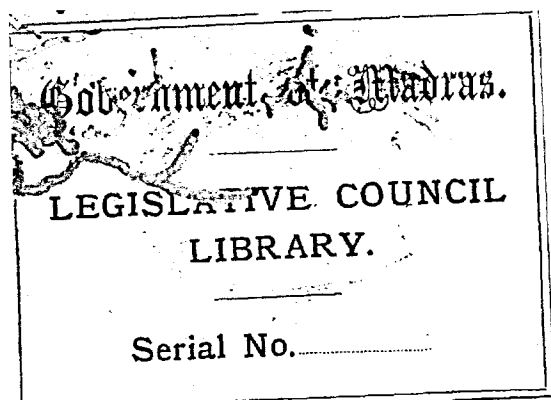




PROCEEDINGS

OF THE

ncil of the Governor of Fort St. George

ASSEMBLED

FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS

FOR THE YEAR

1900,

WITH INDEX.

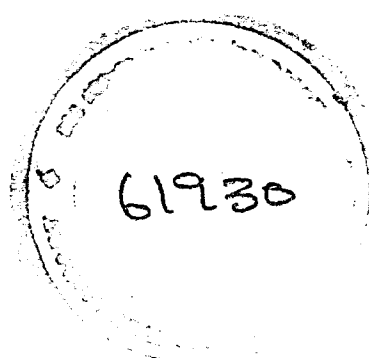
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*a Meeting of the Council of the Governor of Fort St. George
for the purpose of making Laws and Regulations under the
of the Acts of Parliament, 24 and 25 Victoria, Cap. 67.
56 Victoria, Cap. 14.*

the Council Chamber in Fort St. George on Friday the 26th

PRESENT:

by the GOVERNOR OF MADRAS, G.C.M.G., G.C.I.E.—*Presiding.*
The Hon'ble Mr. A. T. ARUNDEL, C.S.I.
The Hon'ble Mr. H. M. WINTERBOTHAM.
The Hon'ble THE RAJAH OF BOBBILI, K.C.I.E.
The Hon'ble Mr. G. STOKES.
The Hon'ble Mr. G. S. FORBES.
The Hon'ble Lieut.-Col. Sir GEORGE MOORE, Kt., C.I.E.
The Hon'ble Mr. J. THOMSON.
The Hon'ble Mr. F. A. NICHOLSON, C.I.E.
The Hon'ble Mr. EARDLEY NORTON.
The Hon'ble M.R.Ry. P. RAJARATNA MUDALIYAR Avargal, Diwan Bahadur.
The Hon'ble Sir V. BHASHYAM AYYANGAR, Kt., C.I.E., Diwan Bahadur
(Officiating Advocate-General).
The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal, B.A.
The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal, B.A., M.L., Rao
Bahadur.
The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal, B.A.
The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu.
The Hon'ble Mr. G. H. STUART, M.A.
The Hon'ble Mr. F. J. E. SPRING, C.I.E.
The Hon'ble Mr. G. G. ARBUTHNOT.
The Hon'ble The Reverend W. MILLER, M.A. LL.D., D.D., C.I.E.
The Hon'ble NAWAB SAIYID MUHAMMAD SAHIB Bahadur.

FAMINE.

His Excellency the PRESIDENT:—Honourable Gentlemen, I think it will be of advantage and interest that you should be put in possession of the exact information of the Government with respect to our position in regard to famine. The Hon'ble Mr. Nicholson, member of our Board of Revenue, has had this matter under his supervision and consideration, and he has just returned from a careful inspection of those districts in which famine is most apprehended. Before proceeding to the business of the day, I will ask Mr. Nicholson to make a statement to the Council on the subject to which I have referred.

The Hon'ble Mr. F. A. NICHOLSON:—Your Excellency, in accordance with instructions I have endeavoured to put as briefly as possible a short statement of the position of the Presidency and a slight forecast of the future. Before I read the memorandum, I should like to ask Your Excellency's indulgence and that of the Honourable Members for the nature of the memorandum itself. It had to be prepared at very short notice and may therefore contain expressions which may be wanting in

absolute precision. Another reason besides that of speed in drawing hitherto Collectors have not submitted their full and final report section 13 of the Code when distress is apprehended. The thing found is that of trying to place in concise form a fair presentment of the country which shall convey to people who have not been an exact picture of the character of the season.

The position in the Presidency at present is that owing to the south-west monsoon and partly to the early monsoon rainfall, sowings were to a large extent in districts, and the crops sown have suffered from the drought. The area of crop sown has nowhere been seriously affected, owing to the exceptionally heavy rainfall of April and May last, a large area of crop was sown and reaped under wells and irrigation works than usual.

In the Deccan districts, the northern parts of Nellore, and the uplands of Kistna and Gódvári, the dry crops, which are there the principal ones, have suffered much and the yield has been and will be small, but except on limited areas there has been no complete failure. Even where nothing more has been secured, the ryots have in most cases obtained moderate to sufficient supplies of fodder for their cattle. In the Deccan, on the black soils, not only has a great area of cholam been harvested with varying outturns, but the cotton crop will yield moderately. On the red soils a good deal of grain has been harvested and the pulses and castors have by no means failed. The prices of produce generally are high, cotton being now dearer by about Rs. 40 per candy f.o.b. than it was a year ago.

In some parts of the Deccan districts moreover, owing to the exceptionally heavy rainfall of September, the area of wet land cultivated has been large. Under a number of the smaller works the supplies have been inadequate, but over large areas the presence of numerous wells whether in the ayacut of the tanks or in the ordinary dry land, has enabled many ryots to secure good crops even in tracts which may be called affected. In North Arcot, and parts of South Arcot on the west, the tank supplies have failed to a large extent, and there will be much loss of wet crop. This failure will be dealt with under the rules, and remissions granted where necessary. Over a large part of the Deccan districts and the other parts of the Presidency where the shortage of crop has been largest, the season of 1898 was very favourable and that of 1897 not unfavourable though late. Parts of Anantapur and Cuddapah, however, form exceptions and need special consideration. As to the rest of the Presidency, although the season has been unfavourable, there is reason to believe that a moderate to fair crop has been or will be secured. In the Tanjore delta, owing to the marked failure of the supplies in the Cauvery, and the bad distribution of the rainfall the area planted has been somewhat deficient, whilst floods and drought have caused a good deal of damage. The exact extent of this damage has not yet been reported.

The people everywhere are reported to be in good condition, and there has hitherto been no lack of employment since the crops, though poor in many parts, had to be watched, gathered and stored, while the work at wells and the irrigation sources, the clearing of wells, and many miscellaneous forms of work have been as abundant as usual. From parts of Anantapur, Cuddapah and Bellary, the labourers are finding considerable employment at good wages on certain large irrigation projects which are being carried out by the Mysore Durbar.

During the first six months of the current official year on the balance of exports and imports there were carried out of the Presidency nearly 800,000 imperial maunds (about

30,000 tons) of food-grains, chiefly from the Deccan districts and the great northern deltas. The exports from the Deccan continued on a large scale through October and November, but have since died away. Those from the East Coast continue, but statistics are not yet available as to the amount. Besides this there was also during the period above mentioned a very brisk trade in grain from Coimbatore, Salem and North Arcot to the West Coast parts for shipment to Bombay.

The result of the large demand for export, together with a general holding up of stocks upon the failure of the October and November rains, has been that prices which were very low in June rose rapidly from September onwards and are now exceptionally high throughout the Presidency. In parts of the Deccan districts and North Arcot rates for the staple food-grains are dearer than the so-called "scarcity rates," whilst elsewhere they are dearer than what are called the "warning rates." In the Deccan and Circars, however, rates are not generally so severe as they were in either January 1892 or January 1897, and in Nellore are much cheaper than they were in January 1898 when distress existed in the western parts of that district.

In the tracts where the shortage and failure of crop have been large, close enquiries are being made with a view to determining whether the assessments due shall be postponed, and whether in any localities it may be advisable to remit them in whole or in part. In several districts, in fact, the postponement of collections on dry lands has been sanctioned either to allow the reaping of the later crops or to avoid undue pressure for kists which may be remitted or postponed till next year; on wet lands Collectors have the power of similar postponements where remissions are probable.

As already stated, there has as yet been no general lack of employment, often at highly remunerative rates, for the labouring classes, nor have there yet been visible any of the usual indications of distress such as an increase of crime, aimless wandering or migration, emaciation of human beings or cattle. But the harvests have been short in duration and comparatively scanty in outturn; the quantity of grain obtained by the labourers has been therefore deficient and general field labour is ending early. Prices are so high that employment is contracted, so that the labouring classes are seeking for miscellaneous work at an earlier date and with greater need than is usual in ordinary years; village credit is certainly restricted and the sources of ordinary charity are less copious than usual. The complete reports of Collectors in the several districts have not yet been, in general, received, but all ordinary works are being pushed on, and it is in contemplation to expand these works by concentrating on numerous productive and useful works, large grants which would otherwise be spread over successive years. It is impossible to forecast at this stage the probabilities of the future, since as shown in previous years, mere observation is notoriously liable to inaccuracy, and no test works have yet been found necessary by any Collector. It is possible that the expansion of ordinary works in the manner indicated may suffice for the needs of the present season, but should distress develop the Famine Code can be introduced as soon as may be necessary.

His Excellency the PRESIDENT:—The Council will now proceed to the business of the day.

ADDITIONAL MEMBERS.

The Secretary reported that the Hon'ble Mr. G. G. Arbuthnot, the Hon'ble the Rev. W. Miller, M.A., LL.D., D.D., C.I.E., and the Hon'ble Nawab Saiyid Muhammad Sahib Bahadur took their seats as additional members of Council.

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His Excellency the PRESIDENT:—Before giving permission for questions which stand in the name of Honourable Members to be put, I desire to draw the attention of Honourable Members of this Council to a certain point in the procedure relating to questions.

Most of the questions are divided into several clauses; and it sometimes becomes my duty to disallow one or more of the clauses, either as involving an assumption, or for some other sufficient reason under the rules.

In such a case it has hitherto been the practice to inform the Honourable Member and to enquire whether he wishes the question put without the clause disallowed, or with that clause so altered as to be free from objection. When the meeting was near at hand and when it seemed that the Honourable Member's acceptance could not be obtained in time, he was not infrequently informed that the question altered as suggested had been inserted in the agenda paper in anticipation of his consent.

This procedure however has been attended with inconvenience, as in certain cases Honourable Members, in the perfectly proper exercise of their discretion, have not desired that the questions should be put except in the original form. I have therefore been led to look up the correct procedure, and I have come to the conclusion that any question altered in the way specified above should be treated as a new question.

The only way in which this will affect Honourable Members is that the altered question may perhaps not be in time for the approaching meeting. But in any case of urgency I shall be prepared to exercise the power vested in me by rule 11 and thus I hope no inconvenience will be caused to Honourable Members by the slight change in the procedure now indicated.

I will now call upon the Hon'ble Mr. Jambulingam Mudaliyar to put the questions that stand in his name.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—

I. Is Government aware that distress is felt by the agricultural and labouring classes by reason of total or partial failure of dry crops in the Badvel and Madanapalle taluks and considerable portions of Rayachoti, Kadiri, Pulivendla, Jammalamadugu, Cuddapah and Sidhout taluks of the Cuddapah district?

Will Government be pleased to state the area in the above and other taluks of the district over which failure of such crops has occurred?

The Hon'ble Mr. Forbes:—

I. The answer to the first clause of the question is in the affirmative. The time of harvest for the late dry crops is hardly yet come; but Government is alive to the fact that a partial or total failure of crop over a considerable area is to be anticipated.

Information is not yet available as to the area over which there has been failure or as to the extent of the failure. Inspection is going on and a detailed report is expected shortly.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—

II. Is it a fact that wet crops throughout the district, except in a few favoured tracts, such as under the Kurnool-Cuddapah canal, are failing or have already failed?

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The Hon'ble Mr. Forbes:—

II. As regards wet crops under rain-fed tanks the answer is in the affirmative. Rice is fortunately not the staple food of the district, and the area on which wet crops have totally failed is believed to be comparatively small.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—

III. What are the prices at which the staple food-grains of the district—cholam, ragi and cumbu—sell at present? Is it a fact that they are above scarcity rates?

The Hon'ble Mr. Forbes:—

III. The Honourable Member is referred to the Board's season reports published every week in the *Fort St. George Gazette*.

The answer to the second clause of the question is in the affirmative.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—

IV. Is it a fact that considerable distress exists among the weaving communities of Proddatur and Jammalamadugu taluks for want of occupation? Will the Government be pleased to adopt early measures to organize relief for this class?

The Hon'ble Mr. Forbes:—

IV. The answer to both questions is in the affirmative.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—

V. In view to the extensive failure of dry crops in the district, will the Government be pleased to adopt early measures to gauge accurately its extent and the particular tracts in which they have so failed and obtain accurate accounts for future use when necessary?

The Hon'ble Mr. Forbes:—

V. The question is answered in the affirmative. All available officers are at present engaged in crop inspection.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—

VI. In view to the present condition of the district, will the Government be pleased to order the suspension of kist collections in the affected tracts?

The Hon'ble Mr. Forbes:—

VI. On the receipt of the report on the crop inspections now in progress Government will be prepared to make such concessions as may then be found necessary. Over the greater part of the district it is certain that no suspension of kist collection is required.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—

VII. Will the Government be pleased to give special consideration to the system of granting loans to agriculturists in all the affected districts for the purpose of sinking wells as a protection against famine, and issue orders to all Revenue officials in such districts to explain the benefits of the system to ryots and induce them to take loans?

The Hon'ble Mr. Forbes :—

VII. The steps suggested by the Honourable Member have been already taken. The rules for granting loans to agriculturists have been long and fully advertised in every district. In Cuddapah the number of loans taken during the last ten years exceeds 7,800 and the amount still outstanding and due to Government exceeds 2.6 lakhs.

Three reports of the Board of Revenue on the state of the Cuddapah district and on the measures proposed to be taken to alleviate distress will be placed on the table, together with the orders of the Government thereon. The papers will be found to contain much of the information desired by the Honourable Member.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR AVARGAL :—

VIII. Will the Government be pleased to avail themselves of the present season in the Cuddapah district to push on to completion the Chopad project in the Proddatur taluk, the Peddapasupula project in the Jammalamadugu taluk and other works of irrigation undertaken in former years but left incomplete?

The Hon'ble Mr. Forbes :—

VIII. Revised estimates amounting, respectively, to Rs. 4,22,000 and Rupees 24,200 for the Chopad and Peddapasupula projects have just been sanctioned for execution. Steps will be taken by the Superintending Engineer, III Circle, to push on with other incomplete works of former years.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR AVARGAL :—

IX. Will the Government be pleased to consider and give effect to the scheme of constructing a railway connecting Kalikiri on the South Indian Railway with Rayachoti, a taluk head-quarter station, situated almost in the centre of the Cuddapah district? Will advantage be taken of the present season to complete the earth-work of the said line?

The Hon'ble Mr. Spring :—

IX. The line referred to is now under survey, and Government hopes in due course to bring about its construction. The earthwork might possibly be taken up as a famine-relief work should emergency arise.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU GARU :—

X. (a) Will Government be pleased to state when it proposes to give effect to the suggestion to establish two experimental farms—one in the northern and the other in the southern half of the Presidency?

(b) Will Government consider the advisability of selecting Gódvári district for one of the farms to be opened?

(c) Have any steps been taken to engage an additional European agriculturist as contemplated in paragraph 78 of the Administration Report for 1898-99?

The Hon'ble Mr. Forbes :—

X. The financial difficulty is still the main obstacle to action, and considering the present state of the season Government can hold out no immediate hope of funds being available for agricultural experiment in the current year.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU GARU :—

XI. (a) Is it the fact that Deputy Commissioners, who fix the assessment for land revenue, have also the power to hear objections to the rates fixed by them and that an appeal lies to the Commissioner of Revenue Settlement, Land Records and Agriculture, from any decision or order passed by a Deputy Commissioner?

(b) Is Government aware whether inconvenience or want of full confidence in the assessment of land-tax is caused by this system? If so, will it be pleased to empower Collectors of districts to hear such objections or to prescribe such other procedure as may be proper?

The Hon'ble Mr. Forbes :—

XI. (a) Yes; Deputy Commissioners have power to hear objections and the appeal lies to the Commissioner of Revenue Settlement.

(b) The Government is not aware that the system causes inconvenience or want of full confidence in the assessment. The officer whose business it is to fix the assessment of a field is obviously the first person who should consider any objections which may be raised to the proposed assessment. The Collector may or may not be a trained Settlement officer, and moreover has plenty of other work to do.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU GARU :—

XII. (a) Will Government be pleased to consider the desirability of allowing those that raise plantain gardens to apply for water *twice* in the year as in the case of cocoanut gardens?

(b) What were the reasons which induced Government to sanction the levy of *double* water-rate in the case of "turmeric" since 1896? In view of the fact that it does not require more than two floodings, will Government be pleased to restore the single rate?

The Hon'ble Mr. Forbes :—

XII. (a) The Honourable Member's reference to applying for water twice in the year in the case of cocoanut gardens is not understood. Plantain gardens are charged double-crop water rate, and the cultivator may use as much water as he likes without any second application.

(b) In 1896 the Government sanctioned the treatment of turmeric as double crop for the purposes of charging water rate, because it was reported that the crop on an average took as much water as would raise two paddy crops. From further detailed enquiries made in all districts it appears that turmeric stands on the ground generally from eight to ten months in the year and requires water for four to ten months. The Government is not prepared to modify the charge now made for water in the case of this crop.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU GARU :—

XIII. (a) Is it the case that Government has ordered that unoccupied land in the Kistna delta should be assigned, subject to payment of a consolidated wet assessment in every case in which the Public Works Department certifies that water is available for irrigation? What were the reasons which led Government to frame this rule? What is the extent of unoccupied land in the Kistna Delta? What will be the effect

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of this rule on the extension of cultivation? Were the local officers consulted in the matter, or did the Board of Revenue recommend the said rule?

(b) In the light of the remarks made by Mr. G. T. Walsh, noted in the

The total quantity of water brought down the river in every year, or even that in every irrigation season, is certainly much in excess of what would suffice for every acre commanded, but it must be remembered, that now by far the greater part of the water necessarily passes in floods over the ancient and flows uselessly to the sea, whilst not infrequently towards the end of the irrigation season, the river falls below the level required to give a full supply, under existing arrangements, even to the area already reached. . . . It would obviously be unwise to encourage during periods of superabundance of water the cultivation of a larger area of wet crops than could be brought to maturity by the scantier supply available later on.—Page 152, The Engineering Works of the Kistna Delta.

margin, regarding the insufficiency of water in the Kistna delta in certain seasons of the year, does Government consider that it is in a position to assure

a certain and adequate supply of water in the case of lands to be newly brought under cultivation?

(c) Is Government aware that such unoccupied land cannot be cultivated continuously with wet crops; that it will not pay the expense of wet cultivation in most cases; that it is generally applied for with a view to use it for purposes of pasture; and that the levy of a consolidated wet assessment in such cases will be felt as a great hardship and will tend to check the extension of cultivation?

(d) Will Government be pleased to consider the desirability of restoring the old practice of assigning unoccupied land, subject to payment of only "dry" assessment, or of at least modifying the recent rule so as to leave ample discretion to the local officers to deal with each case on its merits?

