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 Wednesday, the 25th April, 1888, at 11-30 A.M.

Present:

The Hon. Sir Steuart Colvin Bayley, K.C.S.I., C.I.E., Lieutenant-Governor of Bengal, *presiding.*
The Hon. H. J. Reynolds, C.S.I.
The Hon. C. P. L Macaulay, C.I.E.
The Hon. T. T. Allen.
The Hon. Sir Henry Harrison, Kt.
The Hon. Sir Alfred Croft, K.C.I.E.
The Hon. Moulvie Abdul Jubbar.
The Hon. Babu Kali Nath Mitter.
The Hon. Dr. Mahendra Lal Sircar, C.I.E
The Hon. C. H. Moore.
The Hon. Dr. Gooroo Dass Banerjee.
The Hon H. Pratt.

HOWRAH BRIDGE ACT, IX OF 1871, AMENDMENT BILL.

The Hon. Mr. Macaulay moved for leave to introduce a Bill to amend Act IX of 1871 (an Act for the construction of a bridge across the river Hooghly between Howrah and Calcutta).

He said:—In order to make the object of the motion perfectly clear to the Council, it will be desirable that I should, with their permission, refer briefly to the history of the discussions and proceedings connected with the construction and administration of the bridge. When the Act, which it is now proposed to amend, was before the Council in 1871, a great divergence of opinion was manifested as to the sources from which the revenue which was to provide for the maintenance of the bridge, the payment of interest on the loan from Government, the extinction of debt, and the creation of a Reserve Fund, should be derived. The original scheme of the Bill was that what I may call the basis of the

revenue of the bridge was to be a terminal charge upon goods which enter or leave the Howrah Railway station by the East Indian Railway, whether they cross the bridge or not. The local tolls, that is the tolls on the persons and goods actually crossing the bridge, were to be a sort of supplementary source of revenue, which it was hoped would be ultimately abandoned. The mercantile community, the Port Commissioners, and their representatives in the Council, strongly dissented from this proposal. They urged that to make goods which did not use the bridge pay for it was wholly indefensible in principle, and that the proper people to pay for the bridge were those who made use of it. I need not enter into any details regarding the arguments used on both sides, because Sir George Campbell, who was then President of the Council, brought the question to a very plain issue. He pointed out that it was not a question between different sources of revenue for the bridge, but between accepting the terminal charges and doing without the bridge altogether, inasmuch as the Government of India had insisted on having collateral security for their loan before they would consent to give it The principle of the levy of the terminal charges was accordingly adopted by a majority of the Council. Sir George Campbell, however, made a concession to the opposition which had been raised. He changed what I have called the basis of the revenue of the bridge, from the terminal charges to the local tolls. Accordingly, section 3 was made to prescribe the levy of local tolls, while section 4 made the levy of terminal charges discretionary, and in this form the Bill passed the Council. Since the bridge was constructed until recently the terminal charges have been levied, except that on coal which was remitted in 1877. Some two years ago; however, when it was seen that the period was at hand when, under section 22, it would be necessary to revise the revenue so as to bring it down to the actual expenditure to be incurred, several proposals were brought forward. The Port Commissioners, abandoning the view they had expressed in 1871, proposed the abolition of local tolls. The Agent of the East Indian Railway, who might have been expected to prefer the removal of the terminal charges, first supported this view, and reported to his Board in London, and they agreed with him, that the toll-bar by which the local tolls are collected is so great a source of vexation and irritation to the public, that he would wish to see these tolls abolished. At the same time he proposed that the terminal charge on wheat

should be remitted. In this opinion the Port Commissioners concurred, and they proposed the abolition of both. These questions were referred for the opinion of various local bodies. The Howrah Municipal Commissioners were, of course, in favour of the abolition of the local tolls. The Calcutta Trades' Association believed that people had become accustomed to the terminal charges, and considered that the local tolls should be abolished. The Calcutta Corporation would have the tolls maintained, and the proceeds equitably divided between the Municipalities of Calcutta and Howrah for purposes of improvement. The Chamber of Commerce maintained their opposition of 1871, and urged that the terminal charges should be abolished before the local tolls are interfered with. In view of these differences of opinion Sir Rivers Thompson decided to remit the terminal charge on wheat from 1st April, 1887, leaving the other questions for settlement when the debt of the bridge should be actually extinguished. With this view His Honour, the present Lieutenant-Governor of Bengal, recently appointed a representative Committee to consider the whole matter. Of that Committee my hon. friend, Mr. Reynolds, as Chairman of the Port Commissioners, was President; the Chamber of Commerce were represented by the Hon. Mr. Steel, their Chairman, and the Calcutta Trades' Association by their Master, Mr. Hallett; the East Indian Railway were represented by their Agent, Colonel Campbell, the Municipalities of Calcutta and Howrah by their Chairmen, and there were official members to represent the Government of Bengal and the Accounts Department. In view of the nature of the constitution of the Committee, and, as I will show, of their unanimity on the main question before them, I think the Council may safely adopt their recommendations, and recognise that the differences of opinion which had existed have been reconciled. The report of the Committee will be circulated to the Council. I may say that they were unanimous in recommending, first that the local tolls should be abolished, and secondly that some terminal charges should be retained. The terminal charges recommended for remission are those on rice and grain, pulses of all sorts, seeds of all sorts, and salt. This will represent a relief to trade of about Rs. 1,60,000 in addition to about Rs. 66,000, the amount of the charge already remitted on wheat. The retention of the charge on certain articles with the interest on the Reserve Fund, the rent of bridge lands, and the earnings of the tug steamer, will

[*Mr. Macaulay; Sir Henry Harrison; Baboo Kali Nath Mitter.*]

provide an income sufficient to cover the necessary expenditure. Then as regards the disposal of the surplus, the Committee, with the single dissentient voice of Colonel Campbell, proposed to make over two lakhs of rupees to the Calcutta Municipality to help it in making a road to lead from the bridge towards the Sealdah station. Should the Council accept these proposals, they will require the amendment of three sections of the Act. As I said, section 3 prescribes the levy of local tolls. The Lieutenant-Governor has power to regulate them, but he has no power of exemption. It will be necessary to give him this power of exemption. Then under section 4, though the Lieutenant-Governor can reduce the terminal charges on goods, or exempt goods altogether, he has no power to re-impose them. However remote may be the contingency of their re-imposition, I think it will be prudent for the Council to provide for such re-imposition should unforeseen circumstances require it. Finally, section 18 requires that any surplus must be devoted to the purposes of the Act, and the section must be amended to admit of the grant being made to the Calcutta Municipality. These are the provisions of the Bill which I ask the leave of the Council to introduce.

The motion was put to the vote and carried.

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 MITTER moved that sections 252, 253, 254, 255, and 256 be omitted.

He said:—The Council has already provided by section 247 for notice and plans being submitted to the Commissioners before any hut can be built, and that and the following sections will, to all intents and purposes, be quite sufficient to regulate the building of huts in Calcutta, on land on which huts do not at present exist. If any piece of land is to be converted into a bustee, those two sections give ample power to regulate the erection of

huts. No hut can be built without giving the information required by section 247, and therefore the powers given to the Commissioners are quite sufficient in regard to huts to be built hereafter. Sections 252 to 256 introduce a procedure which does not exist at present, and a procedure which is not suited to the requirements of the people, and there will be great difficulty in working it out by reason of the particular method adopted by the owners of land in letting it out. As I understand it, the owners of land let it out in small parcels to various individuals on a monthly rent, and each individual having taken the land he requires, applies to the Commissioners to build, and having got permission builds his hut. If the procedure was that the owner of the land himself built the huts, and let them out to tenants, there would be no difficulty. But that is never done in Calcutta. The huts are in most cases built by the tenants, and the landholder simply lets them the land in small parcels. That being so, the first difficulty to my mind is this: The landlord cannot foresee the requirements of the tenants, he cannot say whether his tenants will require smaller or larger parcels of land, and therefore it would be impossible for the owner to set apart particular sites for building on. This is a difficulty which I think it will be impossible to surmount. It is of no use to shut our eyes to the existing state of things, for when the landlord is called upon to submit a plan jointly with the adjoining bustee owner, he will say I do not propose to build upon the land; I cannot say what will be the requirements of my tenants, and therefore I cannot possibly select the sites. The objection to my mind seems a very strong one. And having already provided for the regulation of huts, if hereafter huts are allowed to be crowded together or built in irregular lines, the persons who will be responsible will be the Commissioners themselves. The Commissioners have ample power to prevent the irregular building of huts, and therefore, as far as the future is concerned, no difficulty will arise. As regards huts already existing, I submit that the provisions of sections 247 and 248 give ample power to deal with the existing state of things. If huts are crowded together in any bustee, the Commissioners will have power to order certain roads to be opened out and certain sanitary improvements to be made. Section 252 provides for the owners submitting a joint plan. It will be a matter for congratulation if the owners can be made to agree to anything of the kind. Generally their views

are so diverse, that it will be very difficult for them to join in a common object. The section provides that if they do not agree, the Commissioners may prepare a standard plan. The Commissioners will no doubt try to prepare it in the best manner possible, but it is difficult to see how any plan prepared beforehand will meet the requirements of persons who may want to build huts for themselves For instance, one cottah of land may be allotted as a building site, but the tenant may want three cottahs or five cottahs or even ten cottahs: he cannot get what he wants under this procedure. Under section 254 the owners may submit their objections to the plan prepared by the Commissioners, and so long as the standard plan is not completed no hut can be built upon the land. But under the preceding sections provision has already been made against the building of any hut without sanction; therefore sections 252 to 256 are wholly unnecessary. I therefore move the omission of these sections; their omission will not in any way cripple the powers of the Commissioners; they will remain the same, and as I have said before, if they are retained they will not work.

