON. SIR HENRY HARRISON said:—The question raised by this amendment is not of very great importance, but I will explain why the provision now objected to was put in. The law as it stands provides that whenever a house which projects beyond the regular line of a public street has been taken down in order to be rebuilt, the Commissioners may require the same to be set back to or towards the line of the street, or the line of the adjoining houses; provided that the Commissioners shall make full compensation to

[*Sir Henry Harrison ; Dr. Gooroo Dass Banerjee ; Mr. Macaulay.*]

the owner for any damage he may thereby sustain. Certainly that section reads as if it was intended to confer a power of some value on the Commissioners; for instance, they might take advantage of the opportunity to widen the street more advantageously than they could otherwise do; but if this amendment is adopted of what value is it? The question is, what is the compensation to be given? Is it compensation under the Land Acquisition Act? An instance in illustration of this occurred in Old Court House Lane in which a house was taken down for the purpose of being rebuilt, and it was pointed out that advantage might be taken of the opportunity to make the lane (an important thoroughfare) of uniform width. We gave notice to the owner of our intention to take up a small portion of the land at the orifice to the lane for the purpose stated, but he insisted on the Commissioners taking up the whole house, and demanded Rs. 80,000 as compensation. We took advice, and we were advised not to acquire the land unless we were prepared to face the probability of having to pay for the whole of the plot; and thus an important improvement was abandoned. Suppose in such a case there are two cottahs of land, and the Commissioners wish to take up one cottah, it is fair and reasonable that the owner should be compensated for any injury done in diminishing the area of the land as building ground, but no indirect damages should be included?

The HON. DR. GOOROO DASS BANERJEE said:—I support this amendment. The law will never give a decree for indirect damages, and therefore the common law being sufficient, we should not, for the benefit of the Corporation, insert a provision that is unnecessary. Just as in the other case the Hon. Member pointed out that for the protection of private owners it is unnecessary to include in the law what the common law already provides for: so in this case. And there is a further reason for supporting this amendment. In the definition given of "direct" damage reduction in size is stated, but no reference is made to alteration in shape which may equally cause a depreciation in value. We know that people require rectangular pieces of land for building purposes, and therefore change in the shape of the land is a material element.

The HON. MR. MACAULAY said:—I cannot see any necessity for the introduction of any reference to altering the shape of the piece of land. You can

[*Dr. Gooroo Dass Banerjee ; Babu Kali Nath Mitter.*]

only alter the shape of a piece of land in such a case by increasing its size or by reducing its size. Here there is no question of increase in size. Consequently the words referring to reduction of size must include alteration in shape.

THE HON. BABU KALI NATH MITTER said in reply :—A threat held out in a particular case should not justify an innovation in the law, on the supposition that the claim made in that case was a just one, and would be allowed by the courts. I do not think we can assume anything of the kind. Under the present law the owner will get what he is entitled to by the Land Acquisition Act, and I do not see why any difficulty should be thrown in the way by introducing the word “direct,” and then proceeding to define the word.

The Motions being put, the Council divided :—

Ayes 4.

The Hon. Dr. Gooroo Dass Banerjee.
The Hon. Dr. Mahendra Lal Sircar.
The Hon. Babu Kali Nath Mitter.
His Honour the President.

Noes 8.

The Hon. H. Pratt.
The Hon. C. H. Moore.
The Hon. Moulvie Abdul Jubbar.
The Hon. Sir Alfred Croft.
The Hon. Sir Henry Harrison.
The Hon. T. T. Allen.
The Hon. C. P. L. Macaulay.
The Hon. H. J. Reynolds.

So the Motions were negatived.

THE HON. BABU KALI NATH MITTER moved that, after section 212, the following new section be inserted :—

“212A. It shall not be lawful for an owner or occupier of a house, which does not front, adjoin, or abut upon a public road, street or lane, to lay out a new street, lane or pathway leading to such public road, street or lane, without obtaining the written sanction of the Commissioners, who may, before granting such sanction, call upon such person to submit a plan showing the intended level and width of such street, lane or pathway, and the arrangements made for draining it. If the Commissioners approve of the plan, they shall, within thirty days from the date of the receipt of such plan, accord such sanction ; but if they do not approve of the plan, they shall refuse such sanction.”

He said :—To my mind the provisions of section 213, if properly worked, will be quite sufficient for all purposes, but that section has hitherto not been worked in that way, and therefore it is necessary that a provision of this sort

[*Babu Kali Nath Mitter; Sir Henry Harrison.*]

should be introduced. Persons purchase land in the interior, not on the side of any street; they build houses, and leave small paths as streets or passages; other houses are built without leaving adequate paths for streets; the place becomes insanitary, and they ask the Commissioners to improve the locality. Precisely such a case happened in Sukea's Bagan, and it had to be improved at the expense of Rs. 30,000. It was sparsely inhabited at first, but afterwards became crowded with habitations. But if under the law a person having a house would be precluded from opening a street leading to a public street without permission, then the Commissioners would have full control as to the width of the street and the drainage. This amendment would render many of the sections providing building regulations unnecessary; because if the Commissioners have power in the first instance as to the opening out of streets, a great deal of the difficulty which at present arises will be overcome. Another case of the same sort recently came up in Rajah Bagan; small houses were built in promiscuous places without obtaining permission as to the opening out of lanes and pathways; the place got into an insanitary condition, and the residents applied for improvement. The late Officiating Chairman suggested the opening out of two large streets, and the result is that the Commissioners will have to spend about a lakh of rupees to improve the locality. All this will be prevented if the amendment which I now propose is adopted.

The HON. SIR HENRY HARRISON said:—'The Hon. Member has admitted that all he wishes to do is to make more clear what section 213 is intended to do. I have no objection to the wording of the proposed section, but I do not see any necessity for it. The inconvenience which is felt is not as to the laying down of a new street, but to the building of houses here and there without reference to any proper street, but with only small tortuous paths here and there. The object which this section is intended to meet will be better obtained under the building sections which come later on.

The motion was put to the vote and negatived.

The HON. BABU KALI NATH MITTER moved that, in line 1 of section 213, for the words "Every person who" the words "Whenever a person, being desirous of selling any land belonging to him in small parcels, or otherwise" be substituted.

[*Babu Kali Nath Mitter; Sir Henry Harrison; Mr. Reynolds; The President.*]

He said:—The object of this amendment is to widen the scope of the section in order to prevent the very cases which generally happen, viz., that of persons who sell lands in small parcels, leaving only narrow pathways.

THE HON. SIR HENRY HARRISON said:—The only objection I have to this amendment is as to its wording which is not clear.

THE HON. MR. REYNOLDS asked what test the Hon. Member proposed to show that a person is desirous of selling land in small parcels? The words proposed appear to be unnecessary.

THE HON. BABU KALI NATH MITTER said in reply:—To my mind section 213 is sufficient; but notwithstanding that section the Executive has not been able to control the cases which have happened; therefore I am desirous of seeing whether or not the section can be so improved as to deal with such cases. I wish to reach the person who in the first instance sells land in small parcels, instead of those who have purchased small plots of land, and subsequently build upon them.

THE HON. SIR HENRY HARRISON replied:—The object my hon. friend wishes to attain can best be secured by prohibiting the building of any house without the site being first approved. He wishes that owners should be prohibited from selling land in small parcels without warning the purchasers that they cannot build upon the land until a street is first laid out. I ask, is it the object of the owner of land to lay out roads? If asked, he will say he does not wish to lay out a new street.

THE HON. BABU KALI NATH MITTER said in reply:—In every case certain portions of the land are left for streets. If those streets are constructed with the approval of the Commissioners there will be no difficulty. If the site is objectionable the sale will be objected to at the beginning, instead of punishing the persons who have bought the land in small parcels, by refusing them permission to build on it.

[HIS HONOUR THE PRESIDENT thought the wording of section 213 covered all the ground of the amendment and more.]

The Motion was then, by leave, withdrawn.

THE HON. SIR HENRY HARRISON moved that, in the last paragraph of section 224, for the words "shall not apply to any portion of the area by this

[*Sir Henry Harrison ; Mr. Allen*] ,

Act added to the Town of Calcutta" the words "shall not apply to the area by this Act added to Calcutta, or to any area hereafter included in it under section two hundred and fifty-seven" be substituted.

The HON. MR. ALLEN said:—I think this section prohibiting the roofs and external walls of huts being made of inflammable materials is already in force in a considerable part of the area which is to be added to Calcutta.

The HON. SIR HENRY HARRISON said:—In such portions of the added area where this section is already in force, its provisions will at once be applied by the Commissioners in meeting, and it will be extended thereafter as they think fit.

The motion was put to the vote and carried.

The consideration of the further clauses of the Bill was postponed to the next sitting of the Council.

The Council was adjourned to Saturday, the 21st April, 1888.

CALCUTTA ;
The 3rd May, 1888.

WILLIAM GRAHAM,
for 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 Act of Parliament 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 21st April, 1888,
at 11 A.M.

Present :

THE HON. SIR STUART COLVIN BAYLEY, K.C.S.I., C.I.E., Lieutenant-Governor of Bengal, *presiding*.

THE HON. G. C. PAUL, C.I.E., *Advocate-General*.

THE HON. H. J. RLYNOLDS, C.S.I.

THE HON. C. P. L. MACAULAY, C.I.E.

THE HON. T. T. ALLIN.

THE HON. SIR HENRY HARRISON, KT

THE HON. SIR ALFRED CROFT, K.C.I.E.