The Hon'ble Mr. Forbes:—

XIII. (a) The rule is that unoccupied waste, which can in the opinion of the Collector be regularly irrigated, should on assignment be registered as wet and charged with the appropriate consolidated wet assessment. This rule is based on the general revenue practice in this Presidency. The extent of unoccupied land in the Kistna delta available for occupation is about 95,000 acres. The Government sees no reason to suppose that the rule will in any way retard the extension of cultivation. The rule was proposed by the Deputy Commissioner in his Settlement Scheme Report, and no objection to it was taken either by the Collector or the Board of Revenue when offering their remarks on the scheme.

(b) The question whether a certain and adequate supply of water can be assured to lands newly to be brought under cultivation is one to be decided in the circumstances of each case.

(c) The Government is not aware that any of the statements in this clause of the question are correct.

(d) The Government is not prepared to modify the rule in question, which gives the Collector sufficient discretion.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—With your Excellency's permission, I beg to withdraw clause (b) of question XIV and put only clause (a) as the main question.

With His Excellency's permission clause (b) of question XIV was withdrawn.

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The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—

XIV. Have any cases occurred in this Presidency in which individual cultivators holding fields in the midst of an expanse of wet cultivation have claimed exemption from water-rate (when the supply is beneficial and sufficient), on the plea that the water is forced on them? If so, in what districts did they occur? What is the total extent of land and the amount of revenue involved? What portion of the land involved is Jeroyiti, and what portion inam, or belongs to permanently-settled estates?

The Hon'ble Mr. Forbes:—

XIV. During the last few years many suits have been brought against Government to contest the charge of water-rate on the ground that the water was not applied for. The plaintiffs have generally asserted that the supply of water was not beneficial or had not been used. Most of the suits have come from Gódávári and Kistna. Government does not possess the details as to the extent of land or the amount of revenue involved, nor in the opinion of Government would the compilation of such statistics serve any useful purpose.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—

XV. (a) What is the extent of land irrigated by "involuntary flow" in the Kistna delta? Is Government aware that in several cases in which cultivators were charged in the said delta for such "involuntary flow" applications for water were made, which were refused by the Public Works Department, on the ground of precarious supply? Have any cases of a like nature arisen under any other irrigation system or systems in this Presidency; if so, what is the extent of land and amount of revenue involved?

(b) Will Government be pleased to state whether any and what action was taken on the suggestion contained in the Kistna Collector's letter to the Secretary to the Commissioners of Land Revenue, dated 26th February 1897, No. 485, to provide the lands affected by such "involuntary flow" with a proper supply of irrigation, and with what result?

The Hon'ble Mr. Forbes:—

XV. (a) Unless the Honourable Member will define what he means by "involuntary flow", the Government cannot undertake to answer this question.

(b) An officer of the Public Works Department has recently been deputed to the Kistna district to have maps and lists prepared of the irrigated and irrigable lands and an estimate for such remodelling or extension of the canals and channels as may be found necessary.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—

XVI. (a) Has the attention of Government been drawn to the imperfect drainage in the Gódávári and Kistna deltas, in respect of which "the Committee appointed in 1878 under the Famine Commission to inquire into the management of irrigation works in Madras" made the following remarks in its report:—

"In the systems of the Gódávári and Kistna deltas, a good deal still remains to be done, such as . . . works of provision for cross drainage by which serious mischief is done year after year. It is highly desirable that these irrigation works, which are so pronounced a success, should be completed."

M.P.-3

(b) Is Government aware that the drainage is still incomplete and that the Collector of Gódvári remarked, in his remarks on the scheme report for the re-settlement of the Gódvári district, that, "without doubt 10 lakhs could well be spent" on the improvement of drainage in the Gódvári Western delta alone?

(c) Will Government propose to take any and what action in the matter?

The Hon'ble Mr. Forbes :—

XVI. Up to end of 1897-98, the outlay on the drainage works of the Gódvári delta system amounted to Rs. 8.23 lakhs. Since then estimates amounting to Rs. 2.17 lakhs have been sanctioned for drainage improvements, of which Rs. 1.30 lakhs will be spent in the Gódvári Western delta. The outlay on drainage works of the Kistna delta system up to end of 1898-99 amounted to Rs. 16.45 lakhs. Estimates amounting to Rs. 8,900 have been sanctioned during the current year for new drains. Further estimates for completing the drainage system are shortly expected.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—

XVII. Has the attention of Government been drawn to the remarks, noted in the margin, made by Mr. Clerk in paragraph 59 of his scheme report on the re-settlement of the Gódvári district?

"The Central delta has been neglected and the original scheme for distributing the ancient supply does not seem to have been fully executed. The general complaint in some villages is that a sufficient supply of water to enable the ryots to commence cultivation is not sent down the channels till the latter part of July. This makes the season late and the consequence is that, when the heavy rains of October and November set in, the paddy plants are not strong enough to withstand the heavy downpour and temporary submersion I understand that a considerable sum of money is to be spent in improving irrigation."

Does Government contemplate to take any, and if so what, steps to improve the irrigation in the Central delta?

The Hon'ble Mr. Forbes :—

XVII. The total area proposed in the completion estimates to be irrigated in the Central delta was 122,420 acres, the area actually irrigated in 1898-99 being 111,913 acres for first crop. All the works sanctioned in the completion estimates have been completed besides many other works of improvement not contemplated when those estimates were prepared. Designs for further improvements are being received from time to time. The statement that a sufficient supply of water to enable the ryots to commence cultivation is not sent down the channels until the latter part of July is incorrect. There is sometimes not enough water to fill the canals in June, but they are always run full in July. The demand however in the early part of the season exceeds their capacity and it is difficult to get water down to the ends of the distributaries. Efforts are being made to remove the impediments to equal distribution in the early part of the season.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—

XVIII. Is Government aware that there is land available for an extension of irrigation of about 28,000 acres in the Polavaram island in the Gódvári delta; if so, will it be pleased to ascertain whether it will be practicable to irrigate the said area by water taken across the Vriddha Gódvári by means of an aqueduct or a bank?

The Hon'ble Mr. Forbes :—

XVIII. The Government is aware that there is land in the Polavaram island which might possibly be irrigated by water taken across the Vriddha-Gódvári by means of an aqueduct, and the site of the Annampalli lock has been fixed with reference to this possibility; but it is considered expedient to let this question lie over until all the lands commanded by existing works are irrigated and the drainage works completed.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—

XIX. (a) Will the Government be pleased to state the special reasons, if any, for the continuance of the Cantonment Magistrate's Court at St. Thomas' Mount, when such courts at Trichinopoly, Wellington, Poonamallee and Pallavaram have all been abolished within recent years?

(b) What is the cost incurred at present on the said court on account of Magistrate's allowance, office and constabulary both for the court and the sub-jail at St. Thomas' Mount?

(c) Is there any difficulty and, if so, will the Government be pleased to state the same in distributing the business of the said court among the regular Magistrates' Courts of the district, viz., the 1st-class Deputy Magistrate, the 2nd-class Magistrate and the Bench Court of Saidapet and transferring the sub-jail prisoners of St. Thomas' Mount to the sub-jail at Saidapet, and the small number of small cause suits filed and disposed of in the said Cantonment Court to the District Munsif's Court at Poonamallee, in view to the fact that both Saidapet and Poonamallee are situated quite close to St. Thomas' Mount?

The Hon'ble Mr. Stokes :—

XIX. (a) The Honourable Member is mistaken in supposing that there are no Cantonment Magistrates at Trichinopoly and Wellington. Pallavaram has always been included within the jurisdiction of the Cantonment Magistrate at St. Thomas' Mount. The Cantonment Magistrate's Court at Poonamallee was abolished in 1896, as the population of the cantonment being small, it was found that the magisterial work could conveniently be performed by the Sub-Magistrate of that station. No such arrangement is possible at St. Thomas' Mount.

(b) The Government has no information at hand as to the cost of the constabulary attached to the court and the sub-jail at St. Thomas' Mount. A sum of about Rs. 10,500 is charged annually to Provincial Revenues on account of the Cantonment Magistrate and his office establishment.

(c) The Cantonment Magistrate's Court being maintained under the orders of the Government of India, this Government cannot undertake to answer this question.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—

XX. (a) Will the Government be pleased to state the number of villages in each district of the Presidency in which section 9 of Madras Act I of 1889 has been put into force and the provisions of the Act about the formation of Bench Courts for the trial of small suits given effect to?

(b) Will the Government be pleased to state the number of suits disposed of during the year 1898 by Bench Courts in the several districts to which section 9 has been applied as distinguished from suits decided by the Village Munsif alone in such districts?

The Hon'ble Mr. Stokes :—

XX. (a) Clauses (2) to (8) of section 9 of Act I of 1889 have been extended to 227 villages or groups of villages in this Presidency, and it is presumed that the provisions of the Act about the formation of Bench Courts have been given effect to in all these localities—

Anantapur district	11
South Arcot „	23
Bellary district	15
Chingleput district	17
Coimbatore „	22
Kistra district	51
Madura „	8
Nellore „	41
Nilgiri „	5
Tinnevely district	17
Vizagapatam „	17
Total	227

(b) The Government has no information as to the number of suits decided by Bench Courts during 1898.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—

XXI. Will the Government be pleased to issue directions for embodiment in the annual report on the administration of Civil Justice a statement showing suits disposed of by Bench Courts compared with those disposed of by the Village Munsif sitting alone in districts where the rules about Bench Courts are in force?

The Hon'ble Mr. Stokes :—

XXI. The Government has already issued the necessary instructions to this end.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—

XXII. (a) In view to the fact that Village Munsifs, appointed since the passing of Madras Act III of 1895, should all possess necessary educational qualifications as required by rules, will the Government be pleased to cause enquiry to be made and to state why, in the districts of Bellary, Anantapur, Cuddapah, Kurnool, Nellore, Ganjam and Vizagapatam, comparatively very few Village Munsifs exercised the civil jurisdiction conferred under Act I of 1889?

(b) Is it a fact that an impression prevails in some of the Telugu districts that Village Munsifs are free to agree or refuse to try suits under Madras Act I of 1889 just as they please and, if so, will Government be pleased to issue orders to disabuse people of this impression?

(c) In view to the growing popularity of village courts formed under Madras Act I of 1889 by reason of the cheap and speedy disposal of small cases going before them, as testified to by the High Court in their report on the administration of Civil Justice for the year 1898 (paragraphs 5, 13 and 28), will the Government be pleased to adopt measures to encourage Village Munsifs to try such suits?

The Hon'ble Mr. Stokes :—

XXII. A report on the subject will be called for.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—

XXIII. Will the Government be pleased to call for reports from all Collectors in the Presidency as to the feasibility of extending the provisions of section 9 of Madras Act I of 1889 and adopt early measures for constituting Bench Courts, where or it is possible, in view to the educational value of such courts and the confidence they will infuse into parties?

The Hon'ble Mr. Stokes :—

XXIII. The Government is not prepared to accept the Honourable Member's suggestion. It will however take into consideration the extension of the provisions of section 9 of the Act to any local area on receipt of a recommendation to that effect from the local officers.

*The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—*Your Excellency, since sending in questions 24 and 25, I find that the Government Order on the subject has been placed on the table. Under these circumstances I beg to withdraw the questions.

His Excellency the PRESIDENT:—You may as well put the questions as the substance of what you have already said appears in the answer.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—

XXIV. (a) Will the Government be pleased to state the circumstances which necessitated the reduction in the strength of the elected councillors in the Vellore Municipality from 15 to 7, and the withdrawal of the privilege of the Council to elect their own Chairman in the said Municipality, as reported in the *Hindu* newspaper of the 11th January 1900?

(b) Will the Government be pleased to place on the table the papers connected with the subject?

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—

XXV. (a) What are the charges against Mr. A. C. Seshagiri Row, late Chairman of the Vellore Municipality, which led to his removal from the offices both of Chairman and Councillor of the said Municipality, as stated in the *Hindu* newspaper of the 11th January 1900?

(b) Will the Government be pleased to place on the table the papers connected with his removal from the said offices?

The Hon'ble Mr. Stokes :—

XXIV & XXV. The Honourable Member is referred to G.O., No. 1751 M., dated 23rd November 1899, which has been placed on the Editors' Table.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

XXVI. (a) Is it a fact that the Abkari policy of Government under which the revenue depends upon the number of trees marked for tapping for fermented liquor has affected prejudicially the industry in palm jaggery which is made from unfermented toddy?

(b) Is Government aware that there is a general complaint on that score in the jaggery districts?

(c) Is it a fact that the exports of jaggery from Madras and the outports of the Presidency have decreased from 1,297,855 cwts. in 1893 to 267,569 cwts. in 1898, while the amount of the tree-tax has increased from Rs. 21,40,017 to Rs. 38,68,218 during the same period?

(d) Is such decrease in the exports of jaggery in anywise attributable to the system of raising revenue referred to in clause (a) of this question?

(e) If not, is the decrease accountable in any other way?

The Hon'ble Mr. Forbes :—

XXVI. (a) The Government has no evidence on which to conclude that the palm jaggery industry has been prejudicially affected by the tree-tax system of toddy administration. The number of trees marked for tapping sweet juice for jaggery has increased since 1892-93 in Malabar and Gódvári, the only two districts until recently where this system has been in force.

(b) The Government has received two complaints as to some of the restrictions imposed, but no "general complaint" of the prejudicial effect of the tree-tax system has been made from the jaggery districts.

(c) The tree-tax figures furnished by the Honourable Member are correct. Exports by sea and rail from the Presidency were 973,700 cwts. in 1892-93, 846,975 cwts. in 1897-98 and 664,071 in 1898-99.

(d) & (e) The decrease in exports has been ascribed to increased local consumption by sugar refiners, distillers and sweetmeat dealers. This explanation derives support from the fact that exports of refined sugar by sea and rail have increased from 142,504 cwts. to 239,005 since 1892-93.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

XXVII. Is Government aware that inconvenience is caused by the examination by male Customs officers of the personal apparel and luggage of female passengers proceeding by railway from British limits to Karikal, Pondicherry and other stations in French territories? If so, will Government be pleased to arrange for the examination being conducted by female assistants?

The Hon'ble Mr. Forbes :—

XXVII. The personal apparel and luggage of passengers proceeding by railway from British India to French territory is not examined by the Customs officers on the British side. A female searcher is employed to examine women entering British territory from Pondicherry. With regard to customs examination on the French side, it is understood that female searchers are not employed.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

XXVIII. (a) Is there any arrangement in force in the penitentiaries, and jails in the City of Madras, and the mofussil districts for the supply of books to the prisoners for reading during their non-working hours?

(b) If not, will Government be pleased to arrange for the establishment of libraries for the use of prisoners with suitable books in English and the vernaculars?

The Hon'ble Mr. Stokes :—

XXVIII. Yes. The attention of the Honourable Member is invited to Rules 379 and 920 of the Jail Code.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

XXIX. (a) Has the attention of Government been drawn to the publications which have appeared in the following papers on the agricultural condition of the Tanjore district during the current fasli :—

(1) *The Hindu*, dated the 11th January 1900, under the heading of "Terror of Famine in Tanjore."

(2) *The Madras Standard*, dated the 8th January 1900, under the heading of the "Pitiable Predicament of the Tanjore Ryots."

(3) *The South Indian Post* of Negapatam, dated the 6th January 1900, under the leading article headed "Wanted—Remission of kist."

(4) *The South Indian Times* of Kumbakonam, dated the 10th January 1900, under the heading of "Kist Remissions—The First Cry."

(5) *The Sarvajana Mitran* of Kumbakonam, dated the 8th January 1900, under the heading of the "Tanjore District's Crops."

(b) Has the Government satisfied itself as regards the general failure of crops in the district and the consequent distress which has begun to be felt by, among other things, a rise in prices, which have already gone up to Rs. 2 per calam of 24 Madras measures of paddy?

(c) Has Government received reports from the Collector upon the state of the crops, and the probable amount of remissions of kist, which it will become necessary to grant during the current fasli?

(d) If the Collector has furnished an estimate, what is the probable amount of remissions estimated?

(e) Has any recommendation been received from the Collector regarding the suspension of the collection of kist, pending the disposal of the applications of the ryots for remission?

(f) Has the Government, the Board of Revenue, or the Collector received any representations from the ryots praying for the suspension of the collection of kist, and what orders, if any, have been issued on the subject?

(g) Whether Government will be pleased, after satisfying itself, to issue instructions to suspend the collection of kist in the affected parts of the district?

(h) Will Government be pleased to issue instructions for the granting of remissions not only in cases where there has been a total loss of crops, but also in cases of partial failure, in which there is only an 8-anna crop and less?

The Hon'ble Mr. Forbes :—

XXIX. (a) The Government has now obtained and read the articles referred to except No. 5.

(b) From the weekly season reports received by Government it appears that in some parts of the delta the wet crops have been injured by flood and excessive rain, and in others are suffering from inadequate river irrigation and deficient rainfall, but there appears to have been no complete failure of crops except on small scattered areas. The rainfall of the district during the year has been considerably above the average of the last 25 years. The selling price of paddy is approximately that stated by the Honourable Member in his question and this no doubt causes hardship to such of the labouring classes as do not receive a fixed grain wage.

(c) & (d) The Government has received no special report from the Collector upon the state of the crops. The subject of remissions is under correspondence with the Collector and will receive the consideration of Government.

(e) The Government has no information of such a recommendation. The Board of Revenue has power to order a temporary suspension of kist collection when satisfied that the concession is necessary.

(f) The Government received three petitions on the subject and they have been transferred to the Board of Revenue for disposal.

(g) The Government is not at present prepared to make any pronouncement in the matter.

(h) As at present advised Government sees no sufficient reason for any relaxation of the ordinary rules.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

XXX. Whether Government will be pleased to furnish the Council with full information regarding the failure of crops in Trichinopoly, Madura, Cuddapah and other districts during the current fasli, and their agricultural outlook in general?

The Hon'ble Mr. Forbes :—

XXX. No special reports have been received by the Government from Trichinopoly or Madura. Reports from Bellary, Anantapur, Cuddapah, Nellore and Kistna have been, with the orders passed thereon, already placed on the Editors' Table. Other reports will similarly be made available in due course.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

XXXI. In what districts, according to the present forecast, is famine imminent, and where may the starting of relief works become necessary?

The Hon'ble Mr. Forbes :—

XXXI. In many localities the harvest of the late crops is not yet due, and it is still difficult to predict what the ultimate loss of crop may be. All available officers are now generally engaged in crop inspection, and the Famine Commissioner is touring through the worst tracts. So far as can be at present foreseen the necessity for relief works is likely to be restricted to parts of the Deccan districts and Nellore. The harvests of last year were fortunately bountiful and only a few months ago the prices of food-grains were abnormally low. It is believed that the stocks of grain are sufficient, though these are being at present held up. The situation is being carefully watched.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

XXXII. (a) In what districts is Madras Act IV of 1893 (Village Cess Act) in force at present, and at what rate or rates is the cess being levied in the districts in which the Act is in force?

(b) Has Government directed recently any increase in the rate, under section 9 of the Act, and, if so, what is the increase and in what districts?

(c) If an increase in the rate has been ordered, will Government be pleased to state the reasons which necessitated the increase?

(d) What was the collection of the cess per annum at the old rate, and what will be the demand at the enhanced rate (districtwar, if practicable)?