The HON. SIR HENRY HARRISON said:—I must confess that I am a little disappointed at the criticism which has been directed against these sections, because, from the line of argument previously adopted by the Hon. Member, I should have thought that these were provisions which my hon. friend would have supported. When we were considering the building regulations he pointed out that we were punishing the innocent purchaser of a small plot of land, whereas we ought to have dealt with the vendor. In regard to section 247 again, he argued that we were putting difficulties in the way of poor people in regard to the building of their huts; that they would not be allowed to build their huts; that the fault really lay with the landlord, who let his land in small parcels. I then referred my hon. friend to section 252, when he said he would come to that afterwards; and now the way he comes to it is to condemn that which he before said ought to commend itself to us. The object of these sections is precisely that which he so forcibly pressed upon us the other day. He pressed us then to go to the right person, the fountain head, and this is what is now proposed to be done. Under the existing law we have to deal with isolated cases, the building of a hut here and a hut there The only way of laying out a bustee on any proper system is to require the owner or owners to submit

a plan, or if he fails to do so, the Municipality must do it for him. My hon. friend has spoken as if there is no necessity for these sections. Dr. Simpson has assured us several times that what we are doing in the way of running roads here and there in bustees is nothing in comparison to the advantage to be gained by having new bustees laid out on proper plans The Superintendent of Roads, under whose jurisdiction the building of huts falls, says he cannot possibly remedy the evil of huts being built promiscuously here and there; applications come in one by one, and the applications must in each case be answered within 14 days. If Hon. Members will glance at the bustee plans laid on the table, they will see that that is emphatically the one requirement in the bustees of Calcutta, the laying out of the huts on a systematic plan. Huts may be erected far apart, or they may be so closely dovetailed that you may just be able to creep between them. Each tenant can erect his hut just where he pleases. The only person who is in a position to remedy this radical defect is the owner of the land, and if he fails to do so, the municipality must lay down a plan, after hearing any objections which the owner has to offer. And this is what is provided for. My own conviction is that there will be none of the practical difficulties which my hon. friend anticipates. No owner need divide his land in absolutely equal blocks of land. He will run one line of sites, say 50 feet wide, for the largest class of huts, another perhaps of 40 feet in width, a third of 30 feet, a fourth of 20 feet, and perhaps also one line of 10 feet wide for the poorest class of tenants. It is only as to the breadth of the blocks that there will be any difficulty, because there is nothing to prevent a tenant from taking any length of line he pleases. A man who wants to build a hut will select any of the widths of land he wishes, and he can get any length of it which he desires. As a test of the facility with which busted lands can be laid out in this way, I have had some plans prepared in the office. I have taken one of the existing blocks of huts, and have sketched it out on the proposed system, and have then got a draftsman to take the existing huts and fit them in. We took a piece of ground in the Rajah Bagan bustee and fitted every single hut on it into its place on this plan, and if the huts could be taken up on the American system and put down as shown on this plan, they could every one be transplanted and arranged in this unobjectionable manner. I next took Nathur Bagan bustee and cut it up into similar

blocks. Here the difficulties were great, and yet out of 60 huts now on the ground 52 of them have been placed in their proper positions on this arranged system, even after allowing for the difficulties of separate owners' and of each plot belonging to one person. Nevertheless, 52 out of 60 huts now on the ground in the space we took have been fitted into their proper positions. There was still space left where at least eight huts more could be placed, but not the actual huts on the ground. This would be an inconvenience small in the extreme as compared with the object of these sections. The object is to have sufficient powers so as to arrange bustees according to a proper system. The power now existing is merely that of running roads through bustees, but nothing more, and although these roads admit of the scavenging of bustee, the object of laying out bustees in the manner proposed is to allow of proper ventilation. I maintain that the principle of these sections is certainly a very fair one. It is not unjust to the owner to say you must look after your property; you are not to give a cottah of land here and a cottah there and leave the tenant to deal with it as he likes; put a *goalabaree* here, a godown there, a shed for carts here, and a dwelling-house there; and you are not to be permitted to reply—I have nothing to do with that: all I want is my rent. What we say to the landlord is, you are bound to take so much forethought that the use to which your land is put is not to result in a sanitary evil, both to your tenants and to the neighbourhood. That is all we require the landlord to do. And I have not ventured to go further, because it is proper in a matter like this to proceed cautiously, although slowly. The first year will perhaps be taken up in calling for plans, hearing objections, and getting the machinery in order in three or four bustees. Then we can take up, say, 20 more and so on, and in the course of say six or seven years a considerable impression will be made. The progress will no doubt be very slow, because the sections, so far from being of a revolutionary character, will be found rather to be tortoise-like in their operation. I think it will be a pity if the Council thinks it right to omit these sections.

The Hon. Babu Kali Nath Mitter said in reply:—I must admit that on this occasion my hon. friend has undertaken to meet the arguments which I have advanced. He seems to think that I am somewhat inconsistent in the position I have taken. He has been pleased to say that my arguments as regards the

building regulations and as regards section 247 have considerable force, and yet he was the first to oppose them. What I complain of is that this is a round about procedure. If it is desirable to legislate in a matter of this kind, making it compulsory on owners of land to look after their property, a single section would suffice, by providing that no one shall let out his land for the building of huts unless with the sanction of the Commissioners. If a section of that kind be introduced, landowners will realise their position and feel the responsibility imposed on them by law. My hon. friend is not prepared to go to that extent. But why should he not adopt the simplest procedure, instead of so cumbrous a one to attain the object he has in view? Why should he not enact that no owner shall let out small parcels of land for the erection of huts without first obtaining the sanction of the Commissioners? I submit that there is no inconsistency in the position I have assumed. In the matter of the building regulations, I wanted to touch the man who sells the land, who derives the whole benefit, and not the innocent purchaser. But I failed. Then in the case of bustee lands, why introduce the system of joint plans and standard plans? Why not positively assert the principle that no one shall let out land for building huts unless he complies with a certain state of things? That will be the simplest way of dealing with the question.

The motion was put to the vote and negatived.

The Hon. Babu Kali Nath Mitter moved that, for section 257, the following be substituted:—

"When it appears to the Commissioners in meeting that any bustee is, by reason of the manner in which the huts are crowded together, or for any other reason, in an insanitary condition, and that the procedure provided by sections two hundred and fifty-two to two hundred and fifty-six will be too dilatory for improving such bustee, they may cause it to be inspected by two medical officers, who shall make a report in writing on the sanitary condition of the said bustee; and shall specify, if necessary, in the said report, the huts which should be wholly or in part removed, the roads, drains and sewers which should be constructed, and the low lands which should be filled up with a view to the removal of the risk of disease. The huts which together form a bustee under this Part may belong to several owners. The existence of a masonry wall, privy, shed or house in a bustee shall not preclude the Commissioners from dealing with such bustee in any way authorised by this Act."

He said:—The section which I propose is slightly different from section 257 of the Bill, and it provides, with a slight modification, all that is aimed at by that section.

The HON. SIR HENRY HARRISON said:—It seems to me that this section follows as a necessary consequence from the previous amendment being rejected. The section is adapted to the existing procedure. I was so sensitive of the fact of the slow and gradual working of the new system of standard plans that I thought it would not be wise to give up the more expeditious system we have at present, expeditious I mean as compared to the system of placing every hut in its proper place, which must be done gradually. I call the procedure under this section comparatively expeditious. The medical officers appointed to report upon a bustee are to prepare a standard plan, which would be carried out under the present procedure, and in all urgent cases this procedure will be adopted.

The HON. BABU KALI NATH MITTER said in reply:—After the explanation which the hon. member in charge of the Bill has given, I will withdraw this amendment.

The motion was, by leave, withdrawn.

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

(1). That, for section 258, the following be substituted:—

"On receipt of the report of the medical officers, the Commissioners in meeting may cause a notice to be served upon the owners or occupiers of the hut, or, at the option of the Commissioners, the owner of the land on which such huts are built, requiring them to carry out and execute within a reasonable time to be fixed by the Commissioners for such purpose all or any of the works specified in the said report.

(2). That section 262 be omitted.

The HON. BABU KALI NATH MITTER moved that section 263 be omitted.

He said:—It seems to me that this section is not necessary, after having provided for the preparation of standard plans of the way in which bustees are to be improved, unless it be for the protection of the people themselves. But the provisions of this section really afford no protection. It provides that without the consent of the owners of the land not more than one-fifth of the area

of a bustee shall be left for roads, and not more than two-thirds for open spaces. Under the section a tank is not to be included in this proportion. If this is intended as a power in the hands of the people of the bustee to insist, on two-thirds of the land being left open, I submit that the power should not be given, especially when the fullest provision has been made as regards a standard plan, and more especially because the owners will have to pay rates in respect of this two-thirds of open land. In a subsequent section it is provided that where there are roads and so on, the owners of the property shall be considered as occupiers of such portions: therefore they will have to pay rates on the unoccupied lands. I submit that this section is not necessary, but if it is intended to operate as a protection to the owner, the section will have to be modified very considerably.

The Hon. Sir Henry Harrison said:—As far as I represent the Executive of the Corporation, I shall not object to this section being omitted, its intention is to tie their hands: it imposes obligations, to some of which it will not be easy to conform. Whether my hon. friend can be taken to be the spokesman of the owners in this matter, I consider very doubtful. I do not think that a section of this kind can be omitted in the interests of bustee owners, as I think it affords them very considerable protection as regards the proportion of open lands. Obviously, two-thirds is the maximum; ordinarily, nothing like that proportion will be required. But there are some cases in which a considerable proportion of a bustee may consist of a tank with not a very large fringe of land round it; you must have a space of 30 feet from the tank to the huts and a space between two lines of huts, in such cases a considerable proportion must be unoccupied. At the same time if the Council thinks a maximum of two-thirds excessive, and that a less proportion will be a concession of value, I believe that a proportion of one-half may be fixed as a maximum without objection in 19 cases out of 20. It is only in one out of 20 cases that that proportion may prove embarrassing. We propose to apply the proportion of two-thirds to the case of each owner's land, not merely to the whole bustee. If the Council think the section is not wanted, as Chairman of the Corporation I may say there is no reason why it may not be omitted. But if the Council think it necessary for the protection of bustee owners, then if it would be a con-

cession to them of any value to reduce the proportion of two-thirds to 50 per cent., I think the concession might well be made. The proportion of two-thirds will apply only to very exceptional cases.

HIS HONOUR THE PRESIDENT SAID:—I quite understand that the proportion of two-thirds is the maximum, and to omit the section will rather be an injury than otherwise to the clients of the hon. mover of the amendment. On the other hand, the reduction of the maximum from two-thirds to one-half seems to me to be a substantial concession. If I may advise I would suggest that this concession be adopted.

The HON. BABU KALI NATH MITTER said in reply:—I have proceeded on the basis of the public memorial, which says: "Under section 263 owners will be required to set apart as much as two-thirds of bustee land for roads, &c., for purposes of bustee improvement. The section would really amount to confiscation of private property, and your Honour's memorialists beg to record their earnest protest against it." If the maximum is reduced to one-half it will satisfy nobody.

The motion was put to the vote and negatived.

The HON. SIR HENRY HARRISON then moved that in section 263 the words "one-half" be substituted for "two-thirds."

The motion was put to the vote and carried.

The HON. BABU KALI NATH MITTER by leave withdrew the motion, of which notice had been given, that section 265 be omitted.

The HON. BABU KALI NATH MITTER moved that section 266 be omitted.