THE HON. MOULVI ABDUL JUBBAR.

THE HON. BABU KALI NATH MITTLER.

THE HON. DR. MAHENDRA LAL SIRCAR, C.I.L.

THE HON. C. H. MOORE.

THE HON. DR. GOOROO DASS BANERJEE.

THE HON. H. PRATI.

CALCUTTA AND SUBURBAN MUNICIPALITIES AMALGAMATION BILL.

THE HON. SIR HENRY HARRISON moved that the clauses of the Bill to consolidate and amend the Law relating to the municipal affairs of the Town and Suburbs of Calcutta, as further amended, be further considered for settlement in the form recommended by the Select Committee.

The motion was put to the vote and carried.

THE HON. BABU KALI NATH MITTLER moved that section 235 of the Bill be omitted.

He said :—This section gives power to the Commissioners to approve of, or to reject, any building site upon which any person wishes to build.

[*Babu Kali Nath Mitter.*]

The section provides that the person shall submit a plan showing the position of the house with reference to—(a) some existing public street, or (b) some projected public street, or (c) some existing private street, or (d) some proposed private street; and the plan has also to show the position and approximate height of all other houses within 40 feet of the proposed site. These provisions are not in the existing law; and when the Bill was before the Council on the last occasion, these innovations had not been introduced. Then the existing law was modified to some extent, and it was considered sufficient to leave it in that position; but since then the hon. member in charge of the Bill has thought fit to introduce this section, and it was adopted by a large majority of the Select Committee. The members of the British Indian Association have taken exception to this section. A memorial has also been submitted to your Honour on behalf of a public meeting recently held, and in Select Committee I also took exception to it. My objection to the section is that the power given to the Commissioners is a very extensive one, and unless it is exercised with very great discretion, it is likely to be abused and a good deal of injury done to owners who want to build on their lands. Take, for instance, a case of this kind. A man has, say, 3 bighas of land which he wishes to sell in building lots, a man of ordinary means purchases 3 cottahs out of it, and then applies to the Corporation for permission to build. Under this section the Commissioners will be entitled to require him to show them where the proposed street is to be. This man having purchased only 3 cottahs out of the 3 bighas of land is not in a position to say where the proposed street will be; all he can say is that he is willing to leave some portion of his land which may be necessary for a street to be hereafter constructed. The rest of the land may not be sold for a year to come, and this man will in the meantime be kept from building on his land. This is perhaps an extreme case, but the power being conferred in the Commissioners, it may, for aught we know to the contrary, be exercised in this way. The proper safeguard is to require the owner of any land, before he sells it in building lots, to lay out proper streets with the sanction of the Commissioners. That is the real remedy. Such a provision will not only be just, but it will have the desired effect. But in the case I put of the purchaser of 3 cottahs of land out of 3 bighas, the land will be valueless to him, and yet he will

[*Babu Kali Nath Mitter.*]

have to pay rates and taxes in respect of it. Subject to correction by the learned Advocate-General and the Legal Remembrancer, I submit that an owner of land has an inherent right to make a legitimate use of his land as long as he does not cause any injury to his neighbours, and one of the legitimate uses to which he can put his land is certainly the building upon it of a suitable house for himself. I am quite willing, and I have never objected to power being vested in the Commissioners, to regulate the construction of buildings, but I object to any further power being given. The Select Committee in justifying the introduction of this section say in their report that a good deal of mischief has arisen from the absence of the power proposed to be conferred by this section, and that this power exists in the model bye-laws and in the Bombay Act. If the Commissioners consider that those model bye-laws should be followed, having regard to the manners and customs of this country, by all means let them make such bye-laws; but the circumstances in England and in this country are so different that the fact of the power existing under the model bye-laws in England is no justification for its introduction here. I have given notice of motion for the introduction of the following section in lieu of section 236 of the Bill, regarding the information to be given by a person before beginning to build a house :—

“ Before beginning to build any new house, or to rebuild or materially alter the structure of any house, the person intending so to do shall give to the Commissioners notice thereof in writing, and shall accompany such notice with a plan of the site and the proposed buildings drawn to the scale of not less than one inch to every eight feet, showing the following particulars :—

- (a) the position, form and dimensions of the several parts of such building, and of every water-closet, privy, urinal, cesspool, well and other appurtenances ;
- (b) the width and level of the street, if any, in front, and of the street, if any, at the rear of such building, the level of the foundation, and the lowest floor of such building, and of any yard or ground belonging thereto ;
- (c) the drainage of such building and of the intended site, depth, and inclination of such drain ”

I submit that if this information is given, it will be ample for all practical purposes : it will enable the Commissioners to exercise sufficient control over buildings, and it will be unnecessary to give the further power of approval or disapproval of the site. As far as I have been able to look into the English

[*Babu Kuli Nath Mitter.*]

Acts on the subject, the limitations apply to sites falling within proposed streets and sewers. These are the sites which are principally referred to in the English Statutes: the rest of the regulations are entirely as regards the nature of the buildings, the thickness of the walls, the open spaces to be left, and so forth. In the Bombay Bill section 340 provides as follows:—

“Every person who shall intend—

- (a) to make any addition to a building; or
- (b) to make any alteration or repairs to a building, not being a frame-building, involving the removal or re-erection of any external or party-wall thereof or of any wall which supports the roof thereof, to an extent exceeding one-half of such wall above the ground level, such half to be measured in superficial feet; or
- (c) to make any alteration or repairs to a frame-building, involving the removal or re-erection of more than one-half of the posts in any such wall thereof as aforesaid, such half to be measured in superficial feet, or
- (d) to remove or reconstruct any portion of a building abutting on a street which stands within the regular line of such street;

shall give to the Commissioner, in a form obtained for this purpose under section 342, notice of his said intention, specifying the position of the building in which such work is to be executed and the nature and extent of the intended work.”

The other sections of the Bombay Bill refer to the foundations and so forth, and I do not think they touch the point we are now discussing. The provisions in the Bombay Bill are very different from the sections in the Bill before the Council. They limit the power to sites which have not been built upon at all, and the first limitation is that where there is to be a new street it must be levelled and paved, and the opening of a new street may be dispensed with by the consent of the Standing Committee, so that in Bombay power has been given to the Corporation to control the discretion of the Municipal Commissioners. Here nothing of the kind is proposed. With every deference to the hon. member in charge of the Bill, I say that no controlling power is here given to the Corporation. I am fully aware that under the general supervising power of the Corporation over the proceedings of the Chairman, a motion may be brought forward in any particular case, and that the matter may be discussed. But that is a totally different thing: it is quite a different thing from first giving a power to refuse, and then leaving the aggrieved person liberty to

[*Babu Kali Nath Mitter.*]

have the matter brought forward by a Commissioner. The two things are totally different to my mind. As I have said, in Bombay there are the two things which the Bill provides regarding the approval of building sites; and as regards new streets, if there is to be one, it must be metalled and channelled: if there is to be no street, the matter is to be placed before the Standing Committee, and with their consent approval may be given. That is very different from the power to be taken here, for section 135 provides that until the approval of the site is signified in writing, the house shall not be constructed, so that I am quite correct in stating that in the case I have put the executive officers will be perfectly justified in refusing to grant permission. How then is the individual to utilise his land? Is he to wait till the whole of the 3 bighas have been sold, and a private street has been opened out before he can get permission to build? That is certainly not equitable. The memorialists say in the memorial presented to your Honour:—

“The building regulations (sections 235, 236, 237, 238, 241, 242, 243, and 244) invest the Corporation with preliminary powers, to refuse or to permit the erection of buildings. These sections are an unheard of innovation in the law of the land, and while they without fail to be a source of oppression to the people, they will, it is feared, lead to the depreciation of the value of land in Calcutta, and open a wide door to corruption.”

I am quite prepared to support that statement, and I would add that if the building regulations are passed in the form in which they have been presented to the Council, they will open a wide door to corruption so far as the subordinate officers of the Corporation are concerned; and furthermore if the requirements are not modified in the way proposed there will be also this difficulty, that it will be impossible for a person to get sanction in less than six months. He must first get the site approved, then the position and the nature of the building must be approved, then all the materials must be approved. Before all this can be done, it seems to me that at least six months will elapse before a person will be able to obtain the sanction of the Commissioners. After having the site approved he has to submit plans and sections of every floor of the intended building, which shall show the position, form, and dimensions of the several parts of such building and of every water-closet, privy, urinal, cesspool, well, and other appurtenance; and in the case of a building intended as a dwelling-house for two or more families, or for carrying on any trade or business

[*Babu Kali Nath Mitter.*]

in which a number of people exceeding twenty may be employed, or as a public resort, the means of ingress and egress; he has also to give a description of the materials of which the building is to be constructed, of the thickness of the walls and roof, and of the intended mode of drainage, the means of water-supply, and means of ventilation; and if the building is to adjoin or abut on a street, the intended means of access from such street. To satisfy the Commissioners as to all these particulars must take a long time. As to the materials, the man may get his lime and his sand and the officer might not approve of them; he will have to pay for them, and yet he cannot make use of them. All these things in my opinion are not necessary in order to exercise proper supervision over the building. I do not think the Commissioners have anything to do with the internal arrangements of the house. I think it will be sufficient if control is exercised as to the level and the drainage of the intersected house and its position with reference to any street, and that the privy and cesspool are in a suitable place. A person may be building a house for his own residence, but he might fall into difficulties and wish to let it out to others. It will therefore be impossible for him to say whether it is to be a dwelling for two or more families, and the like. Well, having obtained all this information, the Commissioners may disapprove of the building for any of the following reasons: that it will be unsafe; that it encroaches on or over municipal land; or that its construction contravenes some specified provision of the Act or some specified bye-law made under the Act; and then the building shall not be proceeded with till such modifications have been made as will satisfy the requirements of the Commissioners. In place of these several provisions, I have read to the Council the provisions I propose. The second section which I propose runs as follows:—

“Within thirty days after receiving such notice as is mentioned in the last preceding section, the Commissioners shall see whether the proposed buildings are in accordance with such bye-laws as may be prescribed in this behalf. And if they are so, shall signify their approval of the proposed buildings; and if they are not, they shall, within a like period, point out such modification as to them may seem desirable.”