(e) Whether under the old rate, there was any deficit in the "Village Service Fund" in defraying the charges of village establishments, and whether under the enhanced rate any surplus is expected in the same fund including contributions by Government?

The Hon'ble Mr. Forbes :—

XXXII. (a) The Act is in force in all ryotwari villages and major inam grouped with ryotwari villages throughout the Presidency except in certain parts of Malabar, Ganjam and Vizagapatam. The cess is levied at present at the rate of 8 pies in every rupee of land assessment and water-tax.

(b) With effect from the 1st July next, it is proposed to raise the rate of cess to 9 pies. Under section 9 of the Act this rate will be uniform throughout the area to which the Act applies.

(c) & (e) According to the revised estimates of the current financial year, the Village Service Fund opens with a balance of about 6½ lakhs of rupees and will close with a balance of about 2½ lakhs of rupees. For the next financial year, if the present rate of 8 pies were to be continued throughout the year it is estimated that the fund would on 31st March 1901 show a deficit of nearly 2½ lakhs of rupees. On the supposition that the rate will be raised to 9 pies from 1st July next, it is estimated that the fund will show a balance on 31st March 1901 of a little less than 2 lakhs of rupees. Under section 9 of the Act the rate of cess has to be determined from time to time so that the estimated proceeds shall be as nearly as possible equivalent to half the cost of the village service.

(d) The revised estimate of cess collections for the current financial year is Rs. 22.68 lakhs and the budget estimate for next financial year is Rupees 25.38 lakhs.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—

XXXIII. Will the Government be pleased to state the reasons which led to the appointment of a new Abkari Deputy Commissioner?

The Hon'ble Mr. Forbes :—

XXXIII. In recent years improved methods of manufacturing country spirits have been largely introduced into this Presidency and distilleries established in which European methods to a greater or less extent have been adopted. To supervise and control efficiently the working of the distilleries the Government deemed it expedient to obtain the services of a trained expert thoroughly acquainted with the chemistry of distillation and informed in the practical and technical details of the measures taken in England for the protection of the excise revenue.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—

XXXIV. Will the Government be pleased to state how many distilleries the new Deputy Commissioner has to inspect, and what additional establishment has been entertained, and at what cost?

The Hon'ble Mr. Forbes :—

XXXIV. The duty of the Abkari Deputy Commissioner is to inspect all the distilleries and breweries in the Presidency. There are at present fourteen of the former and three of the latter. The additional establishment entertained on this account consists of an Assistant Inspector, one Sub-Inspector and six menials, costing about Rs. 247 a month. Three distillery circles have also been formed, each under an Inspector, assisted by a clerk and four inferior servants, costing in all Rs. 1,233 per mensem.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—

XXXV. Is it a fact that the testing of salt and beer, which was hitherto done at the Chemical Examiner's laboratory, is to be transferred to the new Abkari Deputy Commissioner, and that a separate laboratory is to be built for him? If so, will the Government be pleased to state the reasons for this arrangement?

The Hon'ble Mr. Forbes :—

XXXV. The Abkari Deputy Commissioner will conduct only departmental analyses, while analyses affecting the trading public will be undertaken as heretofore by the Chemical Examiner. A laboratory has been fitted up for the Abkari Deputy Commissioner in the Board's office; no separate building is to be constructed. The reasons for this arrangement will be found set forth in Board's Proceedings, No. 798, dated 24th February 1899, of which a copy will be furnished to the Honourable Member.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—

XXXVI. Will the Government be pleased to state if the new Deputy Commissioner is a certified chemist, and what diploma he has obtained in analytical chemistry?

The Hon'ble Mr. Forbes :—

XXXVI. The Abkari Deputy Commissioner holds a first-class diploma in Theoretical and Practical Chemistry from the Royal School of Mines (now Royal College of Sciences), South Kensington.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—

XXXVII. Will the Government be pleased to state the extent of land under the Gódavari and Kistna delta schemes which was cultivated by direct or indirect flow or percolation of water (not supplied on application or used) during the past five years, but could not be assessed to water-cess by reason of the defective provisions of law as interpreted by the High Court of Madras? The information may be given for each district separately, distinguishing inam and zamindari from Government ryotwari lands?

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—

XXXVIII. Will the Government be also pleased to state approximately the loss of revenue which resulted from the above cause during the said period of five years?

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—

XXXIX. Will the Government be pleased to state if inconvenience has been caused in any other districts by the existing state of the law? If so, in which of the districts, and what, if any, is the consequent loss of revenue?

The Hon'ble Mr. Forbes :—

XXXVII to XXXIX. The Government is not in possession of the desired statistics, and does not think it necessary to compile them. Had the defective state of the law been extensively taken advantage of, the Government would have been forced to undertake the amendment of the Act at an earlier date. The case with which the payment of water-rate may be evaded has recently become widely known, and the amendment of the law is now being undertaken with a view to avoid prospective loss of revenue. The loss of revenue up to date is believed to have been inconsiderable.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

XL. (a) Whether Government has exempted under clause (5) of section 15 of the Police Act (1861) Amendment Act, 1895, any villages, or class, or section of inhabitants in the district of Tinnevely from the punitive police cess recently imposed?

(b) Whether, in the imposition of the cess, any village or villages have been included, in which no disturbances took place, or which took no part in the late riots?

(c) Whether there were disturbances in the villages of *Ayan Surandai* and *Zamin Surandai cusbas*, and their suburbs, *Kila Surandai*, *Bauglow Surandai*, *Sivagurunathapuram*, *Varagunaramapuram*, Tenkasi taluk, Tinnevely, or whether they had taken any part in the late riots?

(d) If not, what are the reasons for the imposition of the cess in the abovenamed villages?

The Hon'ble Mr. Stokes :—

XL. (a) No.

(b), (c) & (d) The numbers taking part in the late riots were so large, and the number of rioters whom it has been possible to identify is comparatively so small that it is not possible to return a definite answer to the question as to what villages took part in the riots. All

villages subjected to the cess lie within the area which Government considers to be in a disturbed and dangerous state so as to render it expedient that the police force should be increased. Several villages were burnt and looted within a few miles of those specified in question (c).

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

XLI. In view of the fact that the civil surgeoncies of *Tellicherry* and *Chingleput* have been recently conferred upon commissioned officers, and with reference to the replies of Government made to my questions Nos. XII, VII and XXXVIII, dated the 7th April, 6th June and 14th November 1899, respectively, will Government be pleased to make a civil surgeoncy available for a Civil Assistant Surgeon in connection with the arrangement which may be made in filling up the vacancy at Trichinopoly caused by the transfer to the Jail department of the permanent District Medical and Sanitary Officer of that district?

The Hon'ble Mr. Stokes :—

XLI. The question will be considered.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

XLII. With reference to the following question asked by me at the meeting of the 19th December 1899, on the Coimbatore south forest grievances and the reply of Government, will Government be pleased to state the result of the enquiry on the subject?—

(a) Whether the attention of Government has been drawn to the article in the issue, dated the 17th December 1898, in the *Vara Varthamany*, a Tamil weekly published at Pollachi (Coimbatore), on the "Coimbatore south forest grievances" and on the ravages committed by herds of wild elephants from the *Anumalais* on cultivation?

(b) Whether, when the ryots of *Sethumadai* village (Pollachi) petitioned the Collector in September of last year for protection, they were advised to plant only castor-oil plants in the immediate vicinity of the forest, under the belief that a belt of castor a hundred yards wide would keep elephants out of the *cholam* beyond?

(c) Whether the ryots have brought to the notice of the District authorities that the castor plants afford no protection against the inroads of the elephants, that these plants also continue to be destroyed by the latter, and that their grievances still remain unredressed?

(d) Whether any remissions were granted to the ryots during the last fasli as claimed by them on account of the destruction of their crops by the elephants?

(e) Whether any loss of human lives has been caused last year by the descent of these elephants into the outskirts of the villages?

(f) Whether Government will be pleased to issue orders to the Forest Department to prevent the descent of the wild elephants from the hills into the plains below by the excavation of trenches at the outer limits of the reserved forests, and by the entertainment of shikaries to be on the watch at those limits?

The Hon'ble Mr. Forbes :—

XLIII. (a) The Government has perused the article.

(b) The ryots of *Sethumadai*, a hamlet containing about half a dozen huts, did so petition the Collector on the 13th September 1898 and were advised as stated in the question.

(c) The answer to this part of the question is in the negative. No subsequent complaints have been received of destruction of crops by elephants.

(d) The answer to this part of the question is also in the negative.

(e) A cooly woman was killed at the foot of Mount Stuart in 1898. It was supposed that she was killed by a solitary tusker.

(f) The Government is not prepared to issue orders as suggested.

The Hon'ble M.R.Ry. G. VENRATARATNAM PANTULU Garu :—

XLIII. Has the attention of Government been drawn to the fact that the increase of assessment in the present revision settlement on the dry portion of the Deltaic part of the Bezwada taluk is 117 per cent.? Is there any precedent for such an increase? Has Government ascertained what the effect of such increase will be?

The Hon'ble Mr. Forbes :—

XLIII. Yes, this is the increase in the delta villages of the Bezwada taluk according to the scheme of resettlement sanctioned by the Government. There have been cases in previous settlements where the percentage of increase in particular tracts of a district has been as great or greater. Special reasons exist in all these cases; and the Honourable Member will find those applying to the dry lands of the Bezwada taluk explained in the scheme report, a copy of which with the orders thereon (G.O., No. 494, dated 27th July 1899) can be obtained from the Superintendent of the Government Press.

ACT ASSENTED TO BY HIS EXCELLENCY THE GOVERNOR-GENERAL.

His Excellency the President announced the assent of His Excellency the Viceroy and Governor-General to the Malabar Compensation for Tenants' Improvements Act, 1899.

PETITIONS.

The Secretary reported the communication of the following papers to the Select Committee on the Madras Tenancy Bill :—

G.O., No. 134, Legislative, dated 22nd December 1899.

" " 2 " " 12th January 1900.

" " 4 " " 18th " "

The Secretary also laid on the table copies of G.Os., Nos. 3038 and 345, Revenue, dated 30th July 1896 and 15th June 1898, respectively, referred to in the answer to clause (e) of question No. XXXI asked at the meeting of the Council held on the 19th ultimo.

THE HINDU GAINS OF LEARNING BILL.

The Hon'ble Sir V. BHASHYAM AYYANGAR, in presenting the report of the Select Committee on this Bill and moving that the report and the Bill as amended be taken into consideration at once said :—

Your Excellency—In presenting the report of the Select Committee on the Gains of Learning Bill and moving that the Bill as amended and the report of the Select Committee be taken into consideration at this meeting, I may shortly review the progress of the Bill in this Council since as a Hindu non-official member I obtained leave to introduce it in February 1891. The Bill together with the Statement of

Objects and Reasons was shortly afterwards published in the official Gazette both in the English and Vernacular languages. The speech made by me while moving for leave to introduce the Bill was also published in the usual course. Before any further action was taken by me, the Government was good enough to invite the opinion of several leading Hindu gentlemen of this Presidency, officials as well as non-officials, on the proposed measure, and the valuable opinions with which the Government was favoured have, I believe, been circulated to the Honourable Members as also certain memorials received by Government. After a review of the divergent opinions Government, by its Order No. 14, Legislative, dated 16th February 1897, resolved that I might proceed with the Bill, observing that without entering into a detailed criticism of the arguments that were advanced in favour of and against the Bill, "it has arrived at the conclusion that the balance of argument inclines to the side of the large body of learning and intelligence which favours the Bill" and that "His Excellency in Council believes that the measure if passed into law will on the whole tend to abate practical abuses and inconveniences which ought to be remedied in order to open the way for wholesome social progress." The Bill was subsequently referred to the Hon'ble Judges of the High Court for their opinion; and, on receipt of their opinion which was substantially in favour of the measure, the Bill was formally introduced into the Council on the 23rd November 1897 when its principles were discussed. At a subsequent meeting it was referred to a Select Committee. The report of the Select Committee which is now before the Council was submitted in May 1899 and the Bill as revised by the Select Committee with its report was published in the official Gazette in the English and Vernacular languages. It will thus be seen that the measure has been before the public for nearly nine years and that ample opportunity has been afforded for the expression of public opinion thereon. The official position which I now hold in the Council as Acting Advocate-General has no manner of connection with the Bill or with the fact of my being in charge of it. If I am not mistaken I am the only member of this Council as now constituted who was also a member of the Council as it was constituted in 1891 when the Bill was first introduced, and I therefore think that it is a duty which I owe to the Honourable Members that I should shortly explain the scope and object of the Bill and the nature and extent of the change which it is sought to introduce in the existing law so far as it is possible to ascertain with any degree of clearness or certainty what such law is. The object of the Bill is in effect to settle and declare that property acquired by a Hindu while he is a member of an undivided family is his separate property and does not merge in the family property, unless the proximate cause of such acquisition, or one of such causes, was the substantial use or employment of joint family property or capital raised on the credit of the joint family or its property. Roughly speaking, a joint Hindu family may consist either of a male with his lineal male descendants, or of brothers, or of cousins one or more degrees removed, or an uncle and his nephews or grand nephews, or as is not uncommonly the case a combination of two or more of these classes. All ancestral property possessed by the family undoubtedly forms joint family property and properties acquired by any member of the family with the aid of such ancestral property is but an accretion thereto and as such partakes of the character of joint family property. The Hindu law, however, has for ages, if not from primitive times, recognised every member of a joint Hindu family as capable of acquiring and holding separate property in which the other members of the family have no claim or share, which he can enjoy and dispose of at his will and pleasure and which on his death intestate does not pass by survivorship to the remaining members of the family, but descends, as

decided by the Privy Council more than 35 years ago, in the Sivaganga case, to his separate heirs in which class his widow, daughters and daughters' sons rank successively next after his male issue.

It is erroneously supposed by some that so long as a Hindu family is joint no member of the joint family can possess separate property which he can dispose of as he pleases or which shall descend to his separate heirs without passing by survivorship to the surviving members of the family. Whether it was so or not in primitive days it is not necessary to enquire. The Hindu law recognises that each member of a joint family is a unit in himself; he could hold and enjoy separate property which does not merge in the joint family property. This is what is referred to in the Hindu law as self-acquisition of the member of a joint family. The cardinal conception of self-acquisition is that the member of the joint Hindu family acquires the property without the aid of the family property.

The whole doctrine of self-acquisition by a member of a joint Hindu family is briefly stated by Yagnawalkya as follows:—"Whatever is acquired by the co-parcener himself without detriment to the father's estate as a present from a friend or a gift at nuptials does not appertain to the co-heirs; nor shall he who recovers hereditary property which has been taken away give it up to the co-parceners; nor what has been gained by science." The topic of Hindu law which is dealt with by the Bill is whether property acquired by an undivided member of a Hindu family, without the aid of joint family property, is to be regarded as his separate property or as joint family property in cases in which such acquisition was the result of education or training imparted to him by the members of his family or at the expense of the family estate. One of the earliest forms of self-acquisition recognised by Hindu lawyers is the gains of science and valour peculiar to the Brahmin and the Kshatriya; and Manu laid down the general rule that "what a brother has acquired by labour or skill without using the patrimony, he shall not give up without his assent for it was gained by his own exertions." I have explained in the Statement of Objects and Reasons and in my introductory speech made in 1891 that the Bill is substantially in conformity with the original texts of the Hindu law, though not with the views of certain authoritative commentators thereon. This topic of Hindu law has also been the subject of several judicial decisions in this Presidency as well as elsewhere which have all along recognised a distinction between the earnings made by means of ordinary or elementary education and earnings made by means of scientific or extraordinary education. At one time it was supposed in this Presidency on the strength of two reported decisions of the High Court passed in 1864 and 1872, that earnings made by means of ordinary education imparted at the expense of the family was not the separate property of the acquirer, but formed the joint family property which was divisible among all the members of the family. It was also then supposed that the science or valour the gains of which the Hindu law recognised as self-acquisition of the acquirer, though such science had been taught at the expense of the family, did not refer to ordinary education, but to special or scientific education. Of course at one time the idea was—that was based on the two important decisions of 1864 and 1872—that though a member of a Hindu family was educated at the family expense, yet if the education imparted to him was only ordinary education, then all acquisitions made with the aid of such ordinary education should belong to the family; but though a member of a Hindu family was educated at family expense and received scientific or extraordinary education then whatever he acquired by his learning and skill which was extraordinary and scientific was personal and that the other members

of the family had no claim to it. Latterly, however, beginning with the dictum of the Judicial Committee of the Privy Council in the case of *Pauliem v. Pauliem* in 1877, the current of judicial decisions has been in the opposite direction, viz., to treat as self-acquired property, acquisitions made by a member of a joint Hindu family by means of ordinary or elementary training or education though the same was imparted to him at the expense of the family. In addition to the cases which have already been referred to by me in the Statement of Objects and Reasons and in the introductory speech, I have only to invite your attention to the case of *Lachmin Kuar v. Debi Prasad* decided recently by the High Court of Allahabad in 1897 and reported in the Indian Law Reports, Allahabad Series, Volume XX, page 435, in which it was held "that the mere fact that a member of a joint Hindu family had acquired a certain general education of a not very advanced character at the expense of the joint family funds would not have the result of making all the subsequent earnings of that member joint family property, but they would remain his self-acquired property." The dictum of the Privy Council in *Pauliem v. Pauliem* which was to the same effect was itself based upon a decision of the Calcutta High Court passed in 1868 and reported in Sutherland's Weekly Reporter, Volume X, page 122. The dictum of the Privy Council was also followed judicially by the High Courts of Madras and Bombay in the three cases referred to by me in the Statement of Objects and Reasons, decided, respectively, in 1881, 1882 and 1890 and reported in 4 Madras 330, 6 Bombay 225 and 15 Bombay 32. Under the existing law, as judicially interpreted by all the four Indian High Courts in conformity with the dictum of the Privy Council, earnings made by individual members of undivided Hindu families, such earnings being the result of ordinary or general education or training imparted to him by a member or at the expense of the family, form his separate property in which his co-parceners have no interest or share unless he chooses to throw such earnings into the common stock and thus incorporate the same with the joint property of the family by abandoning his exclusive right to it. As pointed out by the late Sir T. Muttusami Aiyar in his opinion communicated to Government, the tendency of the decision of Courts is to proceed in a direction which is the very reverse of what is indicated by the Smriti of Catyayana and to make the law more complex in its application. Adverting to the dictum of the Privy Council and the decisions of the Bombay and Madras High Courts he observes as follows :—

"In the cases decided by the Bombay High Court and the Madras High Court subsequent to the decision of the Privy Council, it has been ruled that mere rudimentary or ordinary education imparted at the expense of the family cannot render what was acquired by learning by one of them partible and thus effect has been given to the observation of the Privy Council. The decision of the Bombay High Court, however, indicates a tendency to introduce a distinction between ordinary and professional learning, for which there is no sound foundation in Hindu law. What Catyayana says is that the ordinary gains of learning are *partible* when the learning is imparted in the family or maintenance is provided at the family expense, whereas what the Courts hold in deference to the dictum of the Privy Council which embodies a rule of reason rather than the conventional notion of the Hindu law, is that such gains are *separate* property. Again Catyayana says that special gains by superior learning, superior skill or superior merit are separate property; but there are observations in the decision of the Bombay High Court which indicate an inclination to divide learning into rudimentary and professional or superior learning and to make gains accruing from the latter *partible*."