He said:—This is a novel provision altogether. If the owner wants to remove his bustee land from the character of bustee land, why should he not utilise the road which is his private property? Why should the consent of the Commissioners be needed when the owner wants to build on this portion of his bustee land when the character of a bustee has been removed from it? If another road is needed for the portion of the land which may still continue as a bustee, the Commissioners will have power to have such a road opened. It may be that a portion of the existing road will be the most convenient site for building, and why should the owner be precluded from doing so simply because it has been a portion of a

bustee road? All that the Commissioners might do is to require the owner to find another outlet for the bustee. Probably that will be the way this provision will be worked, but that is not what is provided in the section.

The Hon. Sir Henry Harrison said:—The Hon. Member has raised a fair point; at the same time I may say that the section has been drafted with full forethought, and I believe it embodies the right principle. Looking to the deliberation with which the standard plan of a bustee is to be prepared, with full opportunity to the owner to object, when a certain piece of land, it may be belonging to several owners, has been marked off as a portion of a bustee road by which access is to be obtained for conservancy carts, it seems to me very inconvenient that the whole arrangement of the bustee should be upset because the owner of the land chooses to convert the particular spot into a dwelling-house. He could at the beginning have objected and reserved this particular land for building purposes. The other owners have very likely carefully planned how they will arrange and align the bustee roads to fit in with this, but in consequence of the caprice of one owner, or of a partition or death, the whole arrangement will be liable to be upset. It does happen so now, and in several cases we have been obliged to leave a bustee untouched, because the owner has said that he intends to build a house upon the site which has been chosen as the only good site for a road. When a certain piece of land has been chosen after full deliberation and consideration as one of the ways for people in the bustee getting out, and for access to the bustee from without, as well as for the purpose of scavenging, under my hon. friend's amendment the owner of that particular ground may after a time throw the whole out of gear. I believe the section in the Bill gives the fairest and best solution of the difficulty. If the section is omitted, the effect will be to very seriously encumber dealings with the bustee, not only on the part of the Corporation, but very much also on the part of other owners in the same bustee. Those whose land is further in, will not be able to get proper means of egress and ingress. I therefore think it is proper to reserve this power to the Commissioners, and it should be remembered that the Commissioners in meeting will be the final arbitrators. If there is necessity for a road and if another road can be substituted, they will easily give their consent to the proposed substitution.

The HON. BABU KALI NATH MITTER said in reply:—By section 257 these roads remain the private property of the respective owners, and I fail to see how it is possible to impose by legislation an obligation on the owner not to utilise a particular plot of land for building, although he is at liberty to utilise the rest of his land for the purpose. If this section is omitted the Commissioners will still have power to require the opening out of proper roads, and this course will save interference with the rights of property for which there is, as far as I can see, no justification. It has been said that the standard plan will have been prepared with the fullest deliberation; but circumstances may be altered, and therefore what may have been done with the fullest deliberation at one time might operate with great hardship on a change of circumstances. If he is still the owner of the land, it is very hard lines not to be able to utilise his property in the way he thinks best, subject of course to the control of the Commissioners in respect of building regulations and so forth.

The Motion being put, the Council divided:—

Aye 1.	*Noes* 11.
The Hon. Babu Kali Nath Mitter.	The Hon. H. Pratt.
	The Hon. Dr. Gooroo Dass Banerjee.
	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.
	His Honour the President.

So the Motion was negatived.

The HON. BABU KALI NATH MITTER moved that section 267 be omitted.

He said:—This section declares that the owners of bustee lands shall be deemed to be the occupiers of the roads and common ground or open spaces in the bustee, and the effect of it will be that the owners will have to pay rates and taxes in respect of all the roads and open spaces left expressly for the benefit of their tenants, it may be to the extent of one-half of the whole of the land. The rates and taxes, I submit, ought to be properly apportioned between the parties

concerned. The main thoroughfares may be said to be required for the purposes of conservancy as well; but all the other roads, as well as the open spaces, will be for the benefit of the hut owners, and it seems hard that the owners alone should pay the rates on account of them. As occupiers the owners will be subject to many of the incidents of this Bill. If rubbish is thrown on the land, they may be punished under section 301, which provides that if any dust, dirt, filth or refuse is thrown on any street or place in contravention of certain sections, it shall be presumed that the offence was committed by or with the sufferance of the occupier, unless the contrary be proved. That seems hard on persons who have let out their bustee lands and have very little to do with them. The conservancy of bustees is to be put into the hands of the Commissioners, and a special rate is to be levied on bustees so conserved, and therefore it seems to me that in addition to that the owners of the roads and open spaces in bustees should be considered as the occupiers of them, and should have to pay rates upon them.

The Hon. Sir Henry Harrison said:—It seems curious that the Hon. Member seeks to provide a remedy for what he complains of by omitting this section altogether. It is necessary to have some rule as to who is to be considered in occupation of bustee lands not occupied by huts. It is a source of considerable difficulty. It seems desirable that there should be some fair and equitable arrangement, and this arrangement tries to be fair. The section refers to "common ground," not to "open spaces." Suppose there is a tank in a bustee, and a space of 30 feet round the margin of the tank must be left vacant? How can you say that any particular hut owner can be looked upon as the occupier of that vacant space? Where you have open spaces between the huts you can do so. The owners of the land are not in any way responsible for the open spaces between the lines of huts which are left as the backyards of those huts. As regards the private roads, how can you make anybody but the owner of the land responsible as occupier? They are open to the whole of the bustee. But as regards roads the point is not of much consequence. It is not often that roads get into such an insanitary condition as to require prosecutions. Moreover, the Council should bear in mind that I introduced the proviso to section 269, that no conservancy rate shall be levied on any remodelled bustee without the consent of the owners, contrary to Dr. Simpson's strong and urgent

remonstrance, because I considered it to be just. When we have roads between the lines of huts and roads for conservancy carts, we ought to consider it sufficiently similar to an ordinary compound, and this rate ought not to be levied without the consent of the owner; and if you provide that the Commissioners will not be allowed to levy a special rate on a remodelled bustee, then you must define who is to be the person responsible for the conservancy of these open spaces. You must say that the zemindar is responsible for keeping the general drainage system of the bustee in order, and each hut owner for the portion of the drain which runs into his own premises; that the zemindar is responsible for keeping in order the "common ground," and the individual hut owners for the spaces before and behind their own huts, and the care of the common ground round a tank should go to the owner. It seems to me that some section of the kind is absolutely necessary, and I do not see that any better one has been suggested.

The motion was put to the vote and negatived.

The HON. BABU KALI NATH MITTER, by leave, withdrew the following motions which stood in his name:—(1) that, in line 14 of the first paragraph of section 268, the word "standard" be omitted; (2) that, in line 2 of the third paragraph of the same section, for the words "any standard" the word "such" be substituted; (3) that the fourth, fifth, and sixth paragraphs of the same section be omitted; (4) that, for the proviso of section 269, the following be substituted:—"Provided that, without the consent of the owners, no such rate shall be levied upon any bustee which has already been improved under the direction of the Commissioners."

The HON. SIR HENRY HARRISON moved that, at the end of section 270, the words "in such manner as a rate may be recovered" be inserted.

He said:—This section gives the Commissioners power to serve notices on the occupiers of a bustee, for the cleansing of which no special establishment is maintained, and which is in a filthy condition, to clean the same; and if the notices are not complied with within three days, they may clean the bustee and recover the cost from the occupiers. But the section does not say how the cost is to be recovered. Throughout the Bill costs incurred in default of work being done by owners or occupiers are made recoverable as a rate. If

the words I propose are not inserted, it may be held that the only remedy is by suit. The insertion of these words are therefore necessary.

The motion was put to the vote and carried.

The HON. SIR HENRY HARRISON moved that, at the end of section 277, the following be inserted:—

"For the purpose of efficiently draining any house or land under this section, the Commissioners may require any courtyard, alley or passage between two or more houses, to be paved with such materials and in such manner as may be approved of by them; and may require such paving to be kept in proper repair. They may also require the level of any such courtyard, alley or passage to be raised, if necessary, for the efficient drainage thereof."

He said:—This amendment is brought forward at the request both of the Engineer and the Health Officer, who point out that it is impossible in some cases satisfactorily to provide for the health of houses, if the courtyards are simply ponds; if they are not sufficiently paved to admit of the water running off. The power given is only discretionary; it will hardly be insisted on in the case of very poor people. In the case of the rich it is most usually done, but in the case of some houses where this ought to be done it is not, and the object of this amendment is to provide a remedy in such cases. It is a power which is closely allied to the subject of drainage.

The HON. BABU KALI NATH MITTER said:—If my memory serves me rightly, a similar proposal was brought before the Town Council at the instance of the Health Officer. I did not see the list of business before this morning, and have not been able to trace the discussion, but if I recollect rightly very serious objections were raised to the proposal, and difficulties were pointed out which rendered further consideration necessary. It would have been advantageous if that discussion had been placed before this Council before they were asked to consider this amendment. My hon. friend has referred to the opinions of the Engineer and the Health Officer, and it would have been well if he had referred to the views of the Town Council also on this subject.

The motion was put to the vote and carried.

The HON. BABU KALI NATH MITTER moved that, in section 286, the words "stables and cowhouses," and in line 2 of section 288, the words "stable or cowhouse" be omitted.

He said:—The introduction of these words in these sections is an innovation: they do not exist in the present Act. These sections do not refer to public stables and cowhouses, but to stables and cowhouses in private houses, and I do not see why the Commissioners should be allowed any control over them. People who keep one or two horses or cows for private use would be unnecessarily harassed. Is it really necessary to make legislative provision on account of these small matters, especially when the Commissioners have been given full control as to the construction of buildings? I submit that there is no necessity whatever for including stables and cowhouses in these sections, which are mainly intended to deal with privies and cess-pools.

The HON. SIR HENRY HARRISON said:—It is quite correct to say that this provision is not to be found in the existing law, and it was introduced because there has been difficulty in dealing with these matters. At present we have no control over stables and cowhouses attached to private dwellings. It is quite as likely that in some cases stables or cowhouses kept in a filthy condition will be as injurious to health as badly constructed privies or cess-pools. We can make the owner of a stable or cowhouse run a drain along it, but we cannot compel him to make the floor pucca. In one or two cases in which we have tried, we have found that we have exceeded our authority. If stables and cowhouses in which three or four animals are kept are not made pucca, by being laid with brick-on-edge, they cannot possibly be kept clean. Nearly all these powers are necessary for the security of the neighbours, and we have frequent complaints from the next door neighbours where stables are not properly paved and kept clean. The law should allow the Commissioners to require the floors of stables and cowhouses to be kept in proper condition. I think it a reasonable power, and I do not believe that it will lead to any serious hardship.