The advantage of what I propose will be this. The Commissioners in meeting have first to pass certain bye-laws, and before they can be operative they must have the sanction of the Local Government. There will be the

[*Babu Kali Nath Mitter; Sir Henry Harrison.*]

safeguard, first, of the Commissioners in meeting, deciding, and then the approval by the Local Government of the proposed bye-laws. Whereas if these regulations are provided in the Act in the manner proposed, there will be great difficulty in the way of persons building on their own land. I do not think the object of legislation should be to depreciate the value of land in Calcutta. The value of land now is very high, and that means the prosperity of the town and a high assessment by the Commissioners. But if there is any doubt whether sanction will be given to building on any particular land, the value of land will decrease, and that is certainly not desirable. The policy of the sections in the Bill seems to be to punish persons who have purchased lands, and not the person who has received the purchase-money. If, on the other hand, the hon. member in charge of the Bill had proposed sections to prevent persons selling land in such a way as to place the purchaser in the awkward position of being unable to utilise it for building purposes, I could understand it. I pointed this out in Select Committee repeatedly, but I was not able to convince the Committee that that was the right position to assume in respect of this matter.

The HON. SIR HENRY HARRISON said:—This matter is one of considerable difficulty and importance, and I would ask the Council to give it their best attention, and not to start with any prejudiced idea that the sections in the Bill are unnecessarily embarrassing or harsh. I will first remind the Council that we have to consider the suitability of the procedure proposed in the Bill as compared with the alternative procedure now proposed. It is useless for the Hon. Member to refer to the law in Bombay or in England, unless he is ready to move its adoption. In Calcutta the procedure is for the Executive as representing the Commissioners to act in the first instance, but they are under the control of the Commissioners at every stage. In Bombay, the Commissioner, who is the executive officer, is not under the control of the Corporation, except in matters in which it is definitely prescribed in the law that he shall be so. But after allowing for this difference of system, I believe there is no substantial difference between the procedure in this Bill and that at Bombay. The question is, can the procedure in the Bill be improved without materially affecting its efficiency? If that can in any way be done, I shall be glad to adopt any such proposals. But we must not lose sight of the circumstances under which

[*Sir Henry Harrison.*]

the question comes before the Council. The Select Committee gave their special attention to the question as to sites for building, because Dr. Simpson, the Health Officer of the Corporation, stated that the health of the town and the possibility of its conservancy were seriously jeopardised by the way in which houses are now built, so as to make straight and wide streets impossible; and two of the public bodies in the town also drew special attention to the question. The Calcutta Trades' Association writes:—

“Section 195. This section, which deals with the laying out of new streets, appears to be susceptible of improvement. It requires that the level and width of every new street shall be fixed or approved by the Commissioners, but it should also, the Committee consider, fix their minimum width, which should not, in the case of main streets, be less than 36 feet. As regards bustee lanes and back bustee lanes, their width should not be less than 12 and 9 feet, respectively, from eaves to eaves. It is in the opinion of the Committee, of the utmost importance, in view of the facts contained in Mr. H. J. S. Cotton's note on Raja Bagan Bustee, that the new Act should deal with this subject in a thorough manner. Mr. Cotton but represents the feelings of the public when he states that ‘the superabundance of narrow lanes in the respectable inhabited portions of this city is an intolerable nuisance,’ and the Committee of the Association are convinced that there will be no abatement of the nuisance until the Commissioners are vested with the necessary powers for dealing with it.”

The Health Society similarly writes:—

“The insertion of four new sections is recommended after section 196 of the Bill. While on this subject the Secretary would invite the special attention of His Honour's Government to the remarks made by the Health Officer to the Corporation, Dr. W. J. Simpson, at pages 24 to 27, both inclusive, of his Annual Report for the year 1886, on the need of building regulations in this city. It would also draw special attention to a valuable memorandum on Raja Bagan Bustee, which was drawn up by the late Officiating Chairman, Mr. H. J. S. Cotton, and to the Proceedings of the Fourth Meeting of the Special Committee appointed by the Corporation to consider the amended Bill. The Council would only add that they are in complete accord with the views of the late Officiating Chairman and of Dr. Simpson; and they would urge, for the reasons which appear in the documents referred to, that building regulations applicable to both houses and huts should be embodied in the new Act.”

With these recommendations before us, together with the special remarks of Dr. Simpson, we did what reasonable men would do who are convinced by the force of the arguments urged upon them. One of the most serious evils in Calcutta is the way in which new suburbs spring up and houses are built in the

[*Sir Henry Harrison.*]

most chaotic manner so as to render conservancy impossible, and therefore it became incumbent on me to devise some means of regulating their construction in future. After full consideration I thought the form of dealing with the subject which this Bill proposes the best, namely, to give the Corporation the fullest control over the sites in the first instance, inasmuch as it will be impossible to provide an adequate remedy afterwards except at an enormous cost. If we can devise any means of making the person who sells land in building lots responsible in respect of the proper laying out of streets, I would be entirely in accord with my hon. friend; but I can see no way to do it. Suppose it was proposed that no person shall be allowed to sell his land in building lots until he satisfies the Commissioners that he has made proper provision for the opening of streets and the like? That a person is not to be allowed to sell his land without stating the purpose to which the land is to be applied; that the sale is to be invalidated unless the object is declared, and unless the Corporation is satisfied that these evils will not occur, would that be tolerated? I see no other way of doing it. If the Hon. Member can draft a better procedure, he should do so. Either you must leave the evils uncured, or you must have some such provisions as those contained in the Bill. It is impossible to intervene between the vendor and the purchaser at an earlier stage. We cannot take action until the use to which the land will be put is declared. It is unfortunate, no doubt, that an innocent purchaser should be the person who suffers, but we cannot put in our oar until it comes to the point of some one saying, I want to build on that land.

Now let me describe the procedure, and ask the Council to say whether it is harsh or dilatory. My hon. friend's proposal is that the site should be indicated and certain details given in all cases, whether the building is to be an addition to an existing house, or a new house; and further he proposes that within thirty days after receiving the notice, the Commissioners are to see whether the proposed buildings are in accordance with the bye-laws. Is it not obvious that that procedure does not meet the difficulty? If the Commissioners do pass bye-laws, how will it be better for the person? Would the bye-laws not say that the mode of access to the house must be shown, and the way in which it would be a mode of access to other houses in the neighbourhood so as to form a continuous street? If the bye-laws shirk this, then they will be of no use at all. The sections in the

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Bill have been specially drafted with a view to give the minimum of trouble. We avoid the hardship of going through the same forms in the case of an addition to an existing building, which may be only a godown or a coach-house, or stables, or some minor alteration. We do not make the question of site apply unless to a new house. In such cases the person has only to send in a very brief summary of what he proposes to do, in a printed form, to be prescribed by the Commissioners. Great value attaches to the use of a printed form. If people are allowed to send in the information according to their own ideas, they are most likely to put in things which are not wanted, and to leave out information which is essential; so we require that a printed form, to be supplied by the Commissioners free of charge, shall be used. Then a uniform scale is prescribed, because in that case you can file all these plans street by street, and can make out a complete plan of the whole street. These provisions require very little indeed; they comprise the information which is always required in ordinary cases. But if a new house is to be built, then the person must get sanction to the site, and the Commissioners may ask for information on a vast number of points copied from the Bombay Bill. But we have an alternative procedure. Applications for buildings of a simple kind can be passed without difficulty and in a short time; but if it is a large building of two or three stories which it is very desirable to watch and supervise properly, then a great deal more information is necessary. There is, however, nothing to prevent the builder sending all the requisite information at once—the plan of the site and the further information regarding the building in one and the same application, and of necessity there is nothing to prevent the whole being carried through in a fortnight without difficulty, because, though the Commissioners have a right to thirty days' time for the approval of the site and thirty days to give sanction for the building—not six months as the Hon. Member apprehends—if the proposed construction is put into the hands of a proper builder under circumstances which raise no difficulty, there is nothing to prevent the whole thing being passed in a week.