So far therefore as the bulk of the Hindu community is concerned, having regard to the current of judicial decisions of all the High Courts based on an *obiter dictum* of the Privy Council, the Bill introduces no change whatever inasmuch as the earnings made individually by the bulk of the artisans, traders, musicians, acrobats, priests, purohits, public servants, teachers, lawyers and native physicians are the result of ordinary or general education and training. Under the existing law, it is the minority of the Hindu community that may be regarded as having received a special, scientific or extraordinary education at the cost of the family estate, that is placed at a great disadvantage and the effect of the Bill will only be to extend to that minority the protection which the bulk of the community has under the existing law as authoritatively interpreted by the highest judicial tribunals. It is almost impossible to define what that minority is. The distinction between ordinary or general education and scientific or special education is one which it is by no means easy to draw. What may have been regarded at one time as extraordinary or special education may at a subsequent and more advanced period come to be regarded as ordinary education. The question whether the education which qualifies one for the degree of B.A. or even B.L. is now to be regarded as ordinary or extraordinary education is one on which there may well exist a difference of opinion. What may be regarded as advanced education in a backward district or a backward section of the community may be regarded only as ordinary or general education in an advanced district or section of the Hindu community. Another view which may also be reasonably or at any rate plausibly suggested is that in determining whether the education or training in question is to be regarded as ordinary or special and scientific, you must have regard not so much to the abstract character of the education or training, but to the means of the family at the expense of whose estate, individual members thereof are educated or trained. In the case of well-to-do or affluent Hindu families, the cost of imparting to one of its members even the best kind of modern education in one of the European Universities, or of training him for the Indian Civil Service or other superior profession or service may relatively to the means of such families be small. But in the case of a Hindu family which is comparatively poor, the cost of educating one of its members at the expense of its small estate to the standard of the B.A. degree examination or even the First-in-arts, will be great in proportion to the means of that family. I, therefore, submit with confidence that the existing state of the law is involved in the greatest possible uncertainty and no lawyer can safely advise any of his clients as to whether in particular cases the education derived at the expense of the family would be regarded as ordinary or as extraordinary education for the purpose of the distinction underlying the judicial decisions. This uncertainty is so great that nobody can feel with any degree of confidence that the claim advanced by a co-parcener in concrete cases to a share in property acquired by another living co-parcener or to the whole of the property acquired by a deceased co-parcener can be successfully resisted or prosecuted. When he brings a suit in the lifetime of a co-parcener he will bring a suit for an equal share with the co-parcener because on the death of the co-parcener or on the death of the male issue if the property is to be regarded as joint the whole of it will pass by survivorship to the rest of the family. That is the state of the law. No one can feel confident that he can successfully resist a claim for partition made by an undivided cousin or a brother or any other undivided member of the family nor can anybody feel certain that he can prosecute his claim for partition successfully because the question will turn entirely upon whether the education which he received at the expense of the family was ordinary or extraordinary. In many cases, though the education which was imparted at the expense of the family was only rudimentary or general,

he may by self-culture and self-education subsequently acquire scientific or extraordinary education. Of course in that case the education which was imparted to him at the expense of the family was only ordinary or rudimentary, though the skill and learning by which he has made his large fortune is the result of his improving the elementary or the general knowledge—which is due to his own self exertion and to the exercise of his own faculties. Now under the existing law, as we must take it because we must take the law to be as interpreted by the highest judicial tribunal—the Privy Council—the earnings made by smiths, carpenters, cobblers, shoe-makers, potters, purohits and vakils who may be regarded as not having received any high education—so far as Mr. Justice Holloway and Mr. Justice Kindersley were concerned they refused to recognise that the learning of a vakil would be more than ordinary—form exclusive and separate property. In the case of clerks and a majority of educated men the education they received must have been at the family expense just as is the case in all countries in the world. I do not know if in any country a person receives education when young except at the expense of his father or brother or some paternal or maternal relation. I know cases where parents and relations utterly neglected a boy's education and he after attaining years of discretion has been able to acquire education himself. Barring those very exceptional cases, all youths not simply in Hindu families but among Muhammadan and other families are educated at family expense. The above is the settled state of the law and it has become more settled since I introduced the Bill in 1891 and that is the reason I have now referred to the latest decision of the Allahabad High Court in 1897 and notwithstanding that nine years have now elapsed since I introduced this Bill, no doubt has been thrown by any judicial decision upon the decisions of the Madras, Bombay and Calcutta High Courts based upon the dictum of the Privy Council that the earnings and acquisitions made by a member of a joint Hindu family by means of ordinary or general education, though such general education was imparted at family expense, form his exclusive and separate property in which his co-parcener has no interest and can claim no share, unless of course he chooses to throw his acquisitions into the common stock and thus incorporate it with joint family property. But the decisions proceed upon a distinction between ordinary or general education and special education and in the case of scientific or special education, the tendency of modern decisions seems to be that if such education is imparted at the family expense then he should be placed on the same footing as the members of a family who have made acquisitions by means of family capital. So far as acquisitions made by means of general education are concerned, the decisions say that such acquisitions belong to the acquirer exclusively, though such education was given him at the expense of the family but in the case of those who have received special or scientific education, the decisions have laid down the principle that the earnings made by the aid of such education cannot be regarded as the acquirer's separate or exclusive property. No attempt has yet been made, and I may say that no one will be able successfully to lay down any proposition of law by which you can distinguish between what is ordinary or general education and what is special or extraordinary education for the purpose of giving effect to the principle underlying modern decisions. Is the character of education as general or special to be determined with reference to its nature in the abstract or is it to be determined with reference to the means of the family or the backward condition of a particular tribe or race or the backward condition of any section of the Hindu community. In the case of Brahmins, who are supposed to be the most advanced in education, the degree of B.A. or B.L. may be regarded as nothing but general or ordinary education; but in the case of zamindars or other classes, though very rich yet still backward in

education, the attainment of the degree of B.A. may be regarded as a very high education. Therefore the protection which the Judicial tribunals have given to earnings made by artisans and others who have received only ordinary education is one which the Bill seeks to extend to others, who may be supposed to have received not merely ordinary education but special or extraordinary education. The Bill therefore seeks to remove the distressing uncertainty in the application of the existing law by declaring that property acquired by a member of an undivided Hindu family without the aid or use of patrimony or joint family property and which he has not voluntarily thrown into the common stock shall not be held to be joint family property by reason only that the education or training which enabled him to make the acquisition, had been imparted to him at the expense of the family funds, whether such education and training were ordinary or special and scientific. That the Hindu Law does not recognize any claim on the part of the joint family to be reimbursed for the expenditure out of family funds in imparting a costly and scientific education to one of its members who by means of such education begins to make large profits, any more than for the expenditure incurred out of joint family funds for the marriage of one or more of its members is clear from the fact that he could as soon as his education is completed become divided from his co-parceners by taking the necessary steps for effecting such division, and that in effecting such division of family property not a pie can be set off against his share of joint family property on account of the extraordinary cost incurred for his education out of the joint estate. And all acquisitions made by him by means of such scientific education after he has become separated, are undoubtedly his self-acquisition as against his co-parceners other than his own sons and grandsons. That is the principle of Hindu Law. The Hindu Law is not so mercenary or sordid as to lay the foundation for any pecuniary claim for compensation by one member of the family who has been married at the family expense or educated at the family expense in favour of the other members of the family when partition is effected between the members of his family. It may be that one or two members alone have been educated at the expense of the family and the remaining brothers being young may have yet to be educated; and yet the Hindu Law does not say that these members who have been already educated should reimburse the family to the extent of the family funds which have been spent on their education and that some deduction ought to be made out of the joint family property for the education of the remaining junior members before the property can be divided. The Hindu Law does not proceed on such mercenary principles, but proceeds on the principle that so long as a family lives joint all expenses are common; and when one of the members has been educated, in the majority of cases the income from his share, if the property were divided, would be far more than enough to cover the cost of education. The word "Learning" is defined in the Bill in its most comprehensive and enlarged sense, so as to include, not only the learned professions but also all arts and professions, however humble they may be. As to acquisitions, made otherwise than by learning, they must be the result of manual labour, or the combined result of manual labour and patrimony, or of professional skill or learning and patrimony. As to acquisitions by means solely of manual labour they are recognized as self-acquisitions by the Hindu Law and no change, therefore, is needed in regard to it. Other acquisitions of which the proximate cause is not merely manual labour or professional skill and learning but patrimony also in a substantial degree, do not form under the Hindu Law self-acquisition, but partake of the character of patrimony. If a junior member of a Hindu family having been educated as an Engineer starts a manufactory at the cost of the family and earns largely, the earnings will, of course,

belong to the family, because the proximate cost of the acquisition is not simply the skill and learning, but it is skill and learning combined with the more potent cause, namely, family capital. The Bill does not propose to alter this. Even if any alteration of the law in this respect were desirable, it will be a distinct departure from the Hindu Law, and effect cannot be given to it without practically destroying the joint family system, nor will it be practicable to make an equitable apportionment of such an acquisition or improvement of the patrimony and ascertain what proportion thereof should be credited to patrimony and what proportion to labour, skill or learning. The Bill proceeds on the principle that the proximate cause, and not the remote cause, of the acquisition should be looked to in determining the character of the acquisition, and that any distinction which may be made, on the score of the learning being ordinary or special and scientific, is not only impracticable but one which may lead to opposite conclusions, according as you view it from the standpoint of the fund which was instrumental in securing education, or of the special and personal aptitude of the member who was benefited by the superior or scientific learning. The personal law of a nation, in its bearing on domestic and family relations, should be such as to ensure honesty and fair dealing at home, but if the law, owing to its obscurity and uncertainty or any fault therein, is such that honesty does not begin at home, the sooner it is changed the better will it be for the development of the character of the nation as citizens. As to the beneficial effect which the measure will have upon the domestic life of the Hindus and the repressive effect which it will have on fraudulent and benami transactions in connection with gains of learning made by individual members of an undivided Hindu family, I beg to invite attention to the following extracts from certain memorials received by Government and from the opinions of several leading native gentlemen to whom the Bill was referred for remarks. In the memorial submitted by the Cocanada Literary Association, the Bill has been approved. In the memorial received from the Berhampur Association and Reading-room this is what is stated :—

"The Association cordially approves of the principle as well as the details of the Bill and thanks the Honourable Mover for introducing a measure which without in any way clashing with the principles of the Hindu Law tends to remove a fruitful source of litigation and secures greater harmony in the domestic relations of a Hindu family. The association earnestly hopes that a measure so useful and necessary will meet with no frivolous opposition and will soon become law."

In the memorial submitted by the Coimbatore Bar Association, it is stated :—
"The Hindu Gains of Learning Bill is an important legislative measure calculated to promote peace and harmony among members of Hindu families and to foster a spirit of individual enterprise and self-reliance, and the association trusts that the Bill may soon be passed into law."

I lay special stress upon the opinions of various native gentlemen that the measure is calculated to promote peace and harmony among the members of the Hindu family. In the memorial submitted by the citizens of Madras headed by the late lamented P. Somasundram Chettiar, who is often referred to as the father of Madras, this is what is stated :

"The father spends money also on the education of his other sons, but these remain dull and illiterate, and the youth who secures a good education without the help of the father or of the family funds must needs part with his own gains and go shares with his illiterate brothers who have earned nothing, and all this for the simple reason of his juvenile educational expenses having been incurred by the father ;

what is even worse is that at the time of suits for partition in the gains of the learned brother, even distant cousins and relatives, with a view to get a share in such hard-earned money, hover like birds of prey around the litigants, each employing a solicitor on his behalf, when the usurers of money, who eagerly watch for opportunities to invest their funds to the best advantage, lend large sums to the parties concerned at exorbitant rates of interest, as was done in the Tichborne suit so well known to all. Thus suits for partition are originated and strengthened, and after undergoing the usual preliminaries, they terminate after the lapse of some years ; and if the decision of the Judge who hears the suit happens to be against the defendant, i.e., the learned son, it is simply ruinous to his immediate heirs or sons, and the property thus becomes a source not of happiness but of misery to the family of its real acquirer. This is the inevitable fate of the generality of the partition suits brought in the Courts of Justice ; and thus there is no certainty in the minds of the learned that their hard-earned gains would go to those most dear to them after their death. The last paragraph but 4 of the "Statement of Objects and Reasons" gives a clear and succinct view of the disabilities under which we labour in the present state of the law. We beg to solicit your Excellency's attention to the words that the rule as it at present stands "cannot but act prejudicially to the interest, advancement and the material prosperity of the country in which such a rule is or is supposed to be in operation"; and we would add that it does not at all tend to the moral progress of the community. The heart-burning jealousy and consequent mental agony to which the several members of the family, including the young and the old, are subjected during the progress of a suit for partition are beyond all description. It estranges the son from the father, and makes children of the same womb deadly enemies of each other, and all this owing to the absence of a simple law such as the one now proposed by the Hon'ble Bhashyam Aiyangar." They conclude the memorial thus :—

"And we are gratified to find that it falls to your Excellency to pass it and thus cause your name to be remembered with gratitude through the length and breadth of the land by thousands of families, for the peace and happiness which the law secures to them."

Diwan Bahadur M.R.Ry. Srinivasa Raghava Aiyangar, who is now the Diwan of Baroda and who was formerly a member of this Council when he was in the British service, observes as follows as to the social effects of this Bill :—

"I fully approve, therefore, of the provisions of the Bill and beg strongly to urge on Government the necessity for passing it as early as possible. The settlement of the law by means of legislation will prevent much heart-burning and dispute among the members of the family which the present state of the law gives rise to. What generally happens in Hindu families is this : so long as the earning member lives there is seldom any trouble ; the other members look to him for protection and know that, if they put any pressure on him, it is open to him to separate himself from the family and thus cut off their supplies. When he separates himself of his own accord he generally makes, out of his self-acquisitions, provision for the other members to the extent of his means, though he does not feel bound to consider his cousins, nephews and other distant relations as being on the same footing as his own children whose interests have naturally the first claim on him. It is when he dies leaving a widow, more or less helpless, and young children, more especially girls, that the troubles commence leading to much fraud and waste of property. The proposed legislation will effectually put a stop to these evils and be of great benefit to the country.

"On the contrary, it seems to me that the proposed legislation would promote harmony and mutual goodwill among the several members and prevent the breaking up of joint families as long as it is convenient for them to live together. Often a member of a family who earns a large income may, out of regard for his parents and affection for his brothers and sisters, like to continue in the family and provide for their comfortable subsistence out of his earnings, provided he is not obliged to throw the whole of such earnings into the common fund, thereby beggaring his own children. When the choice is presented to him either of separating himself entirely from the family or of giving up all his self-acquisitions, it is not difficult to see what his decision would be and how detrimental a law of this kind must in the long run be to the interests of the non-earning members of the family."

Mr. Ramiah Pantulu, Government Pleader, Ganjam, says :

"My experience as a pleader during the last 22 years has convinced me of the great nicety and subtlety of the questions which arise in connection with this topic of Hindu Law and of the necessity of a measure of this kind for the preservation of the peace and happiness of many a Hindu family."

Mr. Suryaiyar, late Sub-Judge who has now retired, says :

"Though the Hindu Law favours partition, the average Hindu will not generally adopt the processes necessary to effect a complete partition for reasons too numerous to be detailed here, but will be tempted to resort to the *benami* and other devices in order to secure the fruits of his learning to his branch of the family, which eventually result in ruinous litigation.

* * * * *

"A statutory declaration to the effect that the gains of education of a member of the family are his exclusive property will considerably raise his credit and status in public estimation and will in the long run tend to stimulate the exertions of the other members of the family. And it will also calculate to put an end to unseemly family quarrels and remove the extreme uncertainty in the present state of the law with regard to acquisitions made by a Hindu by means of his learning."

Rai Bahadur V. Jagannatha Row Pantulu, Deputy Collector, says :—

"The Honourable Mover of the Bill has so ably and correctly expounded the present state of law in the matter that I deem it hardly worth while to quote any more authorities bearing on the subject. I may, however, add that even the orthodox portion of the Hindu community living in these parts does not, so far as I have been able to gauge its feeling, look upon the Bill with disfavour.

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"The present uncertainty of law has a tendency to induce the member of a Hindu family to seek for a division or to conceal his earnings and invest them *benami*, while otherwise he may be willing to leave the ancestral property intact for the common benefit and honour of the family. I am aware of numerous cases of this nature.

* * * * *

"In my humble opinion it is likely to engender and promote habits of thrift and self-reliance upon *that* idle and non-productive portion of the Hindu community which, as but a canker or parasite is now eating up and deteriorating the vital and self-subsisting portion of it; to bring in peace and good feeling among members of a family in

the place of mutual distrust and jealousy; to obviate the necessity for a variety of *benami* transactions calculated to keep the self-earnings out of the hotchpotch; and to remove thus one of the sore causes of misunderstandings and litigation among the kith and kin otherwise dear and near to one another."

Rao Bahadur Dharma Rao Naidu, late Deputy Commissioner of Salt and Abkari Revenue, says :—

"Some conceal their property and secure it in other names. The Bill will not only remove the temptation for such frauds, but will also wake up the idlers who claim shares in property acquired by a hard-working member.

* * * * *

"If the Bill be passed, there will be no misunderstandings, each member knowing exactly his own position. There will be a stimulus for self-exertion and harmony in the family which may continue undivided for longer periods than at present. Then there will be the strength of the joint family without its present drawbacks."

Mr. A. Ramachandra Iyer, a Judge of the Mysore High Court and a native of this Presidency who was a distinguished *vakil* practising in the High Court of Madras, says :—

"The Bill meets with my approval, as I am inclined to think that it is in conformity with the usages of the people. If a man who has been educated at the expense of the family earns property, the earnings are treated as his own. If he gives any property to his brothers, it is received with professions of gratitude, and if he divides his property equally or almost equally with them, or if he treats his children and their children alike, he is praised by the public for his generosity and filial affection. If his brothers stand in need of assistance, they do not claim anything as a matter of right. When I make these remarks I have in my mind about two dozen earning members who are natives of Madras, Tanjore, Tinnevely, Coimbatore and South Malabar. These cases indicate that in the opinion of the people a man is absolute master of what he earns and that it makes no difference whether he received his education wholly or partially at the expense of his family or what was the character and quality of his education."

Mr. V. Rajagopalachari, a Deputy Collector and a native of the Tanjore district, says :—

"The effect of the present Bill will be not to accelerate the progress of disintegration, but to defer division by removing the cause of anxiety in the acquiring member which forces him to become divided when otherwise through feeling of delicacy and other considerations he may find it undesirable to do so. Whether the concentration of wealth in selected quarters or its diffusion amongst several is of greater benefit to a community is a controverted question which it is unnecessary here to discuss at length."

I do not mean to raise any such question.

Rao Bahadur Pattabirama Pillay, a very experienced public servant who has honourably retired from public service, says :—

"The continuance of the present uncertainty only serves to tempt the idle members of a family to live at the expense of the more talented member and to throw obstacles for the gifted member becoming divided and drive the latter to the wicked concealment of property and *benami* transactions. The settling of this knotty

question by law would to a certain extent impart a healthy tone and raise the standard of morality among the educated and higher class of the Hindus."