The HON. BABU KALI NATH MITTER said in reply:—My hon. friend forgets that there is in the Bill a chapter relating to nuisances which will enable the Commissioners to prosecute persons for keeping any portion of their premises in an unhealthy condition; therefore under that chapter persons who keep their stables or cowhouses in a filthy condition can be prosecuted. Is not that quite

sufficient? Is it necessary that the Commissioners should also have a voice in the materials and dimensions of these places? The cases of privies and cess-pools and of stables and cowhouses seem to me entirely different. Why should the Commissioners have these powers in addition to the power of prosecution for a nuisance?

The Motion being put the Council divided:—

Ayes 2.	*Noes* 10.
The Hon. Dr. Gooroo Dass Banerjee.	The Hon H. Pratt.
The Hon. Babu Kali Nath Mitter.	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.
	His Honour the President.

So the Motion was negatived.

The Hon. Babu Kali Nath Mitter moved that, in line 4 of section 287, for the words "six hours" the words "twenty-four hours" be substituted.

He said:—This section requires the occupier of any premises to clear obstructions to drains within six hours of notice. I think six hours is too short a time. The notice may be delivered at the house at 11 o'clock, and the occupier may not return from work till 7 o'clock. Workmen will have to be procured before the work can be done, and therefore I think 24 hours is a reasonable time.

The Hon. Sir Henry Harrison said:—The penalty is absolutely *nil*, although it is a serious thing to allow a drain to be choked. We keep a special establishment for this purpose, and if notice is sent to the Overseer's office, the work will be done at once. The fee for clearing obstructions in drains used to be Rs. 2-8; but to facilitate such work the Commissioners reduced it to one rupee.

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

The HON. BABU KALI NATH MITTER said in reply:—My own experience is that the Commissioners themselves are not able to do this within 24 hours, and sometimes they take 48 hours, although they have the means to do it at hand; whereas a private person will have to get men to do it. I ask whether the health of the town will be in danger if the obstruction is not cleared in six hours.

The HON. SIR ALFRED CROFT stated that when he had occasion to call in the Commissioners, the obstruction was cleared in three hours.

The motion was put to the vote and negatived.

The HON. BABU KALI NATH MITTER, by leave, withdrew the motion that, in lines 5 and 6 of section 290, the words "twenty hours" be substituted for "one hour."

The HON. SIR HENRY HARRISON moved that, at the end of the second portion of section 290, the following be inserted:—

"And if any drain is choked, or if any other defect connected with the drain which requires to be forthwith remedied is brought to light by such inspection, the Commissioners shall then and there clear out the drain, or remedy the defect."

He said:—This is the section under which the drains are periodically inspected. If anything is found wrong which requires to be forthwith remedied, the Commissioners ought to do it at once.

The HON. BABU KALI NATH MITTER said:—One part of this provision is very objectionable. As far as a drain is concerned, there is not the slightest objection, but to deal with a stable or a cowhouse in this way would be very objectionable. Suppose the officer considers that the dimensions of the stable or cowhouse are not such as they ought to be, is he to pull it down at once? The defect may be in the construction of the cowhouse or stable.

[The HON. SIR HENRY HARRISON agreed to a verbal modification of the section to meet this objection; after which the motion was put to the vote and carried.]

The HON. SIR HENRY HARRISON moved that, in line 5 of section 291, for the words "any offensive matter or sewage into any sewer" the words

"permits any offensive matter or sewage to flow, or be put into any sewer" be substituted.

He said:—This is a verbal amendment. A person cannot be said to throw or put offensive matter or sewage into any sewer.

The motion was put to the vote and carried.

The Hon. Sir Henry Harrison moved that, in line 6 of section 292, for the words "filth or other offensive matter" the words "sewage or offensive matter" be substituted.

He said:—Just about this part of the Bill we adopted a suggestion made by the Hon. Mr. Macaulay, and defined "offensive matter" to mean dung, dirt, putrid or putrifying substances and filth of any kind not included in the term "sewage," but this section contains the old wording which the definition of "offensive matter" is intended to supersede. This amendment is merely to substitute a properly defined word for the words previously existing.

The motion was put to the vote and carried, and so also were similar amendments moved by the Hon. Sir Henry Harrison in sections 300, 301, 308 and 344.

The Hon. Babu Kali Nath Mitter moved that, in line 6 of section 292, for the word "fifty" the word "thirty" be substituted.

He said:—In an earlier section we have provided that no hut shall be erected within thirty feet of a tank. Thirty feet is ample space, and will be sufficient protection against water being contaminated by any source. I therefore move that in the case of latrines, privies, urinals, &c., the same distance be prescribed.

The Hon. Sir Henry Harrison said:—I do not think sanitary authorities will at all agree with the Hon. Member in this matter. Our present rule is fifty feet in case of a latrine, privy or urinal, and has always been so, and it is the same in the Suburbs also. I quite admit that the rule may often cause inconvenience to a hut-owner who often cannot get any place for his privy, but we always have power to make a special exemption. It will be a retrogressive measure to substitute 30 feet for 50, when the rule is 50 feet now both in Calcutta and the Suburbs.

The motion was put to the vote and negatived.

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

The HON. BABU KALI NATH MITTER moved that section 301 be omitted.

He said:—This section enacts that when rubbish, offensive matter or sewage is thrown or placed on any street in contravention of the rules prescribed for that purpose, it shall be presumed that the offence has been committed by, or with the sufférance of, the occupier of such building or land, unless the contrary be proved. The Municipal Commissioners are not only to be invested with certain powers, but they are to have presumptions of law in their favour. This is a presumption of law. If my neighbour who perhaps is inimical to me chooses to place some rubbish on the street in front of my house, I am to be presumed to be guilty of having thrown the rubbish on the street, and I am required to prove a negative, contrary to all principles of English law.

The HON. SIR HENRY HARRISON said:—There is a great deal of force in this objection, and it has been taken by the Government of India, but they have not insisted on it. But still more forcible is the necessity for a section of this kind, without which the law will be inoperative. The difficulty occurs in this wise. Rubbish is thrown out of a window, nothing but a hand is to be seen, and it is impossible to find out who did the act, because the mere fact of the rubbish coming from a particular house will not be sufficient. In Bombay there was a long discussion on this point, and they have in their Bill a section just parallel to this. It is quite impossible otherwise to exercise any control over the throwing of rubbish on the streets contrary to rule. It is one of the greatest evils in Calcutta. In other towns the people are not allowed to throw rubbish on the streets, here every one is allowed to treat the streets as the common sewer, and any attempt to deprive the people of the right is strongly resented. In the northern portion of the town they are not satisfied with throwing out rubbish once a day; the Commissioners would not hear of any proposal to limit the right to the morning only. The Executive does not object so much if the hours for throwing rubbish are limited, because after that the streets can be kept clean; but in the front of a bazar, for instance, it is done all day. If in addition to allowing the practice both in the morning and in the afternoon, when a person does throw out rubbish after the fixed hours, we have no power to deal with it because our hands are tied—improvement is hopeless. The presumption is the same in the Bombay Bill, but here it must be proved that it was thrown from some building or land.

[Babu Kali Nath Mitter; Sir Henry Harrison]

The HON. BABU KALI NATH MITTER said in reply:—My hon. friend has tried to introduce confusion into the argument by adverting to matters which do not concern us at all. At present the question of throwing rubbish on the streets is not before us. Power is given to the Commissioners to provide proper times and places for the throwing of rubbish, and after that has been done whoever throws or suffers rubbish to be thrown in contravention to such rules is under this section liable to a penalty. This section alters the existing law in many respects. It compels the occupier to prove a negative which is contrary to all principles of the English law of evidence: he must show that he has not done it. My hon. friend points out that it must be shown that it came from a particular house. That I submit is no protection, as that can easily be done by an ill-disposed neighbour, and the presumption is to be that it was done by, or with the sufferance of, the occupier. I submit that that is contrary to all principles of law.

The Motion being put, the Council divided:—

Ayes 3.	*Noes* 9.
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. 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.
	His Honour the President.

So the Motion was negatived.

The HON. SIR HENRY HARRISON moved that, in line 3 of section 302 the word "liquid" be omitted.

He said:—The expression used in this section is "offensive liquid matter," but "offensive matter" is so defined as to include liquids: therefore the word "liquid" should be omitted.

The motion was put to the vote and carried.

The HON. SIR HENRY HARRISON moved that, at the end of section 307, the following be inserted:—

"And the Commissioners may cleanse the premises, and the expenses thereby incurred shall be paid by the occupier."

He said:—What is most desirable is that the premises shall be cleansed, and hitherto we have always acted on that principle, and the bill has been paid. In one case, however, payment was refused. We thought we should be able to recover the cost, but the Law Committee considered that we could not recover, as the provision of the existing Act did not authorise the doing of the work.

The motion was put to the vote and carried.

The HON. BABU KALI NATH MITTER moved that, in clause 2 of section 315, the following words be omitted:—

"And until so paid the Commissioners may retain possession of the land or tank or the site of such tank, and utilise the same for public purposes."

He said:—The effect of this amendment will be that the section will end at the words "and the expenses thereby incurred shall be paid by the owner." In the course of my experience I have come across very many cases where owners have raised objections to the quantity and quality of the work and have refused to pay the bill, and in many cases the Commissioners have not thought fit to go to court to realise the cost, because it was considered that the issue would be a very doubtful one. They have all the powers it is possible to confer upon them for realising their dues, and in addition to that to propose that the property improved by them should be retained by them until the amount is paid is an innovation not warranted in law. In such matters the Commissioners should not be placed in any higher position than that of any other persons who are called upon to make improvements or to execute works. Only a particular class of persons is allowed to retain possession of property of a particular nature as security for charges payable to them. With that exception all persons have to recover their dues by suit before the ordinary tribunals. My hon. friend knows that there is considerable difficulty in realising the cost of such improvements owing to various objections raised from time to time, and in many cases the objection is that the work is not properly done, or that the amount charged

is excessive; and it would be a hardship, when the claim is disputed, for the Commissioners to keep possession of the property until the dispute is settled,—it may be in six months or in a year. The Commissioners are not to pay for the property, but they may hold it in possession till the amount they claim is paid. There is no provision for compensation if the demand is found to be inequitable. It is an innovation in the law for the Commissioners to keep possession of the property improved by them, and to retain possession until their bill is paid, without making compensation to the person whose property has been retained. There is such a thing as an usufruct mortgage, where the person who holds the property realises the income, and applies the income to the reduction of the debt. But here the debt remains the same, and there is no provision for damages. I submit, therefore, that there is no authority for the provision which it is the object of my amendment to omit.