As regards the provisions relating to the site, they have been made as lenient as possible. All that is wanted is that the house shall not be built in such a way as to make it impossible to make it fit in with any proper street. If there is any existing public street leading to it, it must be shown. If there is no

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public street, but there is a projected public street in the locality in which new buildings are springing up, then the position of the site with reference to such street must be shown. If there is no public street either existing or projected, then the position with reference to an existing private street or projected private street must be given; and lastly, suppose no provision can be made for any such street, then for special reasons the Commissioners may accord sanction without reference to any street, public or private. The objection that it will lead to corruption and abuse of authority is an objection that may be taken to any Municipal Bill, but in framing a law we are bound to assume that the power will be exercised in a fair and reasonable manner, and there is moreover a special safeguard, inasmuch as the Executive are at every stage subject to the control of the Commissioners. Any person aggrieved can go to any Commissioner or to the ward Commissioner, and draw his attention to any proceeding of the Executive, and have the matter investigated by the General Committee or the Commissioners in meeting; and if anything unreasonable or harsh has been attempted, he can get it set aside. My hon. friend has argued as if these regulations are particularly harsh or at least stringent, and as if they might easily be relaxed without inconvenience. In Select Committee we were precisely of the opposite opinion. The Health Officer at every stage insisted that we were doing nothing; that the law would not be nearly sufficient; that we were leaving everything to the discretion of the Commissioners and to the bye-laws, and were not providing proper safeguards by legislative enactment. This was uniformly the burden of the position he took up before the Select Committee. We felt that what we were doing was the minimum; we were perfectly alive to the contention of my hon. friend that India was very different from England. We refused to introduce a number of provisions that are to be found in the Bombay Bill, although we were pressed by Dr. Simpson to insert them, because we felt that we had not sufficient knowledge of the circumstances of Indian life to justify the enactment of hard-and-fast rules of that kind. After all I am satisfied that in this Bill very little has been put in; we have put in the minimum of what seemed absolutely necessary; and unless this control over building sites is given, it will be impossible to prevent in future those evils which now exist, namely, the evil of persons building houses as they choose without reference to any regular street or to the

[*Sir Henry Harrison ; The Advocate-General.*]

other requirements of sanitation. My hon. friend has referred to the case of a person buying for building purposes a plot of 3 cottahs out of a piece of land 3 bighas in extent. That is just one of those instances of the idea which prevails in Calcutta that the interests of the community must be sacrificed to the convenience of the individual; that to avoid hardship to an individual the community must suffer; and it is extremely difficult to induce the people to understand that the individual should be placed under restrictions, having regard to the interests of the community in general. When a man is about to purchase a piece of land, he ought to bear in mind, in the first instance, that he should build upon it in a way that will enable houses in the neighbourhood to spring up in regular lines of streets. That is a most necessary discipline, and unless we are prepared to make people learn that the individual must so manage his own affairs that they shall be consistent with the well-being of those around him, we shall not have made any step in advance. Therefore, as regards the general principle of these sections, I submit that they are preferable to the provisions proposed by my hon. friend. He gives no control whatever over building sites and buildings except through bye-laws to be hereafter made by the Commissioners. Till such bye-laws are made, and when made if they are not as stringent as the provisions of this Bill, there will be no power to prevent the overcrowding of buildings without reference to the requirements of sanitation. The provisions he proposes lay down one hard-and-fast rule applying to the case of a small addition to a house and to a very large new building. The Bill makes a clear distinction between the two cases, and seems more convenient in this respect. There are one or two other matters to which I desire to refer, but they have reference more particularly to subsequent amendments on the list.

THE HON. THE ADVOCATE-GENERAL said:—There is one matter which I think should be pointed out. The section provides that the position of the house must be given with reference to certain streets. It says that the Commissioners shall either signify their approval of the site, or for reasons recorded their disapproval thereof as not being a proper site with reference to the street shown in the plan. That leaves it entirely to the caprice of the Commissioners as to what is a proper site. I can understand a rule which states that a building must be so many feet from a street. A. says:—I

[*The Advocate-General; Sir Henry Harrison; Babu Kali Nath Mitter.*]

propose this site. The Commissioners say, we do not think that a proper site. Having given no proper test of judging what is a proper site, it rests with the Commissioners to say what is or is not a proper site. I consider that such an extensive power which might be exercised arbitrarily should not be given. My hon. friend in charge of the Bill says, if you object to the provision in the Bill, draw a better one. It may be that another person may not be able to draw a better provision on the lines of the section; but I say that that is no argument at all. In section 238 special reasons are given which shall justify refusal in respect of a building; that it will be unsafe; that it encroaches upon municipal land, or that its construction contravenes some specified provision of this Act. Three special reasons are given upon which the Commissioners may refuse their approval of a building. Unless those who have thought about it are able to suggest some appropriate way of providing a test which will justify the Commissioners in disapproving of a proposed site, I shall not be able to give my assent to section 235. If the Commissioners say a site is not proper, the individual is completely without remedy.

The HON. SIR HENRY HARRISON said in reply:—I should be glad to see a provision introduced such as my hon. and learned friend the Advocate-General suggests, but I think it will be very inconvenient to lay down any hard-and-fast rule. The tribunal which is to judge will be a most lenient one, and there will be infinitely more danger of too much leniency than over-stringency. First, the Engineer will approve, then it will come before the Chairman, and then it may be taken before the Town Council and the Commissioners in meeting; and these will be found to be the easiest tribunals possible. Whereas if the distance from a street is fixed at 10 or 20 feet, it may be found not to work at all. The object is to make it possible to get some street in, so that it may be a proper site with reference to such street and the adjacent buildings. The Commissioners will be bound to show that it is not a proper site with reference to some existing or projected street or to the adjacent buildings. Can we go further than that without leading to harshness and inconvenience?

The HON. BABU KALI NATH MITTER said in reply:—My hon. friend has asked what alternative proposal I would make in order to have proper regulations on the subject. The answer is quite evident. If the sections which were discussed on the last occasion regarding the laying out of new

[*Babu Kali Nath Mitter.*]

private streets are properly worked, cases such as those of Rajah Bagan and Sakea's Bagan could never have happened. The parties opened out several streets before the buildings were erected, and if the owner was prosecuted for doing so without sanction, the mischief would have ended; but that was not done, and those narrow and irregular streets were allowed to be opened. Then applications came for building, and as under the existing law there was no power to refuse, the buildings were sanctioned. But had there been a power to frame bye-laws in regard to buildings, with power to the Commissioners to refuse sanction to buildings not in accordance with such bye-laws, the remedy would have been at once found. That is a complete answer to the challenge of my hon. friend. Then he said that if these sections are not passed, the difficulty will only be postponed. I submit not. The circumstances of the country have to be taken into consideration. The Health Officer to the Corporation is no doubt a very competent officer, but he has no experience of this country. He comes fresh from England with English notions, and he naturally wishes all the provisions of the English Statutes to be introduced here; but it seems to those who live here that the provisions of the model bye-laws in England are not suitable to the manners and customs of the people here. Therefore it will be best to leave the framing of bye-laws to the Commissioners, and as they will require the sanction of the Local Government, the objection of my hon. friend will be minimised. So far as I have been able to gather, the English provisions have reference to buildings falling within certain streets or projected streets or constructed over sewers. I again submit that if the matter is left in the way I propose it will serve the purpose, more specially if proper attention is paid to the provision referring to private streets, and a prosecution instituted for its infringement. Reference has been made to what was urged by the late Officiating Chairman regarding Rajah Bagan. That is precisely one of the cases to which I referred when I addressed the Council before. A man purchased a large tract of land and resold it in small lots after leaving out certain passages. The Commissioners took no exception to the opening out of those streets without sanction; the purchasers of the building lots then applied for permission to build, and there being no power of refusal, sanction was given. The buildings were raised; the streets or passages were narrow and tortuous, and necessarily the place was reduced to a very insanitary condition. It

[*Babu Kali Nath Mitter.*]

would have been unfair to visit with punishment the purchasers of the building lots by refusing them permission to build: the person who should have been attacked was the man who sold his land in small building lots without making provision for the opening out of proper streets, and this could have been done under the existing law. I therefore submit that there will be no difficulty in working the provisions which I propose.

The motion to omit section 235 was put to the vote and negatived.

The motion to substitute the following, for section 236, was also put to the vote and negatived:—

“Before beginning to build any new house, or to rebuild or materially alter the structure of any house, the person intending so to do shall give to the Commissioners notice thereof in writing, and shall accompany such notice with a plan of the site and the proposed buildings drawn to the scale of not less than one inch to every eight feet, showing the following particulars:—

- (a) the position, form and dimensions of the several parts of such building, and of every water-closet, privy, urinal, cesspool, well and other appurtenances;
- (b) the width and level of the street, if any, in front, and of the street, if any, at the rear of such building, the level of the foundation, and the level of the floor of such building, and of any yard or ground belonging thereto;
- (c) the drainage of such building and of the intended size, depth, and inclination of such drain.”

The HON. BABU KALI NATH MITTER'S motion to omit section 237 was also put to the vote and negatived.

The HON. BABU KALI NATH MITTER'S motion to substitute the following, for section 238, was also put to the vote and negatived:—

“Within thirty days after receiving such notice as is mentioned in the last preceding section, the Commissioners shall see whether the proposed buildings are in accordance with such bye-laws as may be prescribed in this behalf. And if they are so shall signify their approval of the proposed buildings; and if they are not, they shall, within a like period, point out such modification as to them may seem desirable.”

The HON. BABU KALI NATH MITTER'S motion to omit section 239 was also put to the vote and negatived.

[*Babu Kali Nath Mitter ; Dr. Gooroo Dass Banerjee.*]

The HON. BABU KALI NATH MITTER, by leave, withdrew the following motions of which notice had been given :—

(1).. That section 240 be omitted.