Again he says:—

"What number of benami transactions, what amount of concealment of property, fraud and consequent heart-burning disappointments, what fabrication of false evidence, what waste of labour, wit and money, what number of profitless suits and waste of public time and the energy of public officials could be saved by making the law certain on this vexed question is another point to which I would invite the attention of those who are for leaving matters alone."

Mr. S. Narayanasawmy Chetty, who was the Diwan of Vencatagiri, says:—

"In my opinion the Bill is an important and a necessary measure—important in removing the distressing uncertainty of law on this subject, and necessary in introducing peace into many a Hindu educated home."

Mr. M. Srinivasa Rao, a native of Mangalore and a Deputy Collector, says:—

"As observed by the Honourable Member, in the present condition of Hindu society, such an enactment is very much needed in the interests of the peace and happiness of the Hindu families. Under the beneficent rule of the British Government which has afforded, and is still affording, many facilities for the acquisition of various kinds of education by which people could not only earn their livelihood, but also acquire a good deal of wealth, many Hindus, who are members of joint families, have acquired and are acquiring properties by means of their education in the professions of law, medicine, engineering, and by employment in the numerous other departments of the public service.

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"As a consequence of the above two results, the measure will also tend to promote peace and goodwill among the members of a joint family, who, instead of treating each other with distrust, and of entertaining inimical feelings towards each other, on account of a real or imaginary injury to their interests by the conduct of the acquirer of property in respect of such property, would regard each other with feelings of cordiality and affection and confidence when their rights are clearly defined and declared. I beg to submit that several cases of members of joint families treating each other with feelings of distrust and antagonism have come to my notice, the sole reasons for such a state of things being the uncertainty of the law.

"The measure would also to a great extent put an end to those objectionable and sometimes fraudulent transactions resorted to by the acquirer of the property, especially in the case of a member of a Marumakkatayam or Aliyasantana family, with the view of protecting his acquisitions from the clutches of the other members of the family and for securing it for his own wife and children."

Mr. Sundara Row, Sub-Judge and an orthodox Brahmin, says:—

"The object of the Bill is doubtless praiseworthy and preventive of good many disputes which daily occur in Hindu families and conducive to the maintenance of peace and comfort in the family besides giving security to the acquirer."

Sir K. Seshadri Aiyar, Diwan of Mysore, who is a native by birth of this Presidency, observes:—

"He would, in most cases, be found most willing and ready to assist his poor relations if the matter were left to his own good sense, natural affection and desire to win public esteem. On the other hand, to the man who is dead to the dictates of natural affection and the duties enjoined by the opinion of society, there is already,

under the existing system, a ready means of escape, as he was only to take the precaution of having a division of family property effected when there appears a prospect of his attaining to wealth. The real sufferer under the existing system, therefore, is the educated earning man having a respect for the opinion of society and natural affection for his brothers and more distant kindred, who hesitates to resort to a division of family property, an extreme measure which is highly distasteful to every Hindu, as it involves a severance from the rest of his family and renders him for all practical purposes, including those of religious ceremonial, an absolute stranger to them."

That is an answer to the suggestion made that it lies in the power of every man to embark upon a suit for partition, become divided and thereby become the exclusive owner of all earnings after final partition in second appeal to the High Court or a third appeal to the Privy Council. He continues:—

"The popular opinion too, except in some remote rural tracts where the people still continue to live in the old primitive ways and are unaffected by the great inequalities of position and property caused by Western education, is, I believe, not against the spirit of the provisions of the Bill. For, as a matter of fact, at the present day earning members of families, though supporting those dependent upon them, are willingly allowed to keep the great bulk of their gains as their own property and suits for partition of such gains are rare. The proposed legislation, therefore, is not, to my mind, so opposed to the feelings of the Hindu community as it may at first sight appear."

Mr. S. Seshiah, who was a Professor of the Kumbakonam College, says:—

"Nearly all with whom I have discussed the question, including among the number several non-English-educated gentlemen, have expressed their approval of the Bill. The only objections that can be urged against it are—"

He states the objections and meets them.

The late Sir T. Muttusami Aiyar, who took considerable trouble in communicating his opinion on this Bill to Government so early as in 1893, says:—

"Even the orthodox section of the Hindu Community are not much against it since what is proposed to be effected by legislation may now be secured by partition. Although a coparcener may not share with his co-heirs what he earns by his learning, yet he may often assist them in several other ways from family affection so long as he continues in the joint family. Whilst, therefore, it is their interest that he should continue in the coparcenary family, the present state of the law tends to force partition on him unless he is prepared to share with others the fruits of his learning. It is a rule of general jurisprudence that what one earns by his own unaided exertion is his exclusive property, and the Hindu law recognizes it except, as will presently appear, so far as it relates to gains of learning."

* * * * *

"The proposed legislation, therefore, only places gains of learning on the same footing with other descriptions of self-acquired property."

He examined the Hindu law very critically and also the decisions and thoroughly approved of the Bill. In conclusion he states:—

"The Bill now before the Legislative Council will, if passed into law, remove the uncertainty that now exists and simplify the law relating to gains of learning by bringing it into accord with the general law of self-acquired property in a joint Hindu family without at the same time doing violence to the spirit of Catyayana Smriti, but only adapting it to the altered state of things."

The Bill was referred to the Judges of the High Court.

Mr. Justice Shephard says :—

“In principle I think Mr. Bhashyam Aiyangar's Bill is undoubtedly a good one, for it is clearly desirable to put the law, at the present uncertain, on a more definite footing and to shut out the difficult question as to the character of a man's education and the nature of his gains which, as is shown in the Statement of Objects and Reasons, may at any time arise.”

Mr. Justice Shephard suggested certain drafting improvements which have been accepted :—

“The object of the Bill is, as I understand, to preserve to the energetic or fortunate member of a Hindu family the gains which he makes by his own exertions, unaided by any direct or immediate subvention from the family property. It is desired that the unproductive members of the family should no longer be entitled to claim such gains as part of the family estate, notwithstanding that indirectly and remotely an education, general or special, obtained at the expense of the family may have contributed to the acquisition of the gains. The matter is very clearly put by Sir T. Muttusami Aiyar. He observes that the object of the proposed legislature is to place gains of learning on the same footing with other descriptions of self-acquired property. All that is required then is to get rid of the difference by declaring that the fact of a man having been educated at the family expense, or having been maintained by the family during the period of his education, shall in no case be taken into account in deciding whether any property acquired by such person is his separate property or family property.”

Justice Sir S. Subramania Aiyar also cordially approves of the Bill and observes :—

“Nor is the doctrine new to Hindu law, it having been more or less recognized from ancient times. Some Smritis, no doubt, introduced certain qualifications with reference to the acquirer's exclusive right to his gains of learning. But, owing to changes which have taken place in the circumstances of the people, the qualifications introduced by the said Smritis should, as pointed out by Sir T. Muttusami Aiyar in his letter of January 1893 to the Chief Secretary, be treated as unsuited to the present state of the society. Consequently, it must, I think, be admitted by all that the rule intended to be laid down by the Bill is wholly sound and just. Moreover, if the Bill is passed, it would remove the doubt and uncertainty in which the law on the point is now involved, and the enactment would render practically impossible fraudulent litigation that generally springs up after the death of the acquirer and is carried on under circumstances which place those claiming through him at a great disadvantage in establishing the truth.”

In this case the survivor has the upper hand and the helpless widow and children are entirely subordinate, and the most unrighteous compromises are coerced and the widow and the daughter, owing to their sex and owing to the influence of the surviving members of the family, are unable to assert their claims and they submit to most unconscionable and oppressive compromises. The person who prosecutes the suit is fully aware that he cannot be confident of success in the suit, because he will have to establish in the first place that the deceased member was educated, that the education which was imparted to him was not ordinary or general but scientific or special, and that he was educated at the expense of the family. In many cases, especially in Madras, many of those who come from the mofussil receive pecuniary

aid not only to defray the expenses of their education but also to defray the expenses of their maintenance from several charitable gentlemen of whom there are one or two in this Council whose names are well known. Some of these students take their meals by turns—as it is called weekly meals—in the houses of native gentlemen, and the generous Principals of Colleges, some of whom have devoted their lives to the cause of education, render pecuniary aid to them by payment of their fees and by supplying them with books. In all these cases, though no doubt the *onus* will be upon the party who affirms that he was not educated at the family expense, yet we cannot be blind to the fact that several who receive high education receive it not at the expense of the family, but with the aid of pecuniary contributions and assistance given by charitable gentlemen. All this is very difficult to prove in a Court of Justice. The question may present itself for solution fifty years after he received education. He might have led a distinguished career and might have pursued a learned profession. If he dies making a will leaving a widow, daughters and their children, the most unfortunate thing under the existing law is that a suit is brought by the surviving coparceners for recovering the whole of the property and the widow is reduced to the position of being entitled to a bare maintenance. The *onus* will be upon the widow or the daughters to show that the father was not educated at the family expense or that the education which he received at the family expense was general and ordinary or that he was educated in Madras with the aid of pecuniary contributions from various charitable gentlemen. Justice Sir S. Subramania Aiyar says :—

“Moreover, if the Bill is passed, it would remove the doubt and uncertainty in which the law on the point is now involved, and the enactment would render practically impossible fraudulent litigation that generally springs up after the death of the acquirer and is carried on under circumstances which place those claiming through him at a great disadvantage in establishing the truth. Such an enactment would also render resort to benami transactions on the part of the acquirer unnecessary and would diminish fraud and perjury which are the usual concomitants of such transactions.” Of course there are several opinions, Honourable Members would have observed, which are adverse to the measure. Many of these proceed altogether upon a misapprehension of the existing state of the law, and others proceed upon a very strange notion that this Bill would lead to the rapid disintegration and the breaking up of a joint Hindu family, although one gentleman considers that the objection to the Bill is that it would arrest the rapid disintegration and the breaking up of the joint Hindu family. That is the opinion of Mr. P. Chentsal Row. But many of those who oppose the Bill oppose it on the ground that it would lead to the breaking up of the joint Hindu families. With all respect to the gentlemen who express that opinion, I have been unable to convince myself of that. On the contrary, there is much truth in what Mr. Chentsal Row says. If the earning member feels sure that whatever he earns will belong to him exclusively, then you take away the incentive to his becoming divided from the other members of the joint family and thus you will arrest the disintegration and the breaking up of joint families. Sir T. Muttusami Aiyar pointed out that under the existing state of the law the earning members of a Hindu family were constrained to break up the family and become divided. The adverse opinion of some is based upon this ground: that while the Bill declares that the acquisition made by means of learning forms the exclusive property of the acquirer, he will be entitled to a share in the improvement which the remaining members have effected upon the admitted joint family property, by taking part in its management and by employing tenants and others to improve the property. The objection is that

the person who makes acquisition by means of learning will appropriate the acquisition to himself and claim a share in the value of the improvements effected by the junior members of the family by managing the family property. It will be time enough to consider whether at some future day some Bill like the Malabar Act for compensation for improvements effected by tenants could be introduced in regard to joint Hindu families so as to secure compensation to members of joint Hindu families who improve the family property by their exertion and who trade with the family property and acquire large profits. Whether any compensation should be made to such men for improvements effected upon the family property is a matter which, at any rate, we need not consider at present. We know that under the English law any person may effect an improvement upon another man's property and generally the improvement goes with the ownership of the property on which the improvement is effected. Therefore, I submit that the plausible hardship in such cases is one which is inherent in joint families, when joint family property is used and it is the proximate cause for acquisition. Take the case of a firm. It may be that although all the members are entitled to equal shares, yet some of them may be sleeping partners or may not exert themselves, while others exert themselves and thus enlarge the profits of the partnership. In this case, unless there was a special agreement, the member of the partnership who has improved the partnership cannot claim a greater share. In the same way under the Hindu law, those who deal with joint family property and trade with such property are on the same footing as partners of a firm or business under the English law. Suppose a Barrister is a member of a firm and also practises the profession of an advocate. Whatever he earns as an advocate will belong to him exclusively and whatever he earns by the use of partnership assets will belong to the partnership. So I submit, in the case of a joint Hindu family, the principle of Hindu law is not that individual property is obliterated, because the man is a member of the joint Hindu family. If a man is a member of the joint Hindu family and had joint family property, then in respect of anything which he has been able to acquire by the aid of such joint family property he is in the same position as a partner of a firm; but whatever he may earn by means of his learning without the combination of the joint family property or the patrimony certainly must belong to him exclusively. The partnership cannot claim simply on the ground that in your tender years you were educated at the expense of your grandfather or father and therefore whatever you earn thereafter should belong to the family. That, I submit, was never the spirit of the ancient law though certain ingenious commentators have taken a narrow view. Judicially it has now been established that, so far as the bulk of the earnings made by means of education ordinary or general, is concerned, it forms the self-acquisition of the acquirer; and though the latter may be a member of the joint family, yet the other members of the joint family have no interest therein. In the case of a small minority who may be regarded as having received special or scientific education with the aid of the family funds, you must either force them to become divided from the family or declare that the acquisition they make must merge in the family property. The Bill has been amended in the Select Committee and I need only draw the attention of the Council to the two amendments which are of practical importance. Section 3 of the Bill as it originally stood, was as follows:—

“Notwithstanding any custom or any interpretation of Hindu law to the contrary no property being gains of learning made by a member of a Hindu family shall be held not to be his exclusive and separate property &c.”

The Select Committee considered it inadvisable to abrogate any custom and therefore amended the section as it stands in the Bill:—

“Notwithstanding any rule or interpretation of Hindu Law to the contrary, no property being gains of learning, whether such property was acquired before or after the commencement of this Act by a member of a joint family, shall be held not to be his separate property.”

The effect of this amendment will be that if there is any special family custom having the force of law in any family, or if there is any tribal custom having the force of law among any sections of the people or among any rural population, those customs will in no way be interfered with by this Bill. This is an important change. The Bill, as it originally stood, abrogated family or tribal custom which may exist. I am sure there will be no family or tribal custom which will make any distinction between ordinary and scientific education, and if there be any such custom, that custom will be that all earnings made by members of a Hindu family, whatever may have been the character of the education, shall belong to the family. Another addition which was made to this Bill is in section 4:—

“Nothing in this Act contained shall affect—

(a) Any right established before the commencement of this Act by a decree of a Court of competent jurisdiction or by the decision of any other competent authority;

(b) any right created under a partition of, or an agreement for a partition of, property among members of a joint family when such partition or agreement shall have been made prior to the commencement of this Act;

(c) any alienation made or charge created prior to the commencement of this Act by a member of a joint family of or on property being gains of learning of any other member of such family;

(d) any sale made prior to the commencement of this Act in execution of a decree or order of a Court of competent jurisdiction or under any law for the recovery of rents, public revenue or any local cess or tax;

(e) the right of members of a joint family to or in property being the gains of learning of any one of them in cases in which the acquirer of the property has with the intention of relinquishing his exclusive right to it incorporated the same with the joint property of the family.”

Even under the Bill as it originally stood that would have been the legal interpretation that would have been placed upon it. But to make the matter clear and to remove all possible misapprehension, the Select Committee has decided to add the saving clause (e) in order that those members of the joint Hindu family, who make their earnings by means of education and who throw such earnings into the common stock or common chest, as it is called in text-books, with the intention of such earnings merging into the family property shall not be in any way affected by this Bill. Once the earnings made by means of education by a member of the Hindu family are thrown into the common stock with the intention of abandoning his exclusive right thereto, he cannot afterwards say “I repent my action in having thrown my earnings into the common stock and I claim them under this Act under which I am entitled to them solely.” That will be prevented by this clause and the matter will be placed beyond the possibility of any controversy or doubt. With these remarks which I was forced to make at this length, because most of the members present at this meeting were not members of this Council at the different stages of the Bill since its initiation in 1891,

I move that the Bill be taken into consideration. If this motion is carried then the amendments may be considered.

The Hon'ble M.R.Ry. P. Ratnasabhapathi Pillai Avargal seconded the motion.

The motion was put to the Council and agreed to.

His Excellency the PRESIDENT:—At this stage of the proceedings I think it will be for the convenience of Honourable Members if we adjourn for a brief space. The Council will accordingly adjourn till 2-45 P.M.

The Council re-assembled at 2-45 P.M.

His Excellency the PRESIDENT:—The Council will now proceed with the amendments that appear on the agenda paper.

Section 1.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu said:—With your Excellency's permission, I wish to say a few words in support of the amendments which stand in my name. My object in bringing them forward is to limit the scope of this Bill—to exclude those who are governed by the Mitakshara Law from its scope. Honourable Members are aware that the policy of the legislature in matters affecting the personal laws of the people of this country is one of non-intervention. Since the days of Warren Hastings, respect has been shown for the ancient usages and institutions of this country by the adoption of a policy at once considerate and truly sympathetic, in pursuance of which the Civil Courts decide all disputes as to rights of inheritance, succession, devolution and distribution of property and various other civil matters of vital importance in accordance with the personal law of the party concerned, that is, according to the Hindu Law or the Muhammadan Law, as the case may be. The few instances in which the Indian legislatures have interfered with the personal laws of the people can be easily distinguished from the present. By far, the strongest reason for excluding such matters from the sphere of practical legislation is the constitution of the Indian Legislatures. Legislation on questions of Hindu Law and Usage dealing with Hindu domestic life would require in the Legislative Council a number of representative men fairly well informed from the various parts of the country. How the law has hitherto worked, whether the law is consistent with progress so far as their own part of the country is concerned, what changes are necessary and how such changes would affect the well-being of the people, are all matters on which they should be able to advise the Council. It is to be remembered that the Hindu Law affects not merely the Social Law of the Hindus, but it is part and parcel of their religious institutions. According to the orthodox Hindu opinion, law is eternal and immutable. Even Manu and Yajnavalkya are not, strictly speaking, the authors of our laws. Theoretically they are mere compilers who have collected together in a handy and convenient form the ordinances of the Vedas. It therefore happens that, in spite of all the changes in the political condition of the Hindus, their law still retains to a great extent that vitality which it had in the days of Brahminical ascendancy. Considering these peculiarities of Hindu jurisprudence, its development has taken a different course altogether from that of the European systems. If any modification of the Hindu Law is necessary, such modification is being introduced by judicial decisions which take note of the changes in Hindu society.