The Hon. Sir Henry Harrison said:—I quite admit that this is a clause which it is perfectly justifiable to criticise, but the reasons are sufficiently strong to justify the retention of this clause as perfectly equitable. At present we do a great deal of work in the way of tank-filling, and we shall have to do much more afterwards in the Suburbs. For the past seven or eight years the expenditure on this account has averaged Rs. 10,000 a year and our recoveries Rs. 5,000; therefore the general rate-payers have contributed one-half, the reason being that it is extremely difficult in many cases to recover the amount spent. One source of difficulty is that when the Bill is presented the owner pleads poverty, because the charge is considerable, but the enhancement in the value of the property far exceeds the cost. Then, in a very large number of cases, there are joint-owners; some say they had no notice and were not called upon to do the work; in other cases the owner sells the tank, and the new owner says he is not liable. In other cases, again, we cannot find any moveable property to attach, and for these and other reasons we recover only about half. By this provision you put your finger precisely on the difficulty and remove it. We do not want to make any profit out of the land, but it will be exceedingly advantageous if we can retain it for a time. What ought to be done to make the improvement complete is not done. The site should be planted with grass or trees as far as possible to take away the evil effects of the matter with which it is filled up. All the Health Officers of the Corporation, from

Dr. McLeod downwards, say that that ought to be done. Next you want to keep it as an open space; you do not want huts built upon it, which at present have no power to prevent. If these sites are left in our hands for some time, we the effect will be extremely good, and I can see nothing unjust in it. The costs we are in all cases entitled to obtain, and the owner will have the same opportunity of challenging the bill. The operation of the provision will be very beneficial. It will not only do away with a large number of excuses, but it will enable us to keep the sites for the benefit of the public as open sites for a much longer period than they are so kept at present It is a power which will be put in the hands of a public body, because it will be used for the public advantage.

The HON. BABU KALI NATH MITTER said in reply:—My hon. friend has omitted to refer to the cases where the parties have challenged the Commissioners to sue for the recovery of the expenses incurred. In many cases exorbitant demands have been made, and when disputed no steps have been taken for recovery. These are not the cases of poor people, and therefore the cost could easily be recovered if fair and just. Why should the Commissioners be allowed to retain the property? I submit that the reasons assigned by my hon. friend have no bearing on the subject. One of those reasons is that huts may not be erected upon the site for a certain time. The Commissioners have ample power to prevent either huts or houses being built upon the site. Is there any justice or equity in allowing the Commissioners to retain possession of the property without paying for the use of it? Suppose the Court admitted the objection taken by the owner: in such a case, would not the retention of the property be an aggravated injury? A man who contracts to build a house for another person is not allowed to retain possession of it until he is paid for having built it. Here the Commissioners can recover by distress and sale. Why, therefore, should this additional power be given?

HIS HONOUR THE PRESIDENT said:—It is for the Council to say how far the hon. member in charge of the Bill has answered the objection which, I am bound to say, is a very powerful one, though he has shown conclusively that the course which the section proposes to adopt is a very convenient one for the Executive. To me, however, the provision appears so much opposed to our ordinary legal ideas of private rights that the Council would do well to

consider the question carefully before accepting it. For my own part I shall vote against the retention of these words in the section.

The Motion being put, the Council divided:—

Ayes 5.	*Noes 7.*
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 Abdul Jubbar.	The Hon. Sir Henry Harrison.
His Honour the President.	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 moved that section 319 be omitted.

He said:—This section authorises a Magistrate, on the application of the Commissioners, to declare any building to be unfit for human habitation and to prohibit its use as such. This is another unheard-of power, and may operate very prejudicially, especially in the case of the dwellings of joint-Hindu families. What is the owner to do with a building which has been condemned in this way? Why should not the Commissioners acquire it? The value of the property is gone. I challenge my hon. friend to show a house built within the last few years which is unfit for human habitation: houses built in the antediluvian period might be condemned, but not those now built The condemnation or otherwise of a house will depend very much upon the Magistrate before whom the case is brought. If he is a would be sanitarian, he will most probably condemn it; but if the matter comes before a person who will judge on principles of common sense, the result will be different. What inconvenience has been felt from the want of such a provision? Has a single case occurred within the experience of my hon. friend where he considers an order of this kind ought to have been obtained? I have been a Municipal Commissioner since the introduction of the elective system, and I have never yet heard of such a case having been brought to the notice of the Corporation. I submit therefore that there is no necessity for such a provision of law, and that there is no authority for it.

The HON. DR. GOOROO DASS BANERJEE said:—I support this amendment, as it is one of which I myself gave notice, and my reason is shortly this. We can understand that the law should interfere to prohibit one man from using his property in such a manner as to be injurious to his neighbours. But the right of interfering with a man's use of property to prevent his injuring, not anybody else, but himself is a right, the exercise of which should be restricted to the very narrowest limits. It is only in very extreme cases that such a power should be conferred, and I submit that no case has been made out for conferring on a Magistrate the power to prohibit a man from dwelling in his own house. It is true that the Health Officer of the Corporation may be a learned expert in the science of sanitation, and it may be true that its executive officers may be zealous in the cause of sanitation; yet we ought to credit ordinary men with some degree of common sense and a knowledge of their own interests; and in the great majority of cases they are better judges in that respect than the Municipal Commissioners or a Magistrate.

The HON. DR. MAHENDRA LAL SIRCAR said:—With all my love of sanitation I cannot allow this section to pass as it is without clear and definite rules being laid down in what respect a house may be considered to be unfit for human habitation. We may leave it to the discretion of the Commissioners and the judgment of a Magistrate, provided we lay down the conditions under which a house may be held to be unfit for habitation, but unless you do that you arm the Commissioners and the Magistrate with a power which might be exercised most arbitrarily to the great injury and annoyance of the occupiers of houses.

The HON. SIR HENRY HARRISON said:—I cannot admit that there is anything to commend this amendment to the Council. Although this power may be unknown in Calcutta, it has been exercised in Bombay for a long time without complaint, nor is there any proposal to give it up. It has been pointed out that we may credit ordinary men with a due sense of their own interests. But this power is not wanted to deal with ordinary cases, but with such cases as that in which somebody is trying to make somebody else live in a house which is unfit for human habitation, and it is a power which is necessary in the interests of the public. How can the power be exercised arbitrarily? The Commissioners do not claim the power for themselves. They ask to be permitted to bring evidence which will satisfy a Magistrate. First the

Commissioners must put the law in motion, and then they must satisfy an independent tribunal. It is all very well to talk of the necessity of making progress in local self-government. It is an experiment which has been tried in Calcutta for the last twelve years, and if you wish to induce the Government to trust the Commissioners further, is not this exactly the sort of extension of power you ought to expect? This section gives the Executive on behalf of the Commissioners the power of action, but the Corporation has full control over the Executive; and yet those who want the principles of local self-government to be advanced protest against their being entrusted with this power. I say that this and some other provisions of the Bill conferring extended powers on the Commissioners are the necessary result of the experiment of local self-Government having been tried and been found successful, and I cannot conceive any valid objection to a provision which is so safeguarded.

The Hon. Babu Kali Nath Mitter said in reply:—I wholly fail to see what the principles of local self-government have to do with this discussion. My hon. friend says this is an extension of the privileges conferred upon the Corporation, and yet it is objected to. He of course looks at the matter from his own point of view, but from my point of view local self-government means a very different thing from placing a power of this kind in the hands of the Commissioners. The proper extension of the principles of local self-government would be to confer greater privileges on the rate-payers, and not to interpose larger powers between the Commissioners and the rate-payers. I absolutely fail to see how local self-government has anything to do with this question. I have asked my hon. friend to point out a single case where the necessity for such a power has been shewn, but he has not done so, and therefore I am justified in assuming that he is not in a position to do so. Then in the name of common sense I ask how is it possible that in the future any building will be erected which will be unfit for human habitation? If such a building is constructed in the future, the Executive of the Corporation will be responsible, for ample powers have been given to regulate the construction both of houses and huts. The only cases in regard to which it could have been possible to claim such a power are in respect of buildings already existing, and as no such case has ever been brought to notice, I am justified in saying that there can be no necessity for it in the future, unless the necessity should arise from the culpable negligence of the Commissioners.

The HON. DR. GOOROO DASS BANERJEE said in reply:—The remarks of the hon. member in charge of the Bill go to show that he has a very bad case. In fact he gave up the case he had to support and tried to support a very different case. He says the power is wanted for extraordinary cases, for cases where the house is inhabited not by the owner, but by tenants. [His Honour the President—I did not understand the Hon. Member to say anything of the kind.] [The Hon Sir Henry Harrison—I said that generally it would be applied to such cases.] I understood him to give that as an instance in which the power would be exercised. Then he brought in support of this provision the extension of the privileges of local self-government. But the section before the Council confers no privileges on the Corporation as a representative body. If the section conferred this power only on the Commissioners in meeting, then the hon. member's argument only would be pertinent. If that concession is made, it may take off a good deal of the objections to this section.

The Motion being put, the Council divided:—

Ayes 4	*Noes* 8.
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 Abdul Jubbar	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 moved that section 320 be omitted.

He said:—In addition to the reasons which I have mentioned against the retention of section 319 of the Bill, an additional ground of objection against this section is the system which prevails here of all the members of a joint family living together. The Commissioners, for instance, may say that three persons only should reside in a particular house, when as a fact five persons are living in it; and that being so, I submit that this section ought to be struck out.

[*Dr. Gooroo Dass Banerjee.*]

The HON. DR. GOOROO DASS BANERJEE said:—I shall support this amendment, and I have in fact given notice of a similar motion; and I ask permission to move also in connection with it that, in the event of this motion being lost, the words "let out" be substituted for the word "used" in line 3 of the first paragraph of the section. This I move as an alternative amendment.

I quite admit that this section has been inserted in the Bill for a very excellent object, but considering all things I feel bound emphatically to protest against the retention of this section in the Bill. As I submit, this interference by legislation with private rights of property is not only unnecessary and useless, but is positively mischievous. It will be observed that the scope of the section is not limited to the case of lodging-houses, or to cases where there is a conflict of interest, where it is the interest of the owner to let in as many tenants as he can whilst their interest lies in the opposite direction, and where legislative interference may be thought necessary as a check on improper overcrowding. The section equally applies to houses occupied by their owners. But in these cases I submit self-interest is a sufficient protection. And if nevertheless houses occupied by their owners are found to be overcrowded, it is not because they do not know the disadvantages of overcrowding, but because they have not the means to avoid it. The section makes no provision for housing poor people who may be turned out of their houses under its operation. Is there any chapter of the Bill which enacts any workable system of poor law? When we cannot provide the real remedy, there is no good to interfere, because interference will only result in mischief, and people will be driven from bad to worse—from imperfect shelter to no shelter at all. Then there is another difficulty in the matter, even as regards those who are allowed to remain in the house after some inmates are turned out. Those who are Hindus will be placed under this disadvantage. Their law imposes on them the obligation of maintaining and providing accommodation for poor dependent members of the family, and the result will be that they will have to pay more for the maintenance and housing of those who have been turned out than when the whole of them were living together as a joint-family. Thus the little additional space which may be set free for the remaining inmates will have to be purchased at the cost of diminished means of living, for, *ex hypothesi*, the section will operate in this way only in the case of poor families. Then add to this the vexation,

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

annoyance and irritation caused by the interference of the officers of the Municipality in carrying out the provisions of this section. I have only noticed some of the evils which will arise from the enforcement of this section. I do not think I have given any exaggerated picture at all, but should any Hon. Member think it to be exaggerated, I venture to say that, it is only because unfortunately for the majority of the natives his knowledge of them and of the conditions of their society is limited.. I therefore earnestly beg of the Council not to allow this section to pass into law, for the simple reason that the remedy provided for it will prove infinitely worse than the disease.