(2). That for section 241 the following be substituted :—

“If any building or alteration, such as is referred to in section two hundred and thirty-six, be commenced without the notice and plan required by that section being sent to the Commissioners, or before the expiration of the thirty days, or at any levels different from those fixed by the Commissioners within the said thirty days, or in contravention of any lawful orders issued by the Commissioners under section two hundred and thirty-eight, the Commissioners may cause such work as has been done to be demolished or altered in such manner as they may think fit, and the expenses thereby incurred shall be paid by the person failing to comply with the requirements of the Act ”

The HON. DR. GOOROO DASS BANERJEE moved that, after the fourth paragraph of section 235, the following new proviso be inserted :—

“ Provided that where any site is disapproved by reason of its falling wholly or in part within the lines of any projected public street, the owner of such site shall be entitled to reasonable compensation if the site or the portion thereof that falls within such lines be not required by the Commissioners in meeting under section two hundred and four of this Act within one year after the date of such disapproval.”

He said :—Under the existing law the Commissioners have power to refuse sanction for a building if they disapprove the levels and foundation or it is otherwise contrary to the provisions of the Act; but they have no power to disapprove the site. Section 235 gives this additional power of disapproving of a site altogether for building purposes. Whether this large power should be given to the Commissioners or not is a question with which my present amendment has nothing to do. Conceding, however, that this power ought to be given, yet seeing that the exercise of it involves serious interference with private property, it seems desirable that the grounds of the exercise of this power should be narrowly examined, and that care should be taken to guard against any possible hardship or injustice in any case. Now referring to section 235, you will observe in lines 6 and 7 of paragraph 4 that amongst the grounds on which the Commissioners may disapprove any particular site is this, viz., the fact of the proposed site falling wholly or in part within the lines of any projected street. If the Commissioners find, on examining the plan, that the applicant proposes to build on land which falls within the line of any projected

[*Dr. Goroa Dass Banerjee ; Sir Henry Harrison.*]

street, not an actual street, they may disapprove the site. The Commissioners under section 208 are authorised from time to time to prepare plans of proposed public streets, and it may happen that the Commissioners may anticipate the work of years and propose plans which are not likely to be carried out in the course of one or two years, but may take 10 or 20 years to complete. They may disapprove a site for building purposes which they may find they will have shortly to acquire for a public street, and which will cost much more money to acquire if built upon. In the interests of the Municipality there may not be anything very inequitable if they do so. That is the Corporation's side of the question. But it is necessary also to examine the rate-payers' side of the question. Where land is acquired or is about to be acquired the rate-payer loses nothing, for he gets the value of the land, and he may buy other land to build upon. Where, however, the site is disapproved because it is likely to be taken up by some projected street, and it is not likely the projected street will become a reality until 10 or 20 years, it is hardly fair to deprive the owner of the legitimate use of the land without paying him compensation. Under the Land Acquisition Act, if the land is acquired, he will be entitled only to the value of the land: it does not provide any compensation for any interdict laid upon the owner prohibiting the use of the land until it is acquired. It is therefore, I submit, very necessary in the interests of the public to prescribe some limit of time within which the land should be acquired. My amendment allows a whole year's time to the Municipality. If they do not acquire the land within a year, then only will they have to pay compensation.

The HON. SIR HENRY HARRISON said:—This is not an unreasonable proposal, and I cannot say I think it necessary strongly to oppose it. But there is some disadvantage from a public point of view; and the question for consideration is the balance of advantages and disadvantages. The disadvantage from the public point of view is that it puts a somewhat unfair pressure on the Commissioners to anticipate action which may be reasonable. Suppose the neighbourhood of some street running in a certain direction becomes a building neighbourhood, the Commissioners mark the continuation of the street as the line of the new projected street. This is quite evidently the line the street ought to follow as soon as buildings spring up in the neighbourhood. Suppose some one proposes to build on a portion of the line of that street, which may be done for the purpose of

[*Sir Henry Harrison; The Advocate-General; Dr. Gooroo Dass Banerjee.*]

forcing their hands, then the Commissioners may be compelled to take up the land and construct the street long before it is wanted, simply on account of the pressure put if the proposal to build is refused. On the other hand, I quite admit the hardship to the individual if he has no other place to build upon; but it may happen that although the line of street has been marked, there may be so much delay that the Commissioners may not be prepared to go on with the street within the year. I shall, however, raise no objection to the amendment if the Council think it a necessary act of justice.

THE HON. THE ADVOCATE-GENERAL said:—There ought to be no power to undertake the making of a street unless there is a reasonable prospect of making the street within a reasonable time. Here the demand is for compensation if you do not allow the man to build. I think the proposed provision is a reasonable one.

The Motion being put, the Council divided:—

Ayes 8.

Noes 5.

The Hon. Dr. Gooroo Dass Banerjee.

The Hon. H. Pratt.

The Hon. Dr. Mahendra Lal Sircar.

The Hon. C. H. Moore.

The Hon. Babu Kali Nath Mitter.

The Hon. Sir Alfred Croft.

The Hon. Moulvie Abdal Jubbar.

The Hon. Sir Henry Harrison

The Hon. C. P. L. Macaulay.

The Hon. T. T. Allen.

The Hon. H. J. Reynolds *

The Hon. the Advocate-General.

His Honour the President.

So the Motion was carried.

THE HON. DR. GOOROO DASS BANERJEE moved that the last paragraph of section 235 be omitted.

He said:—In the earlier part of this section thirty days is the period within which the Commissioners must signify their approval or disapproval of the site, or pass any other order they may think fit. And thirty days is time enough for an efficient public body like the Calcutta Corporation to take proper action in the matter. But if the last paragraph of the section stands, it nullifies the operation of the first portion, and gives an unlimited time within which to pass orders. It is hardly fair to provide an indefinite prohibition.

[*Sir Henry Harrison; Dr. Gooroo Dass Banerjee.*]

The HON. SIR HENRY HARRISON said:—This is a matter of some difficulty, and I am free to say that the proposal of the Hon. Member is the identical one which I put before the Select Committee in the first instance. It is the general rule that unless disapproval is signified, approval is assumed, and that has been the rule hitherto in Calcutta. At the same time the Select Committee purposely put in the provision for reasons they considered sufficient. They considered it absolutely necessary that the builder should get approval. In such matters there is great room for manœuvring. In general a person who proposes to build on a site to which there can be no objection will send in the papers in the usual way and orders will easily be passed. But suppose he does not wish orders to be passed within thirty days, no doubt there are various means by which that can be manipulated; for instance, by sending in the papers a day or two before the Poojah vacation, and arranging that it should not be laid before the superior officers for that day or two, or by arranging with a subordinate that it shall lie in his desk, and be overlooked for a time, or last of all, by somehow evading receipt of the disapproval, because the receipt of the order of disapproval must be proved; consequently it is of the highest possible importance that approval should be obtained. If you make an order of approval necessary, it is more likely to be pushed on. On these grounds it seemed desirable that approval should be insisted on before beginning to build. There may be only two or three out of a hundred cases in which the proposal to build will, by no possibility, have sanction; and though the omission to pass orders within the prescribed time may happen in only a small percentage of cases, it is precisely in that small percentage of cases that the danger will happen. For these reasons the Select Committee thought it better to put in this provision.

The HON. DR. GOOROO DASS BANERJEE said in reply:—The hon. member in charge of the Bill has been pleased to point out that the necessity for inserting this paragraph of section 235 arises from the fact that the applicant may by manœuvring prevent the Municipality from taking up the matter within thirty days. That amounts almost to a confession, coming as it does from the Chairman of the Corporation, that the subordinate officers of the Municipality are amenable to such improper influences; if so, there is all the more reason why not only this paragraph of this section, but the whole of the building regulations should be done

[*Dr. Gooroo Dass BAKERJEE ; Sir Henry HARRISON ; Babu Kali Nath MITTER.*]

away with. Because just as there may be reason for the Municipality being taken advantage of by the action of their own officers, there is greater reason for the rate-payers being harassed by the action of these people. It becomes the Corporation to reform their own house before imposing building regulations for improving the houses of the ratepayers. I submit that what has been stated is no reason why we should have such a clause to the prejudice of the people. If its omission operates to the prejudice of the Corporation, the Corporation can take care of itself.

The motion was put to the vote and negatived.

THE HON. SIR HENRY HARRISON moved that, for the first eight lines of section 237, the following be substituted:—

“On receipt of such notice, the Commissioners shall, within thirty days, by a written order, either sanction the building of the new house, or for any one or more of the reasons set forth at the next succeeding section, disallow it, or call for further information on all or any of the following details.”

He said:—This is not intended to alter the sense. The alteration was suggested by the Secretary. Section 237 is identical with a certain portion of section 235, and the Secretary asks me to move this amendment, so that the wording of section 237 may be in accordance with the wording of section 235.

The motion was put to the vote and carried.

THE HON. SIR HENRY HARRISON moved that, in the last paragraph of section 237, for the words “competent surveyor” the words “competent builder or surveyor” be substituted.

He said:—This is a mere verbal alteration.

The motion was put to the vote and carried.

THE HON. BABU KALI NATH MITTER moved that section 242 be omitted.

He said:—The Commissioners have the power of demolition, and that is sufficient. To prosecute a man after demolishing his house is a heavier punishment than is necessary. The demolition of the building would be at the man's expense, and it is not necessary that the man should be further punished.

THE HON. SIR HENRY HARRISON said:—Generally the Commissioners exercise the ordinary power of rectifying what has been done wrong; but there are

[Sir Henry Harrison; The President; Babu Kali Nath Mitter;
Dr. Gooroo Dass Banerjee.]

some cases in which special *malâ fides* are shown, and in such cases the man should be prosecuted. It is quite in accordance with the spirit of the existing Act, and has been acted upon in at least half a dozen cases.

HIS HONOUR THE PRESIDENT said:—The last part of the section is very important; you prosecute him and compel him to demolish the building at his own expense.