"A change in the popular convictions," says Mr. Justice West, "may, without inconsistency, be followed by a change in the course of the decisions by which the legislature intended to reflect them. If this view be correct, the path of progress is by no means barred by the accident of a decision being taken on a particular point of Hindu Law at an early stage in the growth of opinion." The Madras High Court, however, does not accept this view and seems to attach too much importance to the existence of the legislature in this country. But that body cannot, for obvious reasons, interfere in such delicate matters. Not long before the introduction of this Bill, Sir C. P. Ilbert, a former legal member of the Viceroy's Council, wrote as follows in the English Law Quarterly Review in an article on Indian Codification:—

"I tried to ascertain privately whether any leading members of the Hindu community would entertain favourably any project of dealing with their family law, but the results of the enquiries were not encouraging. There appeared to be a general indisposition on the part of the Hindus to move in the matter. It is very possible that they are right, that no part of this law is yet ripe for codification and that it had better be left for the present to the more gradual and less direct action of judicial decisions. It is at present, if not in a fluid, at least in a plastic state, and a comparison between the 3rd and 4th editions of Mr. Mayne's valuable book on Hindu Law and Usage will show how it is acquiring a definite form and how dangerous it might be to interfere prematurely with the process by which it is being moulded into shape. The codification of Native Indian Law involves a new departure involving grave and delicate questions. Whether the time has yet come for making a new departure by attempting to codify Native Law is a question which most authorities would answer in the negative." Mr. Mayne thinks that such a code "would produce much more dissatisfaction and expense than the law as at present administered." There are various other considerations which render impracticable the question of codifying the Hindu Law. Moreover the law as to gains of learning is intimately connected with the other parts of the Law of Inheritance, and piece-meal legislation like that suggested is to be deprecated. The authority of Mitakshara is paramount in all the schools except that of Bengal. Why should one law be administered in this province and a different one in the other provinces amongst people who follow the same personal law? Personal law should have nothing to do with domicile. Turning now to the merits of the Bill, I am not satisfied that the proposed legislation is required to meet any serious practical evil and that it has been asked for by a section, important in influence and number, of the community affected by it. In the first place, the remedy for an educated and successful member of a family following the Mitakshara Law is in his own hands. What is proposed to be effected by legislation may now be secured by partition. I do not think that it can be said to be an inadequate remedy, simply because in some cases "the educated member experiences feelings of delicacy, which, together with moral and other considerations, including the public opinion (so to say) of his own circle, are too strong for him to press for a division at once." If he feels delicacy in availing himself of a remedy which the law gives him, how much more delicacy should the legislature feel in stepping in and making the ground smooth for him as if he had availed himself of that remedy? The case is, however, different with those governed by the Marumakkatayam or the Aliyasantana Law. In Malabar and Canara no one member, nor even all but one, can enforce a division upon any who object. It is quite possible, therefore, that, as stated by the Hon'ble mover, this Bill will be welcome to those that are governed by such a system of law. In the second place, a rule requiring a member of a joint Hindu family, who has received special education at the expense of the family to

give a share of his earnings to his co-parceners, or a rule that the property left by him should go to his undivided brother or nephew in preference to his wife or daughter cannot be said to be opposed to the moral sense of the Hindu community. Nor can it be said to be immoral in any sense in which immorality is taken cognizance of by the Legislature. Sir Richard Couch does not think it bad law, having regard to the usages of native society. In the words of Mr. Mayne, "if a member of a joint Hindu family were sent to England at the joint expense to be educated for the Bar or the Civil Service, it seems fair enough that his extra gains should fall into common stock as a recompense for the extra outlay incurred. It might be assumed that, when the outlay was incurred, the reimbursement was contemplated." There is no system of inheritance, perhaps, that recognises the supposed claims of all who are intimately connected by blood or otherwise with the person who leaves property behind him, and it will possibly be found on examination that the most advanced nations of the world are not those whose laws of inheritance are the most compatible with the natural claims of relations. The fundamental principle of Hindu Law is that, upon the death of a member of a joint family governed by the Mitakshara without male issue, his interest in the family property simply lapses and passes to nobody. If there are cases in which the interest of an educated member has so lapsed to the detriment of the interests of his wife or daughter, are we not aware of cases in which that of the other member or members has similarly lapsed, augmenting thereby the extent of interest of the educated member in the family property? Again the Courts have already adapted the Hindu Law texts to the condition of modern Hindu society in declaring the acquisitions made by means of general education to be the exclusive property of the earning member, though remaining undivided. There seems to be no ground whatever for the apprehension of the Honourable mover when he says, "considering, however, that the question has not yet been judicially considered by the Privy Council, it cannot be said to be unlikely, having regard to the texts of Hindu Law that the contrary view might hereafter prevail". What is now proposed is to do away with the distinction between the gains of general education and those of special education and to declare the acquisitions of an educated member as his separate property without reference to the kind of education imparted to him. There may be cases—I am ready to admit—in which the law, as it now stands, operates harshly. I am unable, however, to accept the view that the hardship caused by the existing law is such as to lead people to invest their savings *benami* or in jewellery. I believe that few people invest their *legitimate* earnings *benami*. The worst sinners in the matter of investing their earnings in jewellery are perhaps those who have nothing to fear from any possible claims by their co-parceners. Is there any guarantee that the rule embodied in the measure before us will work fairly and equitably in all cases? We must look at the question, not from the standpoint of the earning member alone. It is easy to imagine cases in which the proposed rule works as, if not more, hardly in the case of others than the earning member. It is further urged that "it will not be possible in the present state of education in India to distinguish in many cases between general, ordinary or rudimentary education and special, scientific or technical education". Not a single case has been cited to show that the Courts in this country have experienced any such difficulty and much less that there has been any miscarriage of justice. There may be difficulty in some cases in ascertaining the nature and character of education just as there is difficulty in ascertaining any other fact by oral evidence. But is that a sufficient reason for the Legislature to depart from the fixed and guiding principles which have always actuated it in the past? Such legislation is, in my humble opinion, neither desirable nor expedient.

One might as well ask that the word "science" be expunged from the English "Customs and Inland Revenue Act, 1885," on the ground that three distinguished Judges like Lord Halsbury, Lord Watson and Lord Macnaghten have differed in their interpretation of the word "science" used in that Act. Amongst the educated men themselves who have been specially consulted and whom this measure is likely to benefit, there is considerable diversity of opinion as to its necessity. With characteristic fairness, the Honourable mover concedes that, "at the time leave was obtained to introduce the measure it was regarded on all sides as a novel departure," and even "with suspicion and distrust" by some "that it might portend consequences of a serious nature to the cherished laws and customs of the people". I may add that the opinion has since gained ground, that the measure is not calculated to advance the cause of progress, and that its addition to the Statute Book would result in the disruption of family ties and affections which are the most prominent characteristics of the Hindu race. "The exact scope and object of the measure is not understood except by a small section representing the enlightened and educated portion of the community". Amongst the gentlemen consulted, 31 are in favour of the Bill and 17 are against it. Mr. P. Chentsalrow, C.I.E., says that he has discussed the subject with several disinterested, intelligent and orthodox Hindus, and he finds that they are generally against the proposed law. I may point out in this connection that the late Sir T. Muttusami Aiyar, who approved of the principle of this Bill, was under a misconception on an important point, for he begins his opinion by saying, "the educated classes consider the proposed legislation necessary and on this point there is a consensus of opinion amongst them. Even the orthodox section of the Hindu community are not much against it, since what is proposed to be effected by legislation may now be secured by partition". I am sorry I cannot agree with the Honourable mover that the opposition of veterans like Messrs. P. Chentsalrow and A. Seshayya Sastri, Diwan Bahadur K. Krishnaswamyrow, Diwan Bahadur P. Sreenivasarow and Rao Bahadur C. Venkobacharry is "based upon an entire misapprehension of the existing state of the law and of the scope and effect of the Bill". They have, each individually and from his individual point of view, come exactly to the conclusion that the existing law affords ample protection. Are we to disregard in a matter of this kind — when we attempt to legislate in regard to rights of property and the methods of distribution thereof — the volume of opinion arrayed against the Bill? I wonder how many of those who have approved of the principle of the Bill in the beginning are now prepared to advise this Council to pass it, in spite of the opposition which it has encountered. I would prefer to be wrong with those who oppose the measure, rather than be right with the Honourable mover and the distinguished men who support it. With these remarks I move my amendment to section 1 to substitute the word "Malabar" for "Hindu" in sub-section (1) of section 1. I do not now move my amendments to the title and the preamble as they will be put afterwards.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—Your Excellency, I second this motion in order to give room for debate. At present I am not prepared to say either one way or the other about the motion. In order that the amendment may not fall through and there may be a fair debate on an important matter like this, I second the amendment.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—Your Excellency, the amendment before the Council is very much like a motion that this Bill be read this day six months. The object of this amendment is to restrict the scope of the Bill to the people of Malabar and South Canara.

I presume that my Honourable friend Mr. G. Venkataratnam Pantulu, by substituting the word "Malabar" for "Hindu" means, having regard to the amendment that he has proposed in the title, to include South Canara, that is, so far as the people of South Canara that follow the Aliyasantana law are concerned. This is practically, therefore, an opposition to the whole principle of the Bill and I dare say he is quite in order. He seems to object to this legislation on two grounds. One is, reading between the lines of his speech, that this is a matter connected with religion and that until this Council shall have been expanded, so that the representatives of the people on it, like the Members of the House of Commons, might numerically represent the full interests of the people of this Presidency, this subject should not be discussed. The Honourable Council knows that I am a Congresswallah and I am an humble but devout worker in that field of reform. Nobody, therefore, can be more anxious than I am to see this council further enlarged and to see in it the people's representatives chosen by the people. When that stage will arrive, it is absolutely impossible for any of us to say. To postpone a Bill of this nature until the Council shall be constituted in the way that my Honourable friend desires it to be constituted would be to make rather too large a demand upon this Council, and it is for Honourable Members to say how far they will be prepared to entertain a suggestion of that kind. It is admitted that this law works hardship and that the Madras High Court cannot do justice. There is not the least doubt that the law needs amendment and that the High Court is unable to do justice in a host of cases that do turn up. The remedy that is now proposed by the Honourable Member is that we should not interfere in the matter until this Council is expanded. Shall we then wait? As to the non-interference policy of Government, I may say that it should not be understood too literally. I need not refer to the various laws passed by the local Councils and by the Imperial Council affecting ancient Hindu law. I need hardly refer to the laws which relate to the inheritance of converts from Hindu religion to other religions, widow re-marriage, the suppression of sati, and a host of other matters which originally formed part and parcel of Hindu law. A man who was a convert originally would not have inherited any property. But now he inherits. In all these cases, justice arising under altered circumstances required the interference of Government and the Government did interfere and modified the Hindu law. It is now too late in the day to say that the Government on account of its policy of non-interference shall not interfere and achieve these small reforms in connection with the Hindu law. I said on a former occasion whatever I had to say. But in view of the fact that the Hon'ble Mr. Venkataratnam Pantulu has in his speech traversed the whole principle of the Bill, I must be guilty of repetition. I stated on a former occasion that this was a law which would pre-eminently benefit Hindu women rather than Hindu men. No objection had been taken upon this score. The Hon'ble Mr. Crole, who addressed the Council at considerable length in opposition to the Bill at that time, did not traverse that point. This is a small measure of reform and has arisen from the struggle between communism, a relic of the past, and individualism, a creature of modern times. So far as the reform is concerned, I hope Honourable Members will not be under a misapprehension that this law is introduced for the first time in India. Such a reform, a greater reform, was introduced 500 years ago in Bengal, long before Europeans came to India. Jimuta Vahana broke through the fetters of the ancient texts which said that families are corporations, and as soon as a man dies, nothing is left for him and all that is left behind belongs to the male members of the family. I need hardly say that devout Hindu as I am, I do not subscribe to the opinion that the Hindu law of property is eternal and unchangeable. In ancient times religion

took under its supervision and protection many matters which do not now belong to religion, such as the cleaning of teeth. I hope the Honourable Member does not say that the cleaning of teeth is a part of the Hindu religion and that we should not use powder from England instead of mango leaves which the orthodox Hindus use. In dealing with this question, you must use your strong practical common sense. I say there is the example set by Jimuta Vahana with no European influence behind him. Honourable Members will see that this is a small measure of reform, small as compared with what Jimuta Vahana did for Bengal 500 years ago. What is the meaning of the cry that Hindu sons will not be educated if this Bill becomes law? Will any of the Honourable Members say that Bengal is less educated, less commercial than any other part of India. On the other hand, it is all the other way. Bengal is most intellectual and judging from works on Law, Science and Literature, we find that Bengal is intellectually in advance of the rest of the country. This was achieved, I say, by Jimuta Vahana's law in opposition to Mitakshara law; and those that cry that higher education would suffer by passing this law ought to pause before making such a statement and see whether it is supported by argument or experience. Under the existing law the father is not the absolute owner of the property. What is the present law? As soon as a child is conceived, not necessarily born, under the Mitakshara law it takes an interest in the property. I hope Honourable Members will note this point. Suppose a person has two grown-up sons and a boy for his third son. Suppose the last one is a genius and the others are not. The present law can effectually prevent the father from educating his last son, because his elder and less fortunate brothers are interested in the property. Under the proposed law, he will be the absolute owner, so far as the gains of higher education are concerned, and he will be more able to devote his property as he likes to educate that son that he likes best and leave those sons who, in his opinion, are not likely to profit by any expenditure on education. This aspect of the question has not been looked at. In the present case, the elder sons can demand a partition, or they may go further, they may restrain the father that he shall not at the expense of the whole family property educate one of his sons. So far as higher education is concerned, having the example of Bengal, if the father has earnings of his own he will be much more able to educate his sons under the proposed law—an argument which the Hon'ble Mr. Venkataratnam Pantulu has overlooked. The next objection he takes is that a piecemeal legislation should not be adopted. I perfectly agree. But Hindu law is a big subject and I do not think that our two years' term will be enough to amend it and that by one single enactment. It would require 25 or 30 years to codify the Hindu law and I do not think that ordinary human life is sufficient to codify it. The objection that this is a piecemeal legislation is not of great force by itself. The question is whether this piecemeal legislation injures any vital part of the Hindu law. Does it interfere with the working of the Hindu law? No, on the other hand, this will make certain portions of the law more exact. The argument that this is a piecemeal legislation can be of no value, unless it can be said that such piecemeal legislation is in the highest degree injurious. It is stated that the provision regarding partition would do as well as this. But this has been answered over and over again in some of the opinions read by the Hon'ble mover of the Bill. There are great difficulties in the matter. We are absolutely powerless in the presence of our mothers and grandmothers, much more powerless than in the presence of Policemen. The presence of our mothers and grandmothers terrorises us much more than that of Magistrates and the Police put together. I respectfully submit that it is all very well to say "go to partition." But what do you say about the curse

of parents, who refuse to take meals or go to sleep? It is all very easy to say "go to partition," but it is not so very easily done. Then what about the law's delay? The decree in a partition suit takes effect not from the date of filing the suit but from the date of the decree. In some cases it might take ten years to obtain a decree and in certain instances, where appeals are taken to the Privy Council, the suit may last twenty or thirty years. In the meanwhile, it may happen that the man who wished to make a will in favour of his wife, mother and daughters is dead; and by the law of survivorship the whole property lapses to the surviving male members of the family. The decree would be a mere piece of paper. If, before a decree is given, it is known that the man is dead, the courts would not give the decree too, as the dead man's interest did not survive him but lapsed to others as soon as he died. The only serious objection that is taken is that it is unfair that when a man is educated at the expense of the family, he should be allowed to have all the gains. That is the only solid objection which needs an answer. On this point I would only respectfully beg to submit one or two observations. Hindu law does not say that if a man is educated at the expense of the family he should make a return for it and this is not taken into account in partition. When a partition of the whole property is made, the fact that more money out of family funds has been spent upon one man than upon another is not considered. I respectfully submit that the Hindu law simply is equality in partition and inequality in enjoyment. That is the equity of Hindu law. A man may marry any number of times and while he remains a member of the joint family all the expenses connected with the marriages, no matter what the proportion may be with regard to the expenditure incurred upon the marriage of another son — it may be a hundred or even one thousand times greater—provided that such expenditure is legitimate, the Hindu law says should never be taken into account. Will the Honourable Member say that the money spent on education is not legitimate or it is less legitimate than marrying a number of times? I respectfully submit that the idea that because money is spent upon a man's education he should therefore make a return is not at all within the spirit and genius of Hindu law. About this matter being connected with religion, I shall only make one observation. It has always struck me that the Hindu law had one curious aspect. The spirit of the Hindu law is that a man acquires property for a double purpose, namely for the enjoyment of the good things of the world and secondly that his spiritual wants may be attended to, not only when he is alive but also after his death by his wife and sons who perform his *śradh*. If any undivided member dies without leaving a son, the person who is to perform the *śradh* is his wife, while the property goes to the surviving members of his family! This is the strange phenomenon that has always struck me. The right and duty to perform the *śradh* and other funeral ceremonies and the right to inheritance do not go together. This is a curious phenomenon as to which I have found no explanation. It is curious that the wife under the Hindu law has to perform the *śradh* of the husband, although she does not get the property which goes to a person who is under no such obligation. If the present Bill is passed it will remove this anomaly. Sarvadhikari, Professor of Sanskrit at the Canning College, Lucknow, says:—

"The wife is entitled to the performance of the *śradh* rites of her husband even if her husband's brother who lived joint in food, estate and worship with her husband takes his property."

In either of the cases the unfortunate widow has to perform the *śradh* ceremony and undertake all the expenses connected therewith while the property goes, it may be, to a brother or a distant cousin, which depends upon the circumstances of each particular

case. I respectfully submit that the present Bill far from tampering with any religious rights will remove this anomaly and place the wife exactly where the religious benefits under the Hindu law would place her, that is, the person who performs the *śradh* will be entitled to the property of the person for whom he performs the *śradh* rites. My friend admits that this is a hard case, but says that hard cases are met by hard cases. That is hardly law. The Honourable Member asks if there are cases in which the interests of the educated member has lapsed to the surviving members of the family to the detriment of his wife or daughter, whether there are not cases in which the interests of the other members have similarly lapsed. This kind of argument is a thing which I cannot reconcile myself to. I beg to oppose the amendment before the Council and hope that it will be negatived. If this amendment is negatived and the Bill be passed, then it will tend to the elevation of women, the protection of minor helpless daughters and, I would honestly admit, the promotion of peace, harmony and, let me add, morality in Hindu families. It cannot be said that the Government can be altogether indifferent spectators. The Government as Government is interested in seeing that peace, harmony and morality are promoted in Hindu families. But the other day a rich and well-known Hindu vakil died and before his body was removed a lock was put to the room containing his wealth by his wife and when his brothers came they put another lock, and even for burning the body they had to depend upon the charity of a friend. Surely the Government cannot say "We will be indifferent spectators of these disgraceful scenes." This shows the uncertainty of the law. If a thing like this occurs among lower orders, then public peace would be disturbed. In the particular case I referred to—it is a respectable family—they did not go to blows. It may lead to disturbance, if it happens in the case of zamindars. The interference of Government in such cases as this is quite necessary, not only for the peace of the family but for the peace of the public. In the case I referred to, the unfortunate widow had to borrow a son of one of the brothers of the husband, be content with a portion of the property and had to give the rest to the brothers. This is a case which occurred two or three months ago. On these grounds, I have no hesitation in saying that the supporters of this Bill are conscientiously convinced that it is absolutely called for in the interests of Government as well as in the interests of the public.