The Hon Sir Henry Harrison said:—This section speaks so clearly for itself, that I do not think it necessary to say anything more on the subject. The section is taken from the Bombay law, and the Bombay law is taken from the English law, and I cannot see why there should be anything so peculiar in Calcutta, that what is acknowledged everywhere else to be an excellent provision should be considered here to be so great a hardship. It is a provision which will be rarely worked, but should a case occur where overcrowding is carried on to such a great extent as actually to lead to the apprehension of an outbreak of any epidemic disease, it seems to me that the municipality is the proper authority to be invested with power of this nature.

The Hon. Babu Kali Nath Mitter said in reply:—My hon. friend again brings in the Bombay law in support of the Bill, but he should remember that in Bombay there is no such thing as a joint-family, nor does such a system prevail in English towns, and it is idle to ignore a system which has taken deep root in this country. The system exists and legislation should be directed to existing conditions and not to the subversion of them. If the section is intended to apply to the overcrowding of houses let to tenants, such as lodging-houses, let that be made clear. [His Honour the President—It is so intended.] I am quite willing to leave the decision of the question to any lawyer, whether it is limited in its application to lodging-houses. The wording does not so restrict it, for the section runs thus:—

"If it shall appear to the Commissioners that any building used as a dwelling-house is so overcrowded as to endanger the health of the *inmates* thereof, they may apply to a

Magistrate to prevent such overcrowding, and the Magistrate may require the owner of the building * * * * to abate the overcrowding thereof by reducing the number of lodgers, tenants *or other inmates* of the said building."

The word "inmates" will include owners living in their own houses with their families. If the intention is to limit the operation of the section to lodging-houses, why is it worded so as to include persons living in their own houses?

His Honour the President said:—I never for a moment implied that the section could not be applied outside of lodging-houses, but I referred to the wording of the section that the Magistrate's order is to abate the overcrowding by reducing the number of lodgers, tenants, or inmates as giving the clear intention of the section. Both the native members who have addressed the Council have spoken of this section as if it was intended to apply to themselves and their friends and the middle classes of the native population. If the Hon. Members knew the history of this provision, and what is done under it in other places, they would not have spoken as they have done. It is intended to apply to what are called rabbit warrens and overcrowded lodging-houses, houses of ill-fame, and the like. If you adopt the Hon. Dr. Gooroo Dass Banerjee's amendment, and make the section apply only to houses let out to tenants, the owner may live in such a house himself and say it is not let out. You must have a larger section, although I quite admit that by an ingenious perversity the section may be brought to apply to the Hon. Members themselves. Suppose the Executive of the Corporation had no common sense and no fear of the Commissioners themselves before their eyes, and the Magistrate was equally devoid of common sense, then perhaps what the Hon. Members apprehend may happen. I do not mean to say that by an ingenious perversity that may not be done. By ingenious hypercriticism you can always find out extreme cases to which a law is not intended to apply, and in that way every law can be made to look ridiculous or incompatible with the welfare of some one in the country. But I cannot conceive, if the object and intention of the section are understood, that there should be any reasonable opposition to it. I cannot help thinking that the opposition is based on a misunderstanding of the real meaning and object of the section.

The HON. BABU KALI NATH MITTER's motion to omit section 320 was put to the vote and negatived.

The HON. DR. GOOROO DASS BANERJEE's motion to substitute "let out" for "used" in line 3 of the first paragraph of the same section, was also put to the vote, and negatived.

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 28th April, 1888, at 11 A. M.

WILLIAM GRAHAM,

CALCUTTA; *The 10th May*, 1888. } *For Assistant Secretary to the Govt. of Bengal, Legislative Department.*

Reg. No. 3116G—300—26-5-88.

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 28th APRIL 1888, at 11 A.M.

Present:

The HON. SIR STEUART 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. REYNOLDS, C.S.I.
The HON. C. P. L. MACAULAY, C.I.E.
The HON. T. T. ALLEN.
The HON. SIR HENRY HARRISON, KT.
The HON. SIR ALFRED CROFT, K.C.I.E.
The HON. MOULVIE ABDUL JUBBAR.
The HON. BABU KALI NATH MITTER.
The HON. DR. MAHENDRA LAL SIRCAR, C.I.E.
The HON. C. H. MOORE.
The HON. DR. GOOROO DASS BANERJEE.
The HON. H. PRATT.

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 MITTER moved that section 324 be omitted.

He said:—This section has met with serious opposition from various quarters. The public memorialists have, I believe, taken serious exception to it, and the

members of the British Indian Association have also done so, and on behalf of the Hindu community I also take exception to it. The effect of a section of this sort may be—I do not for a moment say it will be—the removal of a Hindu from his place of abode to a hospital superintended by other than Hindus. It will certainly interfere with the religion of the sufferer, and I do not think it was ever intended that by the municipal law the religious feelings of persons should be wounded in the manner contemplated by this section. As regards future habitations in Calcutta, the Commissioners under this law will have ample powers, and it will be impossible for any habitation to be constructed which would be unfit for habitation. They can object to any proposed building on the ground of the want of ventilation or open spaces and the like, because ample provision has been made for regulating the construction of buildings, whether masonry or otherwise. That being so, the danger contemplated by this section is of the remotest character and is not likely to happen. Therefore, under these circumstances, it will be a mistake to alarm the people by introducing a section like this, which in most cases will remain a dead-letter, but which may in some cases, where people are not able to resist its operation, prove a great hardship. As far as well-to-do persons are concerned, the Commissioners will not be able to enforce the provision of this section: they can only be enforced in the case of poor persons who can ill afford to defend themselves. As I have pointed out, the Commissioners will have the fullest power to regulate the construction of buildings, and the chance of any such buildings existing in Calcutta will be as remote as one can conceive. I therefore move the omission of the section.

The HON. DR. GOOROO DASS BANERJEE said:—I will support this motion as it is in fact also one of my own, and I ask leave to move as an alternative amendment that, in the event of this motion not being carried, the following proviso be added to the section:—"Provided that such person gives his consent to such removal." There is no doubt that the section has been framed for a most salutary purpose, but at the same time it seems clear that its enforcement, especially under the peculiar circumstances of this country, is likely to be attended with difficulty. In the case of one large section of the community,—the Hindus—of whom I venture to think I know something, its provisions will in many instances be attended with violence to their religious feelings. We all know of

instances where an orthodox Hindu would rather die from want of medical treatment than go to a hospital. Considering all things, therefore, I submit that this section should either be omitted, or it should be modified in the way indicated in my alternative amendment. I do not say this from any perverse spirit of hypercriticism, as I myself have the strongest dislike for any such spirit. Nor do I think one need be driven to a spirit of perverse hypercriticism, seeing that this Bill has so many features affording ground for very fair adverse criticism, sufficient to satisfy the most active critical propensity. And if I raise my feeble opposition to this section it is because, in my humble opinion, I think active compulsory interference with private rights ought to be confined to cases of extreme necessity, and also because, from my limited experience of men and things, I think that interference of this nature is often likely to lead to more harm than good. I therefore submit that if the Council is not prepared to omit this section altogether, at any rate they may allow it to be modified in the way I suggest.

The Hon Sir Henry Harrison said:—I think the true object of this section has not been understood, because if it is modified in the way proposed, then, in the case of opposition on the part of the person affected with any such dangerous disease, the provision will be almost inoperative. The parallel provision in the Bombay law has been in force since 1872, and has been reproduced in the present Bill. Owing to opposition to this section in Select Committee, we introduced the words "male person," so as not to make the section apply to females, and then we confined its operation to persons who are "without proper lodging or accommodation." How can the control, which the Commissioners will have over the construction of buildings, have anything to do with the fact that persons who may come to work in Calcutta without their families may be so situated in the midst of other persons that their suffering from a dangerous epidemic disease will be extremely dangerous to other persons in the house and to the community at large? This power is always given in towns in England, and no objection has ever been taken to it. It is one of those cases in which the community at large is entitled to require the individual to sacrifice some portion of his rights for the public good Should any person be allowed to claim the privilege of becoming a focus of epidemic disease? All that the section does is to require his removal to hospital.

[*Sir Henry Harrison; Dr. Mahendra Lal Sircar; Babu Kali Nath Mitter.*]

In Select Committee there was a strong feeling that if we made this concession it would practically nullify its effect. That was the opinion of the Health Officer, who expressed himself extremely disappointed with the section as it stands It is a provision which would very rarely be put in force, and when it is put in force it will be in very urgent circumstances indeed. Conceive the case of a *dhobie* attacked with small-pox who remains in his house where others in his family are engaged in washing clothes. Can anything be more dangerous? Under these circumstances I think the section ought to stand, and that both the amendments ought to be rejected.

The HON. DR. MAHENDRA LAL SIRCAR said:—This section contemplates the case of only those persons who are without proper lodging or accommodation: therefore, I do not see what possible objection there is to it. As regards the amendment of my hon. friend Dr. Gooroo Dass Banerjee, a person suffering from a dangerous epidemic disease may be incapable of giving his consent by loss of mind, and therefore it will be impossible to get his consent. I think it much better that a person who is without proper lodging or accommodation should be taken care of and treated in hospital, than that he should remain without proper care and treatment. I am sorry that, though a Hindu, I cannot support either of these amendments.