THE HON. BABU KALI NATH MITTER said in reply:—The effect of the section is very different from what the hon. member in charge of the Bill describes it to be. I am not aware that under the existing law the power is precisely the same. It does seem to me to be a very harsh proceeding.

The Motion being put, the Council divided:—

Ayes 3.

The Hon. Dr. Gooroo Dass Banerjee.
The Hon. Dr. Mahendra Lal Sircar.
The Hon. Babu Kali Nath Mitter.

Noes 10.

The Hon. H. Pratt.
The Hon. C. H. Moore.
The Hon. Moulvie Abdul Jubbar.
The Hon. Sir Alfred Croft.
The Hon. Sir Henry Harrison.
The Hon. T. T. Allen.
The Hon. C. P. L. Macaulay.
The Hon. H. J. Reynolds.
The Hon. the Advocate-General.
His Honour the President.

So the Motion was negatived.

THE HON. DR. GOOROO DASS BANERJEE moved that, in lines 1 and 2 of section 242, the words "in addition to or" be omitted.

He said:—Section 242 prescribes a penalty for building contrary to the orders of the Commissioners in addition to the demolition of the building under the preceding section. It is clear that the Commissioners do not require both these powers. It is not necessary to demolish a building, and at the same time to prosecute the person for contravening the orders of the Commissioners. If the object of the prohibition has been attained, there should be no further punishment. The object will be fully gained, if we leave out the words "in addition to or."

THE HON. SIR HENRY HARRISON said:—I have no objection to the motion, except that it is wrong in principle. I think there may be cases in which the

Commissioners should have an alternative procedure. This is a power which will be exercised very rarely, but in some cases it ought to be exercised, though it is of no great practical importance.

THE HON. THE ADVOCATE-GENERAL said:—I also think the principle wrong for which the hon. member of this amendment contends. If a man constructs a building illegally, the proper remedy is to pull it down, and to prosecute the offender. I think both the remedies should exist, and not one substituted for the other.

HIS HONOUR THE PRESIDENT said:—The offence is the building of a house without sending a ground plan and giving the notice required, and the punishment is a fine of Rs. 100 with a further fine of Rs. 20 for every day during which the offence is continued after conviction. Which part of the operation constitutes the offence? Is the penalty for every day during which he does not send in the building plan or during which he goes on with the building?

THE HON. SIR HENRY HARRISON replied:—Under the existing law the provision regarding the erection of huts is exactly the same. The Commissioners may pull down the hut, and the person who erects it contrary to the law is liable to a daily fine until the hut is removed. In the present case the penalty is a fine for every day the building is kept on.

The Motion being put, the Council divided:—

Ayes 3.

The Hon. Dr. Gooroo Dass Banerjee.
 The Hon. Dr. Mahendra Lal Sircar.
 The Hon. Babu Kali Nath Mitter.

Noes 10.

The Hon. H. Pratt.
 The Hon. C. H. Moore.
 The Hon. Moulvie Abdul Jubbar.
 The Hon. Sir Alfred Croft
 The Hon. Sir Henry Harrison.
 The Hon. T. F. Allen.
 The Hon. C. P. L. Macaulay.
 The Hon. H. J. Reynolds.
 The Hon. the Advocate-General
 His Honour the President.

So the Motion was negatived.

THE HON. BABU KALI NATH MITTER, by leave, withdrew the motion, of which notice had been given, for the omission of section 243.

[*Babu Kali Nath Mitter ; Sir Henry Harrison.*]

The HON. BABU KALI NATH MITTER moved that, for section 244, the following be substituted :—

“If the Commissioners fail to pass orders within thirty days, as required by section two hundred and thirty-eight, the person giving such notice may, notwithstanding anything hereinbefore contained, proceed to build or rebuild the house therein referred to, according to such plan.”

He said :—Here my hon. friend's favourite legislation fails him. In the Bombay Bill the provision is precisely the same as in this amendment of mine. The section there is—

“If within thirty days after receipt of any notice under section 335 or 340, or of the plan, section, description or further information, if any, called for under section 336, 338 or 341 as the case may be, the Commissioner fails to intimate in writing to the person who has given the said notice, his disapproval of the building which the said person proposes to erect, or of the work which he proposes to execute ;

or if, within the said period, the Commissioner signifies in writing to the said person, his approval of the said building or work ;

the said person may at any time within one year from the date of the delivery of the notice to the Commissioner, proceed with the said building or work in accordance with his intention as described in the notice or in any of the documents aforesaid, but not so as to contravene any of the provisions of this Act or any bye-law made under this Act at the time in force.”

An individual who wants to build complies with everything which the law requires, and if then the Commissioners fail to give sanction, under the present Bill the Commissioners must pay compensation. This is no satisfaction to the individual. He wants to build, and if the Commissioners do not give sanction within the time prescribed, he should be entitled to build. That is the law here and in the Bombay Bill, and why should there be any departure from that principle? My hon. friend said in reference to another amendment that it was a matter of great importance as to whether a person should build or not. A man gives notice that he wants to build, and if the Commissioners do not do their duty they are to blame, but the man should not suffer. I submit that the man should be entitled to build if within the time the Commissioners give him no answer.

The HON. SIR HENRY HARRISON said :—In voting on this amendment some care is necessary, because a part of it covers ground which has already been

[*Sir Henry Harrison ; Babu Kali Nath Mitter ; The President.*]

rejected. The section comprises three cases. Section 235 respecting sites, section 237 regarding buildings, and section 238 which refers to the demolition of buildings. With regard to the site, the view of the Select Committee was upheld that assent to a site is necessary, but as your Honour remarked, what applies to a site might not apply to a building. That is a distinction which may be drawn. The English law, the existing law here, and the Bombay law make the same provision in all cases, and my proposal in the Select Committee was made accordingly ; but the Select Committee saw the danger, and introduced the very strict rule that as far as the site is concerned approval must be obtained. But as regards the building, I think there will be less danger. In cases in which no site is in question, or where the site has been sanctioned, and the objection is only as to the details of the building, there will be no harm done. The only question is whether any compensation is necessary with reference to the site. If we accept the remedy as regards the building, there will be no remedy as regards the site. If we say that consent should be assumed as regards the building, we shall have no remedy as to the site.

THE HON. BABU KALI NATH MITTER said in reply:—As regards the site, that has been already disposed of. The section provides that until the site is sanctioned in writing, the house shall not be constructed. The reference in my amendment can only apply to buildings, because as regards the site that has been discussed and settled. It will not be necessary to refer to section 235 in this section because that has already been passed.

HIS HONOUR THE PRESIDENT said:—We have already passed the last paragraph of section 235, that until the approval of the site in writing, the house shall not be constructed. The next step is that when the site is settled the Commissioners ask for plans and details of the house. Section 244, providing compensation if the Commissioners fail to pass orders, applies to both the site and the building. The Hon. Dr. Gooroo Dass Banerjee's amendment applies only to the building. I think when you have secured the requirements as to the site, the question in regard to the building is one of very much less importance ; and if the Commissioners fail to pass orders within thirty days, the assumption should be against them, and the man should be allowed to proceed with his building. I think that not altogether unreasonable. But the hon. member in charge of the Bill thinks the wording of the section as it stands leaves open

[*The President; Babu Kali Nath Mitter; Dr. Gooroo Dass Banerjee.*]

the whole question as to the delay the Commissioners may make as to passing orders in regard to the site. If the Commissioners do not pass the site within thirty days, the Bill provides a small penalty on them. But if you cut out section 244, you leave no penalty as to the site.

The HON. BABU KALI NATH MITTER said in reply:—My idea as to this compensation is that it will never work, and I think it is very objectionable. The Bill authorises the Commissioners to call for plans in respect of buildings and they can take proper care with regard to their own officers.

The HON. DR. GOOROO DASS BANERJEE moved that, in the first paragraph of section 244, for the words “they shall pay to the person intending to build compensation for such delay at the rate of Re. 1 per diem for every day in excess of thirty days” the words “their approval shall be presumed” be substituted.

He said:—My amendment is practically identical with that of my hon. friend. I think we may have both the sections providing against delay as regards approval of the site, and also a section providing for presumption of assent in regard to the building.

The HON. BABU KALI NATH MITTER'S amendment was put to the vote and carried.

The HON. DR. GOOROO DASS BANERJEE'S motion was by leave, withdrawn.

The HON. DR. GOOROO DASS BANERJEE also, by leave, withdrew the following motions of which notice had been given:—That, in the event of amendment No. (17) not being carried, in line 8 of the first paragraph of section 244, for the word and figure ‘Re. 1’ ‘Rs. 5’ be substituted; that in line 2 of the proviso of section 244, for the words and figures “Rs. 2, Rs. 5, Rs. 10, or Rs. 20,” the words and figures “Rs. 10, Rs. 15, Rs. 20 or Rs. 25,” respectively, be substituted.

The HON. SIR HENRY HARRISON, by leave, withdrew the following amendment of which he had given notice:—

• That, for the second paragraph of section 237, the following be substituted:—

“If further information is called for, no steps shall be taken to build the house until orders have been passed upon receipt of such information.”

He said:—If the Commissioners call for further information, and no information is given, then the previous notice would be of no value at all.