The Hon'ble Mr. A. T. ARUNDEL:—Your Excellency, I should like to trouble the Council with a few remarks upon this Bill. In the first place I may repeat what the Council is already aware—it is just as well to emphasise it—that the Government is neutral with regard to this Bill. That is to say, it does not request the Official Members to give their votes either for or against it. At the same time, I should like to mention why personally I shall give my vote in support of the Bill brought forward by the Hon'ble Sir V. Bhashyam Aiyangar. I think the only speech against this Bill up to this day was delivered by the Hon'ble Mr. Crole in November 1897, and I should like to quote from it. He said "the principle is to make the Hindu family responsible for proving that the self-acquisition is the family property; whereas at present the person who claims the property as self-acquired has to prove the fact himself." The Bill "proposes in short to shift from the individual to the legislature the responsibility of doing a mean thing which the unwritten laws of native society now condemn." He concluded by saying "if after the people of this country have really understood what is awaiting them they agree to the Bill, of course, this Council must pass it, but if a tangible portion of the people of this country object to the Hindu family being broken up in this manner, I submit that this Council will do well to pause before sanctioning legislation of this drastic character." Well, sir, that speech was delivered

in November 1897. I made inquiries with some curiosity to see how many petitions have been received in regard to this Bill since that date, because it is perfectly clear that his speech might be received as a sort of invitation to put in petitions and to put forward such opposition as might be felt by Hindu society against the Bill. I have been informed by the Secretary that since that date, four petitions have been received. One of them is in favour of the Bill and three against it. Of these three, two are from individuals and the third is from the inhabitants of a little village called Tummerakodu in Palnad taluk, Kistna district. I think, therefore, we may fairly say that Mr. Crole's test has thus been applied since 1891 and no "tangible portion of the people" have expressed themselves against it. It is perfectly clear that the educated and intelligent members of society who were opposed to the Bill must have been half-hearted and very lukewarm in their opposition or they would have secured the representations of a substantial following, although my Honourable friend Mr. Venkataratnam Pantulu says that recently objections were made manifest, which were not apparent before. The Hon'ble Sir V. Bhashyam Aiyangar has already told us and I should like to mention it once more that this Bill was published in the vernaculars in 1891, so that the Bill has been before the public for nine years. In 1892 owing to the absence of comments either *pro or con* with regard to the Bill, the Government determined to consult the most prominent members, the most intelligent members of Hindu society. The opinions of those gentlemen consulted were given demi-officially and I do not know whether they have all been placed at the disposal of Honourable Members. As the Hon'ble Mr. Venkataratnam said that out of 48 gentlemen consulted 31 were in favour of the Bill and 17 were against or not in favour of the Bill, I think it will be just as well to mention the names of these latter gentlemen. They are—

1. M.R.Ry. M. R. Ramakrishna Iyer, High Court Vakil, Tinnevely.
2. " A. Venkata Ramana Pai, Subordinate Judge.
3. " R. Subramania Iyer, District Registrar.
4. " Rao Bahadur C. Venkoba Chariar, Subordinate Judge.
5. " K. Subba Rao Pantulu Garu, Deputy Collector.
6. " P. Pundarikakshudu Garu, Deputy Collector.
7. " C. Nagoji Rao, Inspector of Schools of Rajahmundry.
8. " K. Krishnaswamy Rao, Chief Judge, Travancore.
9. " A. Sankariah, retired Diwan Peishcar, Cochin.
10. " N. Subba Rao Pantulu Garu, High Court Vakil, Rajahmundry.
11. Rai Bahadur P. Ramasamy Chettiyar, Revenue Officer, Madras Municipality.
12. " A. Sabapathy Mudaliar, Bellary.
13. Diwan Bahadur P. Srinivasa Rao, Judge, City Civil Court, Madras.
14. Raja G. N. Gajapathi Rao, C.I.E.
15. M.R.Ry. C. Ramachandra Iyer, retired District Judge.
16. " A. Seshiah Sastriar, c.s.i., Retired Diwan of Travancore and Diwan-Regent of Pudukkottai.
17. " P. Chentsal Rao Pantulu Garu, c.i.e., retired Superintendent of Stamps, Madras, and late Councillor of the Council of the Maharaja of Mysore.

I had some hesitation whether it be fit to quote the opinions of these gentlemen. The two last named gentlemen, however, are personal friends of mine, and when I wrote to them they said that I might make any use of their opinions I liked. I should like

make a reference to the letters written by these gentlemen. Mr. A. Seshiah Sastriar says:—

"There is no question that the ambition of modern youth is to monopolise themselves and their children all the fruits of the education which they may have sived at the expense, partially or wholly, of the joint family property, or even of h acquisitions, as begging, by the personal labours of the common parents; but further question is whether a declaration of law such as is proposed will not imperil re vital interests and the well-being and the mutual relations of the Hindu society n appear on the surface.

"I am of opinion that a law of the kind will grate against the sense of the ole nation, will undermine to some extent the relative and hitherto unquestioned es to, and claims of, the members of a joint family, and produce a general disturbance property and uneasiness, if not soreness, of feeling. I would rather trust the estab- ed courts of the land to decide each case as it comes up before them on its own rits as has been the course hitherto—a course which leaves a wide door for generous oposals and sensible acceptance of compromises by members of a joint family—a or which will in most cases be shut against them if there was a law to back those o are ungrateful and ungenerous to the parent stock after Fortune has singled them for her favours."

It is apparent, therefore, that his feeling is against the Bill with regard to the ury it may do the Hindu family system. We cannot help feeling, in reading this ter, that there is no very strong condemnation of the Bill. Mr. Seshiah Sastriar's ling is that it is better not to have the Bill. Let me now quote from Mr. P. entsal Row. I am quoting the opinions of these two gentlemen with the weight of eir authority because the Council might like to know what two gentlemen of great perience have got to say. Mr. Chentsal Row writes a long letter on the subject, the former part of which he is clearly in error with regard to the law as it has been elared by the courts and therefore, to that portion of that letter I do not attach much portance. The other part I refer to is this—

"I cannot say that the law proposed is equitable. If in a joint family nsisting of four brothers, A, B, C, D, A works on the family farm, B employs mself in trading, C practises in the Court and earns money and D looks after domes- management, the most equitable arrangement would be to treat all the earnings as e common property of all the four and not to exempt the earnings of C alone from vision. It may be that all the other members had the use of the family capital, hile C used his brains alone, but so long as they choose to remain undivided, I do it see how C can equitably claim his earnings to himself and yet claim a share in the tire earnings of the rest.

"Nor does it appear to me that the declaration that gains of learning are divisible is a decided social advantage. If on the one hand it induces the acquirer to ert himself better, it has on the other hand a tendency to make the other members of e joint family less contented and less industrious. For instance, in the case mentioned e preceding paragraph, it would certainly deter A, B, and D from putting forth e same amount of energy as they would if they had a share in the earnings of C.

"It cannot also be said that under the law proposed litigation would diminish ad suits for division would become less. Mr. Bhashyam Aiyangar's law may render unnecessary for C to go to Court for a division, but it is sure to encourage the other rothers to go to Court.

"The only advantage of the Bill is that it will to some extent effectively check the spread of demoralization." He enlarges on that topic. He finally says—"It may be urged that, on the whole, the advantages of declaring the earnings accruing from one's own exertions as self-acquired property preponderate as a motive for exertion. If so, and I have no doubt it is so, our law must have much larger scope than that proposed by the Hon'ble Sir Bhashyam Aiyangar. We will have to declare *all* gains due to *personal exertion*, whether with or without the aid of the family property, impartible. All circumstances considered, therefore, I think that in the present condition of Hindu society and the feelings of the people as regards personal acquisitions, if any legislation is needed at all to remove uncertainty, it is in the direction of declaring the gains of learning divisible when the learning has been acquired at the expense of the family property."

There again it seems to me that Mr. Chentsal Row is evidently feeling that there is danger that the present condition of Hindu society may be affected by the proposed law, and I was therefore astonished when I read the concluding paragraph of his letter in which he gives an opinion which shatters to pieces the whole of his preceding argument. What he says is—

"All circumstances considered, therefore, I think that in the present condition of Hindu society and the feelings of the people as regards personal acquisitions if any legislation is needed at all to remove uncertainty, it is in the direction of declaring the gains of learning divisible when the learning has been acquired at the expense of the family property. If such a law would induce people to separate from joint families more largely than they do at present, nothing can be more desirable. I consider that the joint family system is a clog to enterprise, a damper to self-exertion and the curse of India, and the sooner it ends the better for the country."

I have no intention of quoting the opinions of the gentlemen who are in favour of the Bill, as that has already been done by the Hon'ble Sir V. Bhashyam Aiyangar, and I should merely like to run through the names—

Coimbatore Bar Association.

Berhampur Association.

Literary Association, Cocanada.

Citizens of Madras.

M.R.Ry. K. P. Sankara Menon, High Court Vakil, Madras.

" M. B. Sundara Rao, Subordinate Judge.

" M. Srinivasa Rao, Deputy Collector.

" S. Narayanaswami Chettiyar, Diwan of Venkatagiri Samasthanam.

" V. Srinivasachari, Subordinate Judge.

" T. Pattabhirama Pillai, retired Deputy Collector.

" S. Kalyanasundaram Chettiyar, Deputy Collector.

" V. Rajagopala Charriar, Deputy Collector.

" V. Jagannatha Rao Pantulu Garu, Deputy Collector.

" C. Sury Aiyar, retired Subordinate Judge.

" D. V. Ramayya Pantulu Garu, Government Pleader, Berhampur.

" S. Gopalachariar, Subordinate Judge.

" Rama Varma Raja of Parapanad.

Diwan Bahadur R. Durma Rao Naidu Garu, Deputy Commissioner, Salt and Abkari, Northern Division.

M.R.Ry. K. C. Manavedan Raja, Statutory Civil Service.

M.R.Ry. P. Somasundaram Chettiyar, late President, Pachaiyappa's Board of Trustees.

Rao Bahadur C. Gopala Nayar, Subordinate Judge.

Rao Bahadur R. Rama Subba Aiyar, High Court Vakil, Madura.

Rao Bahadur S. Seshayya, Professor, Kumbakonam College, and Tamil Translator to Government.

M.R.Ry. A. Ramachandra Aiyar, Judge, Chief Court, Mysore.

The late Rao Bahadur P. Runganadha Mudaliar, M.A., Professor, Presidency College, Madras.

Diwan Bahadur T. Venkasamy Rao, retired First Assistant, Revenue Secretariat.

The Hon'ble Diwan Bahadur S. Srinivasa Raghavaiyengar, C.I.E., Inspector-General of Registration, Madras.

Diwan Bahadur R. Raghunatha Rao, late Diwan of Indore and retired Deputy Collector, Madras.

Sir K. Seshadri Iyer, Diwan of Mysore.

The Hon'ble Justice S. Subramania Iyer, C.I.E., High Court Judge, Madras.

The late Justice Sir T. Muttusami Aiyar, High Court Judge, Madras.

As I have already said I will not quote further opinions, but I should like, with the permission of the Council, to read a summary of the arguments *pro* and *con* which led the Government to decide that the Bill might be introduced.

"Weighty opinions have been expressed both in favour of and against the measure. The main arguments on either side may be briefly summarized.

Against the Bill it is urged—

(1) That it is anomalous to treat the gains of learning in a different manner from the gains of trade:

(2) That the Bill is likely to prejudice the education of the younger members of joint families inasmuch as the managing member being debarred from a share in the gains of their learning will have no inducement to give them a liberal education:

(3) That the measure is unpopular with Hindus in general:

(4) That the Bill is unnecessary because the educated members of a family are always secure partition if they wish to enjoy their earnings separately:

(5) That the Bill strikes a blow at the joint family system:

(6) That the Bill is one which is equally applicable to Hindus living in other provinces, and should, therefore, be taken into consideration by the Supreme Legislative Council:

(7) That the provisions of the Bill are inconsistent with the Hindu religion.

On the other hand in favour of the Bill it is urged—

(1) That the Bill will remove the existing uncertainty of the law which promotes litigation and disturbs the harmony of joint families and has a tendency to induce a learned member to become divided or to conceal acquisitions made by him or to vest them *benami* when otherwise he might be willing to leave the ancestral property intact for the common benefit of the family:

(2) That it will tend to foster a spirit of individual enterprise and self-reliance, ensuring the fruits of his individual efforts to the acquirer and stimulating other members of the family to support themselves:

(3) That it will tend to raise the credit and status of the educated members of the community:

(4) That the gains of special learning have become trifling now that education is widespread and are the result rather of natural ability and industry than of actual education:

(5) That it is impracticable to lay down distinctions between ordinary and extraordinary learning as contemplated in the rulings of the courts:

(6) That the existing rule places a premium upon idleness during the time of education:

(7) That the rule that the savings of a learned member of a family are liable to partition tends to make him extravagant or to promote resort to fraudulent concealment of his earnings:

(8) That the provisions of the Bill coincide with the law as laid down in the Smritis:

(9) That the provisions of the Bill coincide with what is already accepted as the customary law among Marumakkatayam and Aliasantana people in the districts of Malabar and South Canara:

(10) That the Bill will pave the way for the codification of Hindu law and remove the idea that such law is not subject to legislative control:

(11) That the Bill is desirable as it places the gains of learning only on the same footing with other self-acquired property."

The Government remarks "that it has arrived at the conclusion that the balance of argument inclines to the side of the large body of learning and intelligence which favours the Bill". These views were laid before the Government of India and the Secretary of State and no objection was raised by them to the Bill being brought forward as a private Bill by the Hon'ble Sir V. Bhashyam Aiyangar. I must say when I first went into these papers, my feeling was somewhat antagonistic to the Bill, because it appeared to me that it might affect the conditions of the bulk of Hindu society. But as soon as I was able to apprehend the bearings of the law as determined by courts, it appeared that this view was mistaken and the true legal position has been emphasised by the Hon'ble Sir V. Bhashyam Iyengar. To put it in my non-legal fashion I should sum up the present position somewhat like this:—

All property acquired by an individual by his own efforts as the result of general education at the expense of his family is his self-acquired property and cannot legally be claimed by members of the undivided family. But as regards special scientific or technical education the case is different. I understand the gains arising from such education are still regarded as part of the family property. This is an infinitesimal proportion of Hindu society. So far as we have been able to understand, the feeling of this most intelligent portion—it is rapidly increasing—is decidedly in favour of the Bill. The Bill will change the existing law only as regards this small but important section of the Hindu community. There is one other matter which affected my opinion considerably after I was satisfied upon the legal point, that is, the way in which the status of women is affected—that has been dwelt upon by the Hon'ble Mr. Vijayaragavachariar—and also the moral evil attached to the present system. These have been very largely dwelt upon and I do not think it is necessary for me to say anything more. These are the reasons which lead me to give my individual vote in favour of the Bill.

The Hon'ble Sir V. BHASHYAM AIYANGAR:—The amendment proposed by my Honourable friend the effect of which is to restrict the operation of the proposed

measure to Hindus governed by Marumakkatayam or Aliasantana system of Hindu Law, necessarily implies the justice of the principle, involved in the Bill, namely, that it is neither just nor equitable that because a Hindu was educated by, or at the expense of, the father or of the family, therefore all earnings made by him while he is a member of the joint family belong, not to him separately, but to all the members of the joint family. If that were just or equitable, there is no reason why this Bill should be passed in regard to Hindus governed by the Marumakkatayam or the Aliasantana law. Therefore his very proposal to amend the Bill and to make it applicable to Hindu families governed by the Marumakkatayam or the Aliasantana law necessarily endorses the justice and equity of the principle of the Bill. My Honourable friend is prepared to enforce this principle to its full and logical effect in the case of Marumakkatayam and Aliasantana Hindu families. But, he says, that the measure should not be made applicable to Hindu families governed by the Mitakshara law, for the simple reason that the benefit which the measure would confer upon the earning members of Marumakkatayam and Aliasantana families could be attained by a Hindu governed by the Mitakshara law by having recourse to the remedy, which under the Mitakshara law he has, of enforcing a partition with his coparceners and of thus becoming the separate owner of all acquisitions which he may make by means of his skill or learning after a final decree for partition. My Honourable friend, therefore, argues that the Hindus on the Eastern Coast have already got the remedy in their own hands, and that it is therefore unnecessary to afford them further relief by the proposed legislation, and that it should be restricted to their brethren on the Western Coast, who have no right to compel a partition and become divided from the family. I confess that I am not an admirer of the remedy pointed out to Hindus governed by the Mitakshara law, nor do I ardently wish the rapid disintegration and breaking up of the joint Hindu family by forcing an earning member of the family to break off from it, a step which he will be naturally forced to take, if that should be the only course open to him under the law to secure to himself and his heirs the property acquired by him. An undivided family, consisting of only a father and his sons, is as much a joint Hindu family, as one consisting of brothers, cousins and uncles and nephews, &c. Imagine what the social consequences of applying the remedy by partition will be, if the Hindu father is to effect a partition with each of his sons as he comes into existence in the world or of the son becoming divided by bringing a suit for partition against his father and his brothers as soon as he attains the age of majority and begins to earn by means of professional education or training imparted to him by, or at the expense of, the father. If a Hindu father were to effect a partition between himself and each of his sons as soon as he comes into existence, as he can do, by virtue of his parental dominion and power, without having recourse to a suit for partition, in order to enable him effectually to make a decent provision out of his professional earnings in favour of his wife, daughters or other relations, the result will be that each afterborn son will be entitled to participate only in the share reserved to the father at the last preceding partition, and will not be entitled under the Hindu Law for a re-distribution of the whole family property including the shares allotted to the previously born sons. When the professional earnings made by a Hindu father without the aid of patrimony are treated, by a fiction of law, as the joint family property of himself, his sons and other male lineal descendants up to a great grandson, by reason that the father was educated or trained at the expense of his father, the result is that such earnings and on the same footing as ancestral family property and he cannot, without the consent of his sons, settle even a portion of such property by deed or will upon his wife, daughters, daughter's sons or other relations; when some of his sons happen to

be minors, their assent to such disposition cannot be legally secured. If the sons were majors, in a majority of cases, they will assent to this proposal to make a decent settlement upon his daughters and wife. But as some sons may happen to be minors their assent cannot be secured. It is extremely doubtful whether after the death of the father, when the minor sons become majors, they will respect the settlement made by the father upon his daughters by his first wife, the sons being born by another wife. If a settlement is made during the lifetime of the father, and especially on the occasion of his daughter's marriage as a general rule, it takes effect and is not impugned. But owing to the growing disinclination to make a settlement of properties upon one's daughter before she has children and thereby run the risk of the property passing to her husband and his relations in the event of the daughter dying without issue and the natural desire not to part with dominion over one's property in his lifetime, there is a growing tendency among Hindus to make provisions for their wives, daughters and daughters' children by their last will and testament; and under the existing state of the law, the testator cannot die in peace of mind that his will will take effect and be upheld legally. So long as the sons of the testator are in harmony with their sisters, who are legatees under the will, and their husbands, it may be that the father's will will be respected; but if misunderstandings arise within twelve years from the date of the father's death between the brothers and sisters or the brothers and sisters' husbands, as is not uncommon, the sister will be molested, and successfully, too, by a suit impugning the validity of the settlement in her favour of property which by fiction of law is regarded as joint family property. A son, while his father is alive, will have to effect a division with his father, and his brothers, including minors, if he wishes to have control over his professional earnings and settle a portion of such earnings by will or otherwise on his wife and daughters. Is he to be told that the remedy is in his own hands; that by bringing a suit for partition against his father and brothers, he may become divided and make a valid disposition in favour of his wife and children of properties he may acquire after the final decree for partition? Under the present state of the law the money-lender is encouraged to advance loans on unconscionable and usurious terms to young men who may happen to be of extravagant and dissipated habits when the money-lender can safely calculate upon being able to realize the debt by legal process against the share of the son in the professional earnings of his father or brother who was educated or trained at the cost of their fathers, and the father also is unable to exercise sufficient check and control over a disobedient son, and is obliged to keep him in good humour lest he should, under evil advice, sue him for a partition. In cases where the father is possessed of what is really ancestral property, the evil above pointed out may be unavoidable under the Mitakshara system of law. But there is no reason why a Hindu father whose earnings are really his self-acquisitions should be placed on the same footing in respect of such properties by an ingenious fiction of law, that such earnings should also be classed as ancestral property by reason that he was educated by, or at the expense of, his father. It is not Hindu youths alone that are educated or married at the expense of their parents or their family. But the same is the case with their fellow-countrymen — the Muhammadans; and, in fact, youths all over the world are generally educated by their parents, brothers and other relations, and except for the ingenuity of certain commentators, the liberal view generally taken by the ancient Hindu lawyers in regard to gains of learning would have prevailed and the courts would not have been obliged to distinguish between the gains of ordinary or general education and the gains of special or scientific education, such distinction having at one time been made in favour of those who received special or scientific education