The HON. BABU KALI NATH MITTER said in reply:—There is one portion of the argument of the hon member in charge of the Bill, wherein he said he found it difficult to understand how the fact of the Commissioners having control over the construction of buildings had anything to do with this section, which I have not been able to follow. If houses and huts are so constructed as to afford proper accommodation and ventilation, there can be no house or hut in regard to which it can be said that it does not afford proper accommodation or lodging. The section does not provide that every person who is suffering from a dangerous epidemic or infectious disease shall be removed to hospital, but that only persons who are so suffering and are without proper lodging or accommodation. Therefore my argument that the Commissioners have control over the construction of buildings and huts is material to the point at issue. I regret that my hon. friend opposite, though a Hindu, does not see any objection to the provisions of this section. Probably it is so, owing to the profession to which he belongs, but in this respect I am positive that he

does not represent the Hindu sentiment; but I and my hon. friend opposite (Dr. Gooroo Dass Banerjee) do undertake to represent that sentiment. I will remind the hon. member in charge of the Bill that when this provision in its enlarged form was first introduced against my most strenuous opposition, he was pleased to say that the section would remain tentatively in the Bill, but if he found that the other Hindu members of the Council were opposed to it he would not insist on the section remaining. Since the Bill was referred back to the Select Committee, various representations from several public bodies had been received, and no doubt, having regard to those representations and to my objections, its operation was limited to the case of male persons, and the section was modified in other respects. That I freely admit; but at the same time I do not see any necessity for the section.

The Hon. Babu Kali Nath Mitter's motion being put, the Council divided:—

Ayes 2.	*Noes* 11.
The Hon. Dr. Gooroo Dass Banerjee.	The Hon. H. Pratt.
The Hon. Babu Kali Nath Mitter.	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. Le 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 then, by leave, withdrew his amendment to add the following proviso to the section:—"Provided that such person gives his consent to such removal."

The Hon. Babu Kali Nath Mitter moved that section 320 be omitted.

He said:—This section provides for the cleansing or disinfecting of a building to prevent or check the spread of any dangerous disease. Probably ten years hence, when sanitary science is better understood by the people, a section like

[*Babu Kali Nath Mitter; Sir Henry Harrison; Dr. Mahendra Lal Sircar; Mr. Macaulay*]

this may with propriety be introduced; the people will by that time have learned the principles of sanitary science; but at present a provision of this kind will be viewed with alarm, and the utility of it to my mind is extremely doubtful.

The HON SIR HENRY HARRISON said:—We have got within measurable distance of the time when, in the opinion of my hon. friend, a provision of this sort will be admissible; but I am inclined to hope that if the Council adopts it now, that period of time will be shortened a little, and that nine years hence no objection will be seen to it. I admit that all the provisions of this section will be very slowly put into application. This is another section taken from the Bombay Bill. There it has been in force for the last sixteen years, and they do not wish to postpone it for another ten years. Should there be any place which, from want of cleansing or disinfection, might prove dangerous by the propagation of disease, there can be little doubt that a power of this kind should be left in the hands of the Corporation

The HON. BABU KALI NATH MITTER said in reply:—There is nothing in the section to indicate the circumstances the existence of which will constitute the danger. The Commissioners are simply to judge on the certificate of the Health Officer; and, knowing as we do the propensities of Health Officers, there will be great danger of the section being put into operation without real necessity.

The HON. DR. MAHENDRA LAL SIRCAR said:—To guard against the certificate of the Health Officer being given on the report of his subordinates, whose opinion may not always be perfectly correct, I will, with the permission of the Council, move as an amendment that the words "after personal inspection" be inserted after "Health Officer" in line 2 of the section. I do not see that there can be any objection to the addition of these words.

The HON. MR MACAULAY said:—I really think we ought to assume that the Health Officer will not give his certificate without good grounds. He will not give it unless he is satisfied that the provision ought to be put in force in a particular case.

Sir Henry Harrison; The Advocate-General; Dr. Mahendra Lal Sircar The President; Mr. Allen.]

The HON. SIR HENRY HARRISON said:—I have no particular objection to this amendment, but I feel, as my hon. friend Mr. Macaulay does, that the certificate of the Health Officer will only be given in cases in which he sees sufficient grounds. Suppose, for instance, that two leading practitioners in the town have visited the house of a person suffering from an infectious disease, and they report that the disinfection of the house is necessary to prevent the spread of the infection, the Health Officer may, under such circumstances, feel himself relieved from the necessity of inspecting the premises. Otherwise he would be bound to satisfy himself.

The HON. THE ADVOCATE-GENERAL said:—The Health Officer will be the person responsible for the certificate, and it may be left to him to do what is proper.

The HON. DR. MAHENDRA LAL SIRCAR said in reply:—I would not have proposed this amendment had not I known that duties of this kind are often perfunctorily performed. I have no objection to add the words "or after receiving the certificate of two qualified medical officers."

HIS HONOUR THE PRESIDENT said:—I cannot allow this further amendment without notice.

The HON. MR. ALLEN said:—I do not think the personal inspection of the Health Officer should be a necessary condition. Suppose ten persons in a house died from small-pox, and every one who goes into it takes the disease, will not such a state of things ascertained from his reports justify the Health Officer's certificate? What can personal inspection add to his knowledge? Disease germs are not visible to human eyes. The house is full of them: the angel of death is sitting in that house and strikes every one who enters. The Health Officer by going there may himself be struck, but otherwise personal inspection will tell him nothing. I consider therefore that no such restriction should be introduced into the section. The circumstances which come to the knowledge of the Health Officer in his ordinary report will be quite sufficient to enable him to determine whether or not he should give his certificate.

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

The HON. BABU KALI NATH MITTER's motion to omit section 325 was put to the vote and negatived.

The HON. DR. MAHENDRA LAL SIRCAR's motion to insert the words "after personal inspection" in line 2 after the words "Health Officer," was also put to the vote and negatived.

The HON. BABU KALI NATH MITTER moved that, in line 1 of clause 2 of section 326, for the word "may" the word "shall" be substituted; and that all the words from "but" to the end of the section, be omitted.

He said —The object of this amendment is to make it compulsory on the Commissioners to pay compensation for the destruction of a hut under this section If a hut is destroyed for the public benefit, I think the public should pay for it. We are here dealing with hut-owners who are generally men of humble means. The destruction of his hut may be a serious matter to him, and if it is destroyed for the public benefit, compensation should be paid, and not be left optional with the Commissioners.

The HON. DR. GOOROO DASS BANERJEE said :—The amendment in my name in regard to this section is substantially the same, and is made for precisely the same reasons as my hon friend has advanced. It is this—that for the second paragraph of section 326 the following be substituted .—

"The Commissioners shall pay compensation to any person sustaining substantial damage by the destruction of any hut."

The HON. SIR HENRY HARRISON said :—This is a reasonable suggestion, nevertheless I submit that on the whole the weight of argument is against it. The section is exactly the same as in the Bombay Bill, that compensation *may* be given if the Corporation thinks fit. Would it never happen that the loss sustained by the individual was due to his own laches, and that in such a case it would not be justifiable for the Commissioners to give compensation ? The tribunal which is made the judge will be a most lenient tribunal : the remarks which have been made by the hon. movers of the amendment will show how lenient the tribunal would be, and the cases in which compensation would not be given would be exceptionally bad.

The HON. BABU KALI NATH MITTER's motion being put, the Council divided:—

Ayes 6.	*Noes* 7.
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 Moulvie Abdul Jubbar.
The Hon. C P L Macaulay.	The Hon. Sir Alfred Croft.
The Hon the Advocate-General.	The Hon Sir Henry Harrison.
His Honour the President.	The Hon. T T Allen
	The Hon. H. J. Reynolds

So the Motion was negatived.

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

The HON BABU KALI NATH MITTER moved that section 332 be omitted.

He said:—This section provides that no person shall let a building or part of a building in which a person has been suffering from cholera, small-pox, diphtheria or typhoid fever, without having first disinfected the building or part thereof, and every article therein likely to retain infection, to the satisfaction of the Commissioners; not simply the room in which the disease occurred, but the whole building or part of the building. There are some houses which are let out in flats: that flat is not to be let out, and the Commissioners are to be judges of what is likely to retain infection. The words are so large that anything can be brought within the wording of the section. As I understand the section, it means that the building or any part thereof or any article therein likely to retain infection is to be disinfected, and the judges of what is likely to retain infection are to be the Commissioners. There are no qualifying words except those mentioned in the section. As soon as there is a case of cholera in any building, it will be supposed that the building should be disinfected, as it would be likely to retain infection. That will be the way in which this section will be worked.

The HON. SIR HENRY HARRISON said:—I read the section in just the opposite way from that in which my hon. friend does. The section is borrowed from an English Act, and has been in force in Bombay since 1872. It is intended to mean that if the danger lies in any part of the building, that part is

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

not to be let; if in the whole building, the whole building is not to be let. It does not mean that if cholera has occurred in one wing of a building, you are not to let out the other wing. Let us take the converse case. Are we to say that a person is with his eyes open to be allowed to let out the portion of a building in which he knows that a person has suffered from cholera or small-pox? Is that the spirit in which sanitary legislation is to be carried on?

The HON. THE ADVOCATE-GENERAL said:—The intention of this section is very clear. I cannot understand objections of the sort which have been raised to this and other cognate sections. One would have thought that Hindu sentiment would be in favour of strengthening all the purposes of sanitation. We have on one side an outcry that the people labour under heavy taxation; but here there are small measures designed to improve the health of the town without any additional taxation, and yet a complaint is preferred. I must say that I can have no sympathy with such objections: they should be more thoroughly considered before they are brought forward.

The HON. DR. GOOROO DASS BANERJEE said:—I am bound to say that Hindu sentiment is in favour of having a building, in which a person has suffered from an infectious disease, disinfected or purified in some manner or other before it is let out again for habitation.

The motion was put to the vote and negatived.

The HON. BABU KALI NATH MITTER moved the omission of section 336, which provided a penalty on the owner of any land who permits animals to be kept thereon for purposes of profit without a license.

He said:—I may at once say that I do not seek to enlist the sympathy of the learned Advocate-General in its favour. I do not want to enlist the sympathy of any of my colleagues. I move the amendments which I think I am bound to move, and if I am mistaken it is my misfortune. But it is wrong to suppose that I try to ask the sympathy of any Hon. Member. In regard to this section, suppose a landholder lets out five cottahs of land to a tenant. He does not know for what purpose the land is wanted. The tenant having taken the land for, say, six or eight months, what control has the landholder over the tenant as to the use to which the land will be

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

put? If the tenant uses it in a way which is objectionable, the tenant is responsible. If he does not make a proper use of the land, and injury is caused to the neighbours, the tenant alone is to blame. How can the landholder, who has simply let out his land, remain responsible for animals being kept upon it in contravention of the law? The way in which this section was understood in Committee was that if it is brought to the notice of the landholder that his land is being used in a particular way, unless he puts a stop to it he would be considered to be so using the land. But it seems to me that the landholder would have no control as long as the tenant has a lease. If the landholder let his land for a certain specified purpose, that would be a different thing; but the purpose to which the land will be applied is never contemplated when the land is let. The person, having got a lease of the land, uses it as he thinks proper; if he puts the land to an improper use, he is responsible, and not the landholder.