THE HON. BABU KALI NATH MITTER moved that, for section 247, the following be substituted:—

“It shall not be lawful for any person to erect a hut or shed, or any range or block of huts or sheds, or to add to any hut or shed, or to any range or block already existing at the commencement of this Act without thirty days’ previous notice to the Commissioners; and the Commissioners may, within thirty days of the receipt of such notice by them, require, in the case of a single hut or shed, that it be built in the manner approved of by them; and, in the case of a range or block of huts or sheds, that they be built so that they may stand in regular line with a free passage or way in front of and between any two lines of such width as they may think proper for ventilation, and to facilitate scavenging, and with such number of privies and with such means of drainage as to them may seem necessary, and of such a level as will admit of such drainage, and with a plinth at least two feet above the level of the nearest public street:

‘Provided that no hut or shed shall be built within twenty feet of a tank without the leave of the Commissioners.’”

He said:—I should very much like to shorten the discussion, because the arguments will be very much the same in all these cases; therefore it will save the time of the Council if I make one speech for all. My object is that the sections of this chapter should be left in the same position as they were when the Bill was before the Council on the last occasion. One discussion can be had from this section up to section 249 almost on the lines on which they have already proceeded. When we come to the standard plans, &c., a separate discussion will be necessary. Many of these huts do not cost more than from Rs. 40 to Rs. 50 to build, and to expect the owners of such huts to submit plans will put them to an expense which they cannot afford; it will besides be very difficult for these persons to submit a plan containing all the information required. My object is to make the procedure as simple as possible. In respect to a single hut or shed, the information necessary is of a very limited character. As regards a block or range of huts, a little more information will be needed. Under the existing law a lane or passage is left between every two lines of hut; but if, as the Select Committee consider to be the meaning of the existing law, and, as has been provided in the Bill, a passage of sufficient width is to be left after each line of huts, a great deal of the bustee land will be taken up for the

[*Babu Kali Nath Mitter ; Dr. Gooroo Dass Banerjee.*]

purpose, and the owners of bustee land will have to pay in rates and taxes the whole of the rent which they derive from the bustee, they will not be able to build upon more than one-third of the land. As regards section 248, it provides for the submission of plans which these persons will be unable to give. Instead of that, my amendment proposes that they shall give notice and conform to the rules and regulations framed by the Commissioners. If they build without notice, the huts may be pulled down. My amendment on section 248 runs thus, that for section 248, the following be substituted:—

“If any hut or shed be built, re-built, or added to without giving to the Commissioners such notice as is required by the last preceding section, or otherwise than as required by the Commissioners, the Commissioners may give notice to the owner or occupier thereof by affixing a notice to some conspicuous part of such hut or shed, to take down and remove the same within one month, or to effect such alterations as they may deem necessary; and it shall be lawful for the Commissioners, if they shall think fit so to do, to cause the same to be taken down and removed, and the expense incurred thereby shall be paid by the said owner or occupier thereof, and shall be recoverable as hereinafter provided ”

And I propose to omit section 249, which provides that in addition to the demolition of the hut a prosecution may be instituted.

The HON. DR. GOOROO DASS BANERJEE moved that, in the first paragraph of section 247, the words “such form shall require a ground plan of the hut drawn to the scale of eight feet to the inch, and such other details as the Commissioners may prescribe” be omitted.

He said:—This is a much more restricted amendment than any of those which have just been moved by my hon. friend. My object is to have section 247 so framed as to prevent poor people from being placed in any difficulty. It will very often be very difficult for them to procure the services of a competent surveyor. I also move that, in line 11 of the first paragraph of section 247, for the word “thirty” the word “fourteen” be substituted. Under the existing law 14 days is the time within which the Commissioners are to state their approval or disapproval in the case of a pucca building; and if that time has hitherto been sufficient for a pucca building, it ought to be considered sufficient in the case of huts. People have to take a lease of the land before they can submit an application to the Commissioners for permission to erect a hut; the rent will begin to run, and yet they will not have the benefit of the lease until

sanction is obtained to erect a hut ; and they must in the meantime occupy some other land for which they have to pay rent. This will be a hardship. I have, therefore, reduced the period from 30 to 14 days. I have also to move that clause (d) of section 247 be omitted. That clause provides that a hut shall not be erected within 30 feet of a tank. It is well known that in the suburban area which will be amalgamated with Calcutta, tanks are situated so close to one another that there will be in many cases a difficulty to leave a clear space of 30 feet between a hut and a tank. With every regard for sanitation, we must have regard to the existing state of things. If it is thought undesirable that a hut should be built on the margin of a tank, in that case I will move that 10 feet be substituted for 30 feet. Practically huts are built much closer than that ; and if we have a clear space of 10 feet from the edge of a tank to the edge of the hut, it would for all practical purposes be sufficient.

The HON. SIR HENRY HARRISON said :—The question of bustees has for a long time embarrassed the town of Calcutta. These new sections have been drafted with a view to give practical effect to what has long since been decided upon as the proper course to adopt. It has long since been decided that the present custom of building huts one jumbled up with the other is utterly wrong. Till a few years ago it was found impossible to do anything with them ; but during the past few years we have had narrow roads made to enable conservancy carts to pass through. But in the condition of the huts there has been very little improvement. Section 277 of the present Act provides that the Commissioners “ may require a free passage or way in front of and between every two lines (of huts) of such width as they may think proper for ventilation and to facilitate scavenging.” Attached to several of the mills around Calcutta you will find excellent bustees for the workmen built under the supervision of intelligent managers, especially one which I recently went over built under the supervision of Mr Yule at Garden Reach, and there can be no comparison of their immense superiority to the Calcutta bustees. The difficulty is how to bring a proper system into operation. A project comes in the shape of an application for the building of a single hut, and you have to deal with it without any means of working it into a proper system. The officers of the Corporation urge that it is quite impossible to work out any system from such separate proposals, and

[*Sir Henry Harrison; Mr. Allen.*]

the object of this part of the Bill is simply to make some improvement feasible; and therefore we compel the owners to interest themselves in laying out their bustee, and to submit a plan of the whole bustee, on which the site of every hut shall be marked, and this plan when approved by the Commissioners shall be taken as the standard plan of the bustee. It is a radical measure intended to deal with a radical disease, and I cannot see how anything short of that will deal sufficiently with the evil. As regards isolated objections, I quite admit that the Suburbs are so honeycombed with tanks that people have been accustomed hitherto to build their huts within even three feet of a tank, but this is considered by all sanitary authorities to be the worst of all insanitary evils. Tanks should, as far as possible, be obliterated, but it will take a long time to do so, and therefore we have provided a space of 30 feet as the minimum distance from a tank. As existing huts disappear or tanks are filled up there will be improvement; there may be some harshness in fixing that limit, but it appears to me to be necessary. For these reasons I am emboldened to ask the Council to adopt the principle on which the Bill proceeds.

The HON. MR. ALLEN said:—In the progress of these sections through the Select Committee, I particularly protested against all exaggerated notions of what is called sanitary science being brought into operation in Calcutta or the Suburbs without regard to all the surrounding circumstances. My whole contention was against the importation of such, and I certainly felt that in agreeing to the provisions which have been embodied in this Bill, I was acting with the least hardship to the people that was possible in a law of this kind. The Hon. Member on my right, who has moved an amendment as to the distance at which a hut might be allowed from a tank, entirely forgets that the law in the Suburbs at present provides a minimum distance of fifty feet from a tank. The Hon. Member declares stoutly against the hardship of poor people not being allowed to put up a shanty according to their own convenience; but he forgets that the interests of the whole of Calcutta are too important to be sacrificed to the convenience of poor people. One of the greatest evils which has hitherto existed is the facility which has been given to these poor people to put up their shanties in the best parts of the town. There is one bustee at the present moment to the south of Theatre Road which is considered to be an improved or reformed bustee, and I have seen such sights along that Theatre

road, when the filth of the bustee has been thrown into the road for removal in the morning, that the wonder is, not that there has been disease in Calcutta, but that any person in that neighbourhood can live at all, and this is called an improved bustee, but the sights that are to be seen of a morning in the neighbourhood of bustees are enough to make any person sick. Therefore, I consider that it is necessary to make some provisions for the proper laying out of bustees, and I agreed to these provisions as imposing the least restrictions compatible with the health and safety of the town. The Hon. Member thinks that these poor people will not be able to get plans made for them, but in saying so, he forgets the spread of education, which will enable them easily to get applications written, and plans made at very little cost.

HIS HONOUR THE PRESIDENT said:—It is one of the points most frequently taken exception to, that the people who live in these huts build them, and not the owners of the bustee land. The hon. member in charge of the Bill has shown very clearly that the object is to make the owners of bustee land take an interest in the laying out of their bustees beforehand. Good; but the law as it stands at present is not that the owner of the bustee land, but the person who wants to build a hut, has to submit a plan; that is the real subject of complaint. It seems the most desirable thing in the world that landlords should be compelled to submit plans carefully drawn to scale, showing how they wish to lay out their lands. But it seems rather hard that a poor man, who builds his hut not with the aid of a proper contractor, but with ordinary hired labour, should be required to submit a plan. There is something in that objection, but I daresay that what is required of him is a mere rough plan which cannot cost him very much to get prepared. The other points to which exception is taken indirectly are in connection with the amount of space between a hut and a tank and between lines of huts. Without venturing to say what the present section does mean, I would concur with those who for the sake of sanitation would impose a certain amount of inconvenience on those who build in bustees. The point on which stress is practically laid in the public memorial is that under the general scheme for bustee building provided in the Bill, two-thirds of the land in a bustee will lie unoccupied; and the Commissioners may practically refuse to approve of any plan that does not leave two-thirds of the land for roads and open spaces. This, I think, is very

[*The President ; Babu Kali Nath Mitter.*]

unimely, but it is an objection which has been taken, and I shall be glad to have it removed if possible. In regard to the space required between tanks and huts, we have just been told by my hon. friend, Mr. Allen, that the law in the Suburbs requires a space of fifty feet; that I think is quite sufficient justification for the space of thirty feet required by the Bill.

The HON. BABU KALI NATH MITTER said in reply:—The hon. member in charge of the Bill has told us that these sections have been framed with the express desire of compelling owners of bustee lands to submit standard plans, and so forth. But that is what he has absolutely failed to do. He forgets how bustee lands are laid out. For instance, a man has 3 bighas of land; a person wants to rent 3 cottahs of that land for a certain period; the rent is fixed and the land is marked out and given to him; another person takes 7 cottahs in the same way, and so on. The only way in which the owner of the land would be touched is by the framing of bye-laws expressly declaring that the owner of any land who wishes to let it out in small parcels to different persons must in the first instance submit a plan as to the sites to be built upon, the roads and open spaces to be left, and so on, and must obtain the sanction of the Commissioners to such land. If a provision of that sort were introduced, it would have a very good effect. It would prevent the owner from letting out small parcels of land to different individuals at a monthly rent for the purpose of building huts upon it as they think proper. My hon. friend asks why I do not introduce an amendment to that effect. I have repeatedly pointed out to him that if his object is to control the owners of bustee lands, this is the only way in which it can be done. Section 252 of the Bill, to which I have been referred by my hon. friend, authorises the Commissioners to call upon the owners of a bustee to prepare and submit a plan showing the manner in which the bustee should be laid out, and this plan, when approved by the Commissioners, shall be taken as the standard plan of the bustee. But the provisions of this section can be evaded by the owner saying I do not want to build upon the land; I have simply let it out. The section would be unassailable if the owner of the land wishes to build huts upon it. But the fact is not so: the huts are built by the tenants, and not by the owner of the land. The owner has nothing to do with the building sites; he simply lets out the land, and it is for each

tenant to say how much land he wishes to take. That being so, the section will practically remain a dead letter. But if the law is framed in the manner I have suggested, it will prevent owners of land from converting their lands into bustees without submitting a plan of the way in which the bustee is to be laid out and obtaining the sanction of the Commissioners to the plan. Such a provision would effect the object in view, but the object with which section 252 has been framed must ultimately fail. On this point the memorial which has been presented to your Honour says:—

“The regulations relating to the erection of huts are cumbrous and unsuitable to the circumstances of the people, who will often be prevented from erecting huts, though at the same time they may be paying rent in respect of the land which has been let out to them, and upon which the huts are proposed to be built. The provision which makes it obligatory upon owners of bustee land to pay the rates leviable from their tenants, and then to realise them, is a proceeding which will entail hardship and loss upon owners, and will at the same time relieve municipal employes from the performance of their legitimate duties. Further, under section 263 owners will be required to set apart as much as two-thirds of bustee lands for roads, &c., for purposes of bustee improvement. The section would really amount to confiscation of private property, and your Honour’s memorialists would beg to record their earnest protest against it.”

If this section is carried out to the extent to which it is proposed to do, owners of bustee land will have to pay in rates and taxes nearly the same amount which they will realise as rent, because they will get no rent for two-thirds of the land, but they will notwithstanding have to pay rates and taxes upon it. They will be considered to be the occupiers of all lands left vacant for sanitary purposes: they will be able to realise rent on only one-third of the land, and will have to pay 23 per cent. in rates at the maximum. Therefore it is very necessary that these sections should be carefully considered. I submit that the powers conferred by the existing law are ample for all purposes. If a bustee is not properly constructed, you can have it medically examined, and then compel the owner to do what is required; therefore you have plenary powers at present, and I submit that the effect of these sections of the Bill will be only to harass the ryots instead of putting such pressure upon the owners of land as is desirable.

The HON. DR. GOOROO DASS BANERJEE said in reply:—My hon. friend, Mr. Allen, was pleased to observe that under the existing law in the Suburbs no hut can be erected within fifty feet of a tank. I was not aware of any such law;

Dr. Gooroo Dass Banerjee.]

and I therefore asked him to be good enough to point out to me the provision to which he referred; and it appears that the section to which my hon. friend alluded does not refer to the construction of huts, but of latrines. Section 236 of the Mofussil Municipal Act provides that no latrine shall be constructed within fifty feet of a tank, and section 238 regulates the position of latrines in regard to holdings; so that these two sections do not bear the construction which has been put upon them, and upon which my hon. friend based his argument.

The HON. BABU KALI NATH MITTER'S motions that new sections (given above) be substituted for sections 247 and 248 of the Bill being put, the Council divided:—

Ayes 2.

The Hon. Dr. Gooroo Dass Banerjee.
The Hon. Babu Kali Nath Mitter.

Noes 10.

The Hon. H. Pratt.
The Hon. C. H. Moore.
The Hon. Dr. Mahendra Lal Sircar.
The Hon. Moulvie Abdul Jubbar.
The Hon. Sir Alfred Croft.
The Hon. Sir Henry Harrison.
The Hon. T. T. Allen.
The Hon. C. P. L. Macaulay.
The Hon. H. J. Reynolds.
The Hon. the Advocate-General.

So the Motions were negatived.

The HON. DR. GOOROO DASS BANERJEE'S motion that, in the first paragraph of section 247, the words "such form shall require a ground plan of the hut drawn to the scale of eight feet to the inch, and such other details as the Commissioners may prescribe" be omitted, being put, the Council divided:—

Ayes 5.

The Hon. Dr. Gooroo Dass Banerjee.
The Hon. Dr. Mahendra Lal Sircar.
The Hon. Babu Kali Nath Mitter.
The Hon. C. P. L. Macaulay.
His Honour the President.

Noes 8.

The Hon. H. Pratt.
The Hon. C. H. Moore.
The Hon. Moulvie Abdul Jubbar.
The Hon. Sir Alfred Croft.
The Hon. Sir Henry Harrison.
The Hon. T. T. Allen.
The Hon. H. J. Reynolds.
The Hon. the Advocate-General.

So the Motion was negatived.

[*Dr. Gooroo Dass Banerjee.*]

THE HON. DR. GOOROO DASS BANERJEE'S motion that, in line 11 of the first paragraph of section 247, the word "fourteen" be substituted for "thirty" being put, the Council divided:—

Ayes 7.

The Hon. Dr. Gooroo Dass Banerjee.
The Hon. Dr. Mahendra Lal Sircar.
The Hon. Babu Kali Nath Mitter.
The Hon. Moulvie Abdul Jubbar.
The Hon. H. J. Reynolds.
The Hon. the Advocate-General.
His Honour the President.

Noes 6

The Hon. H. Pratt.
The Hon. C. H. Moore.
The Hon. Sir Alfred Croft.
The Hon. Sir Henry Harrison.
The Hon. T. T. Allen.
The Hon. C. P. L. Macaulay.

So the Motion was carried.

THE HON. DR. GOOROO DASS BANERJEE'S motion that clause (d) of section 247 be omitted, was put to the vote and negatived.

The HON. DR. GOOROO DASS BANERJEE'S motion that in clause (d) of section 247, the word "ten" be substituted for "thirty," was put to the vote and negatived.

THE HON. DR. GOOROO DASS BANERJEE moved that, in lines 1 and 2 of section 249, the words "in addition to or" be omitted.

He said:—This point has already been considered in reference to the construction of pucca houses. The only additional argument, which can be brought forward in reference to the unauthorised construction of huts, is the poverty of the owners of these huts. It is enough that the power of demolition is exercised: we do not require a prosecution in addition. I am quite aware that I have to meet the powerful opposition of the learned Advocate-General, who remarked that on principle when the provisions of a law have been infringed a penalty is incurred, and the offender should be liable to punishment. But these are not offences against any moral law, or any law for the protection of person or property; they are merely offences against certain municipal regulations; and though on strict principle the offenders may have become guilty of an offence, there is no reason why they should be prosecuted in addition to the exercise of the other power of demolition which secures the object in view.

[*Sir Henry Harrison: Babu Kali Nath Mitter.*]

THE HON. SIR HENRY HARRISON said:—This is a matter of no practical importance. There are scarcely any prosecutions in such cases, but the principle should be maintained.

The Motion was put to the vote and negatived.

THE HON. BABU KALI NATH MITTER, by leave, withdrew the motion of which he had given notice, that section 249 be omitted.

THE HON. BABU KALI NATH MITTER moved that, for section 250, the following be substituted:—

“If the Commissioners fail to pass orders within fourteen days as required by section two hundred and forty-seven, their consent shall be presumed.”

He said:—This motion stands precisely on the same footing as in the case of the building regulations.

THE HON. SIR HENRY HARRISON said:—This provision is of much less importance in the matter of huts than it is in regard to houses. The present law prescribes a period of 14 days, and if within that time the building is not disallowed, consent is presumed. It is somewhat inconvenient to admit that presumption, but as the principle has been accepted in regard to houses I must accept it in the case of huts.

The Motion was put to the vote and carried.

The consideration of the further clauses of the Bill was postponed Till the next sitting of the Council.

The Council was adjourned to Wednesday, the 25th April, 1888, at 11-30 A. M.

CALCUTTA ;
The 7th May, 1888. }

WILLIAM GRAHAM,
For Assistant Secretary to the Govt. of Bengal,
Legislative Dept.