The Hon. Sir Henry Harrison said:—This is one of the alterations in the existing law of which the urgent necessity has been shown by six years' practical working. At present the owner lets out the land, and a *goalabaree* is built upon it. The tenant is prosecuted for keeping it in an absolutely filthy condition, and is fined in a sum ranging from annas 4 to Rs. 10; he pays the fine, but the *goalabaree* remains in the same condition, and then we have another prosecution. There is nothing more difficult in the municipal administration than the endeavour to keep these *goalabarees* in a proper condition. There are some hundreds of prosecutions instituted annually, resulting in conviction after conviction, and the sole endeavour of the offender is to pay the fine which he tries to get made as small as possible, and he then hopes that he will not be troubled again for three or four months. The only real remedy is to make the owner of the land responsible for the use to which his land is put. The object is to prevent a landholder from letting his land for a *goalabaree* unless he is satisfied that the requirements of the law will be observed, and, when he does so let his land, he should be held responsible if it is kept in a filthy condition.

The Hon. The Advocate-General said:—I do not understand the discussion which has arisen on the construction of the word "permits" in this section. The contention is that if the owner lets his land to another

person, he ought not to be made responsible for what the tenant does. The hon member in charge of the Bill says it is in the power of the landlord always to turn out the tenant. If a man lets his land for a certain term, he cannot be said after that to permit; he has no power over the land or the tenant. If his tenant were a tenant-at-will; it would be different. A man cannot be said to permit the tenant to do something when he has no power to prevent him, and I do not think it is intended to apply to a case of that sort. But when the landlord has the power to turn the tenant out and he permits, he is responsible. I can see no possible objection to that. If the law requires that a license should be taken out for a place of this description, and the landlord knows the land is to be used for that purpose without a license, why should he be allowed to assist any person to act in contravention of the law? The whole scope of the objection is to allow people to escape from the consequences of acts for which they ought to be liable.

The HON. BABU KALI NATH MITTER said in reply:—If the view of the hon. and learned Advocate-General is correct—and I suppose it must be taken to be correct—then there is no objection to this section, but the meaning which was given to it in Select Committee was very different, viz., that if the matter is brought to the notice of the landholder, and he still allows the same state of things to continue, he would be responsible. That is how the matter was understood in Committee. But if that is not the meaning, but the permission must be actual permission, I will not press the amendment.

The motion was then, by leave, withdrawn.

The HON. SIR HENRY HARRISON moved that, in line 2 of section 348, for the words "unregistered place" the words "not registered under section two hundred and ninety-seven of Bengal Act IV of 1876" be substituted.

He said:—This is only a verbal alteration, and provides fully for the object of the section. The expression "unregistered place" is ambiguous.

The motion was put to the vote and carried.

The HON. SIR HENRY HARRISON moved that, in lines 2 and 3 of the second paragraph of section 349, for the words "or permits it to be used" the words "for any of the purposes mentioned in section three hundred and forty-six, or permits it to be so used" be substituted.

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

He said:—This is an amendment of a similar kind. The penalty clause provides that, whoever after the expiration of the time "uses such place or permits it to be used." This may be misunderstood. There is no objection to the place being used, but it is not to be used for one of the prohibited purposes, and the amendment is to make that clear and to prevent the possibility of misunderstanding.

The motion was put to the vote and carried.

The Hon. Babu Kali Nath Mitter moved that clauses (*a*) to (*e*) of section 385 be omitted.

He said:—The clauses ran thus:

"(*a*) Any premises in such a state as to be a nuisance or injurious to health:

(*b*) Any tank, well, ditch, gutter, watercourse, privy, urinal, cesspool, or drain so foul or in such a state as to be a nuisance or injurious to health:

(*c*) Any animal so kept as to be a nuisance or injurious to health:

(*d*) Any accumulation or deposit which is a nuisance or injurious to health:

(*e*) Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family:'

This is what the members of the British Indian Association say on this section—

"Looking to the extreme disparity between the modern ideas of European sanitarians about domestic arrangements and those of the people of this country, the clauses (*a*) to (*e*) of this section cannot but prove an engine of oppression, or a dead-letter. They would doubtless be beneficial to the Corporation by bringing in frequent fines under section 367; but they can do no good to the people at large. The clauses have been reproduced from an English Act, but they are totally unsuited for the condition of life in this city. Even in England it has not been possible to enforce them to the full extent. Take, for instance, the clause about overcrowding. The complaint in that respect has not yet been removed. In Calcutta it is impossible to remove it. When people congregate together in houses under circumstances which are *not* unavoidable, they may be well asked to disperse to prevent the air in the house becoming noxious; but when members of the same family are compelled under the force of circumstances to live together, and have not more airy and better ventilated quarters to go to, what are they to do? A poor man living in a hut with a wife and eight children may be quite inclined, against the ties of affection and in the interests of sanitation, to separate, but who will give him a second hut? Unless the Commissioners are prepared to provide free quarters in all such cases, it will be practically impossible to prevent overcrowding in houses under unavoidable circumstances. No amount of fine or

imprisonment or the sale of goods and chattels can do any good. If fines could improve the condition of the poorer classes, their condition would not be bad. In fact, the fine in the law appears to be a penalty for poverty."

The objection has been taken not in the interests of the rich, but of the poor in Calcutta; and considering that, as regards overcrowding a section has already been passed which relates to lodging-houses, &c., clause (*e*) of this section does not appear to be necessary. Other sections have also been passed which will enable the Commissioners to go into houses to see whether they are kept in a clean state, and, if not so kept, to have them cleaned and to realise the cost; therefore if there be anything which is likely to be injurious to health, the Commissioners may remove the cause, and clause (*d*) is superfluous. As regards the keeping of animals, provision has also been made by other sections; clause (*c*) is therefore not required. Clause (*a*), to my mind, is meaningless; certain specific acts are treated as nuisances, but this is a general clause. Then again, as regards clause (*b*), privies, cess-pools and drains are under the control of the Commissioners. If a drain gets choked, the Commissioners are allowed not only to point out the defect to the owner, but to repair them then and there. Therefore the Commissioners have the fullest power in respect of all these matters without having recourse to a prosecution. I do not think that in cases in which the Commissioners have the power to take executive action and to recover the cost of works done, they should also be allowed to prosecute the parties and have them fined. On these grounds I move that clauses (*a*) to (*e*) of section 385 be omitted.

The HON. DR. GOOROO DASS BANERJEE said:—I beg to move that clause (*e*) of this section be omitted. My amendment covers much smaller ground than that of my hon. friend. The question in my amendment has to some extent been discussed in connection with section 320, and it will be unnecessary to repeat what I said then. In the course of that discussion Your Honour observed that much of the apprehension regarding hardship resulting from the operation of that section was ill-founded. But the language of clause (*e*) is different from that section, and it is made expressly applicable to the case of the overcrowding of a dwelling-house by members of the same family, and that is one reason why I submit, subject to correction, that my apprehensions are better founded in the present instance. In the next place,

[*Dr. Goorob Dass Banerjee; Moulvie Abdul Jubbar; Mr. Macaulay.*]

there is no reason why there should be a double provision. Section 320 will practically suffice to prevent overcrowding in cases where it may be necessary to exercise the power, and it is not necessary to have this clause as well.

The Hon. Moulvie Abdul Jubbar said:—I quite agree in all that has fallen from the Hon. Member who has just sat down, and I wish to add a few remarks in reference to clause (*e*). That clause, if passed into law, will neutralise the effect of that principle of charity in which we natives have been instructed from our infancy. We have been taught to be charitable to our relatives and friends, and to that principle it will not always be possible for us to attend, because under the provisions of this clause we may sometimes have to turn out of our house some of those who, under our religious obligations, or according to our social customs, we are bound to shelter and maintain. I do not know what the Hindu religion teaches its followers in regard to charity; but the Koran enjoins on every Mahomedan the duty of helping relatives, paupers and travellers, and no Mahomedan true to his faith can excuse himself from this duty on the plea which may be furnished by the Municipal law. An individual family includes not only one's parents and children, but relatives and dependants; and I do not see how, consistently with their duty, these relatives can be turned out of doors. There are few native houses which one with ideas of foreign sanitary regulations will not declare to be overcrowded in the sense of the words used in this clause. I therefore respectfully but earnestly hope that Your Honour will not sanction undue interference with the social habits and household affairs of the native community.

The Hon. Mr. Macaulay said:—It is with great reluctance that I wish to ask the Council to oppose the views which have been put forward on behalf of one section of the community by the Hon. Member who has just spoken. I think it is necessary that if people understand that charity begins at home, they should equally understand that in municipalities charity does not end at home. It is all very well to be charitable and to receive into one's house a number of relations and dependants; but you must also regard the health of the public. In connection with this subject, I would ask the hon. movers of these amendments whether it is not the fact that the Council has received these amendments and considered them carefully, and has exhibited great patience in listening to the arguments which have been

adduced in support of them; but now that we are coming to the end of the long string of amendments, we should have two considerations before our minds: the first is that sanitary laws exist, and that it is our object and desire that they should be adhered to, and that pleadings of a special class which are brought to bear against them cannot be considered as against the claims of the community at large The next is that the ends and object of these sanitary measures is the good of the people: and that we leave the administration of these measures to the Corporation which represent the community. We assume that this agency will administer them better than any other. The spirit of sanitary legislation requires that neither the rich nor the poor should be allowed to interfere with their operation. Bearing these two considerations in mind, I think we may put aside these amendments and proceed to carry the Bill into law.

The HON. THE ADVOCATE GENERAL said:—I wish to point out to the Hon. Members who have spoken on clause (*e*) of this section that I limit my remarks, to one point of view, viz, that there may be some hardship in making clause (*e*) applicable to places where there are members of the same family. There are houses which are overcrowded by wealthy people who are not members of the same family. There is, for instance, a class of people who come from Madras—wealthy people who work on a capital of three or four lakhs of rupees, but who nevertheless crowd together to the number of sixty or seventy in one house. These people should not be exempted from the operation of this section. If they crowd together and render a house unhealthy, the powers of the Municipality should extend over them; therefore the amendment to leave out this clause altogether is too large. But with regard to members of the same family, there is something in what has fallen from the Hon. Member opposite (Moulvie Abdul Jubbar), that poor people very often cannot help themselves. People come to their houses, and they are wholly without the means of turning them away or of giving them more accommodation. I would therefore suggest that some modification of clause (*e*) be made so as to exclude from its operation members of the same family.

The HON. MR. ALLEN said:—I regret I cannot agree with the Hon. Advocate-General, that because a number of people are members of the same family