and now in favour of those who have received only general or ordinary education. Hitherto I have dealt with the *splendid* remedy as between the father and his sons, father and his sons forming as much a joint Hindu family as a joint Hindu family consisting of nephews, cousins, uncles, brothers one or two degrees removed; and if he has daughters or daughters' sons should not the father be in a position to die in peace of mind that he has made some provisions for his daughters and daughters' sons? As Honourable Members of this Council are aware several Hindus have children by different wives. The surviving sons may be sons by one wife and daughters may be children by another deceased wife. Is it at all a desirable state of things, is anybody prepared to uphold that while he has money gained by the exercise of his profession—let it be by extraordinary or special or scientific education imparted at the expense of the father or grandfather—he should be entirely dependent upon the good will of his sons after his death and that he should not be in a position to make a will and die in peace of mind that the provision he has made in favour of his daughters or daughters' children will take effect? I submit that it is simply idle to say that he can secure this object by effecting a partition with each of his sons as soon as a son is born. You may take the converse case of a Hindu father who has several sons, one of whom is brave enough to cast off prejudices and bold enough to go to England to be trained for the Bar and the rest of whom, who may be his elder brothers, would not brave the opposition of their co-religionists. Suppose one of his sons, as I have already said just now, is brave enough to cast off all these prejudices and goes to England to be trained for the Civil Service or the Bar, and after such training he comes back. Is it to be stated that all the earnings he makes should be shared by his father and brothers? He would always be willing to give a very liberal share if not equal shares to his brothers and father. Is he not to be in a position to make a will devising the property to his wife and children? Is he to be told “You had better effect a division from your father and brothers and then you can make a will about the property?” In former times the Hindu father provided for his daughters by making a settlement on the occasion of their marriage which is called Sthridhanam, which will be in accordance with usage and custom and which was never disputed but upheld by courts, if it be a reasonable provision on the occasion of a marriage. Unfortunately owing to the existence of the system of infant marriages, daughters die without children and under the Hindu Law any property settled upon the daughter by the father passes on the death of the daughter, whose marriage has not been consummated and who has not lived with her husband even for a day, to the son-in-law. Hindus, therefore, do not wish that the property settled upon the daughter should pass to the son-in-law. Therefore, it is that Hindus do not follow the ancient usage of making the settlement on the occasion of marriage, but they put it off till the daughter has children. Then under Hindu Law the Sthridhanam property of the daughter goes not to the husband but to the daughter's children who are of course the grandchildren of the donor. And with the advance of civilisation people also wish to retain control over their property till their death inasmuch as disposition of property by will has now been upheld and become part of the Hindu Law; and the natural desire is not to make any provision for daughters until then, except for pocket money which they may give them monthly; and no permanent provision is made until it is done by will. If the daughters have been in harmony with the sons and if the brothers do not create a disturbance—at least in eight cases out of ten, daughters and sons are by the same mother—very probably the sons will not impugn the validity of the disposition made by the father; but if any misunderstanding should arise before title is acquired by prescription which is after the lapse of twelve years from the date of the death of the

testator, then the son is sure to bring a suit to challenge the validity of the will and try to recover the property settled upon the sister or half-sister as the case may be. As regards the joint family consisting of brothers, uncles and nephews, I would only refer Honourable Members to page 7 of my speech made in 1891 in which I explained the great evil of partition suits and the most demoralising effect which partition suits have. One other beneficial consequence of this measure, if it be passed into law, will be in connection with Life Assurance policies. A system of State insurance appears to have been recently inaugurated which is worked by the Postal department and public servants are allowed to insure their lives up to a limited amount the premium being deducted from their salaries. In most of the cases the public servant insuring his life nominates his wife or children as the persons to whom the amount insured is payable on his death. Section 6 of the Married Woman's Property Act (Act III of 1874) which provides that "A Policy of Insurance effected by a married man on his own life and expressed on the face of it to be for the benefit of his wife or of his wife and children or any of them shall enure and be deemed to be for the benefit of his wife or of his wife and children or any of them according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate" is not applicable to Hindus though this is not generally known (*vide* section 2 of Act III of 1874). In the case of a Hindu such nomination of the payee can operate only as a testamentary disposition if he be competent to make such disposition and is in the form, if any, prescribed by law. I understand that on the death of the public servant insuring his life, claims are not unusually advanced by the brothers and cousins of the deceased as against his widow and daughters on the ground that the applicants were undivided with the deceased and that the deceased was educated at the expense of the joint family though the premium was paid solely from his salary. If the education imparted to the deceased public servant was only general and ordinary education, the Postal authority would be justified in rejecting the claims of the co-parcener and act safely in paying the amount to the nominees or separate heirs of the assured. But it is unreasonable to expect the Postal authorities to take the responsibility of deciding whether the education imparted to the deceased public servant was ordinary or special having regard to the character of the education and the means of the family to which the public servant belonged, the period of educational progress when he received his education, the backward or advanced condition in an educational point of view of the tribe or district to which the deceased belonged and whether he was really and substantially educated at the expense of the family or received his education with the aid of charitable contributions made to him. A simplification of the existing law is therefore absolutely necessary for the working of this system of State insurance from which so much good is expected. And the measure I propose would conduce to that end. I should wish to make a few remarks in regard to some of the special objections made by my Honourable friend Mr. Venkataratnam Pantulu. I was rather astonished that religion was invoked in the course of the discussion on this Bill. I really cannot understand how religion has anything to do in this matter, except, as my Honourable friend Mr. Vijayaraghavachariar said, that religion has got to do with everything, such as a man's walking or sleeping or anything of that kind. In that sense everything is founded upon religion. I submit that religion has nothing whatever to do with this question. All that you now have to settle is whether certain property is to be ranked under self-acquisition or not. So far as the Hindu Law is concerned it recognises the self-acquisition or separate property of an undivided member of a Hindu family. The Bill simply declares that what one acquires by means of learning can be classed as self-

acquisition, though expenses have been incurred in imparting such learning out of family property. Hindus aspire to high posts in public service. Brahmans occupy the position of District and Sessions Judges and also sit on the High Court bench passing sentence of death on Brahmans which, no doubt, orthodox Brahmans would consider as the most irreligious act that they could do. My Honourable friend observes that judicial decisions give effect to change of public opinion. English Judges are scrupulous and conscientious interpreters of Hindu Law. The commentators of Hindu Law have adapted Hindu Law to modern requirements, but English Judges are too scrupulous and their judicial training is such as to make them simple and faithful interpreters of Hindu Law and nothing is more abhorrent to a Judge who has received English training than to make a law. On this point in a note which is published among the papers circulated, I stated as follows: "The Hindu Law in itself is sufficiently elastic and admits of wide scope for its development and advancement by the growth of customary law." One of the fundamental principles of the Hindu Law is, 1,000 texts notwithstanding, that family customs and tribal customs shall be respected. "The commentators of recognized authority also had considerable influence in moulding and modifying the Hindu Law, though it must be confessed that in some instances the weight of their authority was brought to bear not in the direction of progress but the very reverse. Under the administration of justice by the British Government owing to the existence, expansion and improvement of regularly-constituted tribunals and the facilities which are afforded to its subjects of readily resorting to courts and employing skilled advocates to vindicate their rights the moment they are infringed, there can hardly be any scope for the growth of customary law which would correct and modify the old Hindu Law except among the poorest and most backward classes and communities." Being too poor they may not readily resort to courts. If there is any growth of customary law in India, it is only in the case of the poorest classes, but so far as the middle classes are concerned, it is impossible there can be anything like a healthy growth of customary law; and that is due to the rigid system of judiciary. "As for commentators they cannot, of course, exist now having anything like the authority of the old commentators under former native Governments. The various judicial decisions on questions of Hindu Law in the Indian Law Reports may be viewed in a certain sense as corresponding to such commentaries. But it must be borne in mind that Judges trained in the school of English law and judicial interpretation and anxious to interpret and administer native laws strictly and faithfully are far too judicial and conscientious to supply the place of the Hindu commentators of old, who assumed far greater liberty and latitude in effectually advancing and moulding the Hindu Law, though under the guise of commentating upon the original texts or Smritis. It is therefore, I think, the duty of the British Legislature to advance the Hindu Law and adapt it to the conditions and sentiments of modern Hindu society without, of course, doing violence to any of its fundamental or leading principles. If the British Legislature should withhold its helping hand, the Hindu Law under the British Government will become crystallised, and the growth of customary law arrested by the active force of the judicial tribunals. In other words, so far as their substantive laws of inheritance and property are concerned, natives would, under British rule, be decidedly in a less favourable situation than under native rule. It will not be out of place to refer here to the forcible and significant observation of Mr. Justice Muttusami Aiyar in *Venku versus Mahalinga* [Indian Law Reports, 11 Madras, pages 400 and 401] decided in 1888. "Is not therefore the cessation of the usage indicated by the Privy Council the sound basis for judiciary action, especially when there is a standing Legislative Council and when only, very imperfect

material is available to a Judge, who is bound to decide according to evidence, for ascertaining whether to any and what extent there has been a substantial change in the sentiments of the large mass of the Hindu community in regard to a particular usage of a section of the Hindus? . . . Is it not also a sound rule of legislative policy that judiciary legislation of the earlier period should gradually retire within the narrow limits of judicial interpretation in proportion to the increased activity of direct legislation through organised bodies?" So far as the question of general codification is concerned, I need not say anything here. The passages quoted from Sir Ilbert's book refer to general codification. The Bill before the Council is nothing like codification. Does my Honourable friend put it that a piecemeal legislation on any point of Hindu Law in view to removing any uncertainty in regard to a point is wrong? My Honourable friend stated that persons in other provinces may not want it; the only answer I can make is this: That it will not apply to them. I am of opinion that legislation in such matters should take place in local Legislative Councils and not in the Supreme Legislative Council. To quote again from my note already referred to: "One can hardly conceive that an additional native member of an Indian Legislative Council can render more appropriate or valuable services to his countrymen and to the Government than by initiating such measures with due regard to the feelings, sentiments and requirements of the native community or a considerable section thereof." Having regard to the fact that different schools of Hindu Law prevail in different provinces, that the customs and habits of Hindus in different provinces are very divergent and dissimilar—the Hon'ble Mr. Vijayaraghavachariar pointed out the dissimilarity between the Bengal school of law and the Mitakshara school of law—"and that certain communities and provinces are more advanced than others, I am of opinion that, as a general rule legislation in matters of Hindu Law should take place in the respective local Legislative Councils and not in the Supreme Legislative Council. At the commencement and for a considerable time legislation in matters of Hindu Law can only be fragmentary, and such legislation is not without its advantages in that it will deal only with questions of practical importance pressing for legislative interference and deal with such points more thoroughly and carefully than in a general code of Hindu Law." So far as fragmentary legislation is concerned, I am a strong advocate of such legislation, and it is thoroughly approved by the British Parliament to remove difficulty as it crops up from time to time by piecemeal legislation. If this is fragmentary, it has this very great merit: that it will completely and effectually meet an existing difficulty and remedy an existing grievance. But if that is connected with the other branches of law, then of course you must be very careful to see that this very fragmentary piece of legislation does not in any way affect the other portions of Hindu Law. If there is any fragmentary legislation proposed, it would be a legitimate objection to it to say that there are certain consequential and logical extensions which should be made, and therefore that fragmentary legislation should not take place. Now so far as this Bill is concerned it cannot possibly be connected with any other topic of Hindu Law, because we are not interfering with the Hindu Law of Inheritance nor are we creating self-acquired property for the members of an undivided family. The Hindu Law does recognise that self-acquired property can be held by a member of an undivided Hindu family. But there is a doubt whether certain earnings are his self-acquired property or family property. To settle such doubt about self-acquired property would not in any way affect the question of adoption or inheritance. My Honourable friend knew that it would not, and therefore he stated that it affected religion. The instance that has been put before us from Mr. Mayne has reference to a person going to England. I cannot

see any injustice in his being the owner of any acquisition which he may make. As stated before, he was bold enough to break through all the prejudices and to go to England. In the case of well-to-do families, the amount spent on him will be comparatively small. It often happens that more of family money is spent upon a youth who is not susceptible of even fair general education than upon an intelligent youth who for one-tenth of the cost attains a scientific or special education. Therefore, I submit it is simply ingenious and fanciful to go and try to create distinction between these various kinds of education and to place a real, practical and vital importance upon such a distinction as that. If three of the Judges in an English Court were unable to construe the word "science" in an Act, is not that a very good reason for our present legislation? There would be tremendous difficulty in deciding what is scientific education as opposed to general education. It was stated that Sir T. Muttusami Aiyar was under a misapprehension. I really do not know what misapprehension he was under. As regards the orthodox Brahmans or people, whether the opinion which they give when you consult them is in favour of or against the Bill depends entirely on the way in which you explain the provisions of the Bill. One and the same orthodox Brahman when I explain the Bill to him—conscientiously I believe—will be thoroughly in favour of the Bill. But if my Honourable friend Mr. Venkataratnam Pantulu—conscientiously also—explains the provisions of the Bill to him, he will probably give an opinion against the Bill. If it is represented to him that, by this Bill, all joint families will be broken up and there would be a rapid disintegration of them, an orthodox Brahman will say "I am entirely against it"; but if I tell him that the result of this Bill will be to arrest the rapid disintegration of Hindu families, he will be emphatically in favour of it. If you allow a member who makes self-acquisition to appropriate the earnings to himself, then he will not be forced to become divided; but if he becomes divided the junior members will suffer; and though they may not get a share in his self-acquisition, yet if he lives as an undivided member and the other members live under his protection, they will receive assistance from him in various ways; if I explain the Bill in that way, the orthodox Brahman who said "no" to the Bill would now say that the Bill is a welcome measure. If you tell an orthodox Hindu that if this Bill is passed then brothers will not help each other, he will say it is a bad Bill. Of course there is a distinction between legal and moral conceptions of things and that is the reason why in a measure of this sort public opinion can be reflected only by intelligent, thoughtful and educated natives. Mr. Ramachendra Iyer and various other gentlemen have reported to Government that they talked the matter over with orthodox Hindus who said they saw no objection to the Bill. Sir T. Muttusami Aiyar says that when he explained the consequence of the Bill the orthodox people were not opposed to the Bill. I am sure that Sir T. Muttusami Aiyar was not under a misapprehension. There have been several cases of piecemeal legislation as it is called, in connection with Hindu Law. Under the Hindu Law, a son is under a pious obligation to discharge the debts of his father, whether there is any family property or not. The Bombay Legislative Council so early as 1866 passed an enactment for the relief of heirs of Hindus, limiting their liability to discharge the debts of their father only to the extent of the assets. Though that may be the law, I may tell you that there are many Hindu sons who out of their self-acquisition would discharge the debts of their father. As to saying that courts should decide each case on its own merits, that is perfectly right. You should lay down certain principles of law and courts will decide each case on its merits, so far as the facts are concerned. But whether a certain education is to be regarded as ordinary or scientific is not a matter of fact but has to

be defined in some way. I doubt whether the Legislature will ever undertake to define what is ordinary or special and the courts being forced to do so will in one case say it is ordinary and in another case special. A Judge is bound to decide a case that comes before him. He cannot say "I am unable to decide it, I am so conscientious that inasmuch as I cannot form an opinion, I cannot decide it." When it is his duty to decide it he must sacrifice his conscience to a certain degree and he must dispose of cases whether he is able to form opinions to his entire satisfaction or not. He will no doubt form his opinion to the best of his ability. The Hon'ble Mr. Venkataratnam Pantulu having stated that this Bill is necessary for Marumakkatayam and Aliyasantana Hindus, I can hardly see how he can consistently and logically say that the Hindus of the Eastern Coast need not have the Bill.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—The subject has been fully discussed from all points of view and I do not pretend to throw any fresh light upon it in my reply. It seems to me that we will be setting a most undesirable precedent by passing this measure. I can understand the interference of the Legislature if any particular custom or rule of personal law has been shown to be opposed to the paramount claims of justice and humanity; or if it runs counter to the principle of individual liberty and religious toleration; or if it is against public policy; or if there is a pressing demand on the part of the community affected to relieve it from its effects. It is only in such cases that the Legislature has till now interfered. The preamble to Act I of 1830, declaring the practice of Sati illegal says: "The Governor-General in Council, without intending to depart from one of the first and most important principles of the system of British Government in India that all classes of the people be secure in the observance of their religious usages so long as that system can be adhered to without violation of the paramount dictates of justice and humanity. . . . I cannot understand the interposition of the Legislature in a matter which relates purely to a question of devolution and distribution of property and on which different nations — why different members of the same community — possibly hold diametrically opposite views, and on which it would not be wise that a body like this should attempt to legislate. Is there any country in the world in which such an attempt has ever been made? Government is not interested in this legislation one way or the other. Nobody has heard of the hardships of the present law till the Honourable mover of the Bill formulated them. I doubt very much if it is by legislation of this character that the position of Hindu women can be elevated. There is no demand whatever on the part of the community affected—at any rate such a pressing demand as to warrant our interference. There is no real grievance and that accounts for the lukewarmness of the community in this respect. Whilst gratefully acknowledging that the Honourable mover has done a distinct public service by calling attention to this important subject, I regret my inability to accord my support to it.

The amendment was put to the vote and lost.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—I beg to withdraw my amendments to sections 2 and 3, as they are consequential.

With the permission of His Excellency the President the amendments were withdrawn.

Section 3.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—Your Excellency, the amendment which I have notified is to insert the following proviso to section 3:—

"Provided that such person makes a declaration in writing registered under the law for the registration of assurances for the time being in force that

from the date of such declaration he will consider himself divided from such family in respect of his gains of learning."

Section 3 of the Bill as it stands lays down in substance that if a member of a joint Hindu family acquires property by means of education given to him at the expense of the family funds, such property shall be his own. The object of my amendment is to create a sort of incentive by bringing to bear upon the acquirer by means of public opinion that when he wants to treat his acquisition as his own he shall be induced to make some reparation to the other members of his family for the cost incurred in behalf of his education. It is an undisputed fact that there is a large body of opinion opposed to the Bill, as in favour of it. The provisions of the proposed law go against the instincts of the Hindus as a nation, and savour of selfishness. But none the less the proposed law is in consonance with justice. It is a rule of general jurisprudence that what one earns by his own unaided exertion should be his exclusive property. On this ground I have been a supporter of the Bill from the very commencement. And I am therefore all the more anxious that its provisions should go forth to the public in as agreeable a form as possible. It is with this object that I have given notice of the amendments which stand in my name. After all, what is proposed to be effected by the proposed legislation may, under the existing law, be secured by partition. It is open, even now, to an acquirer, who is a member of a joint Hindu family, and who received his education at the cost of the family funds, to divide himself off, the moment he begins to earn and make all his earnings his exclusive property. So that the opposition to the Bill is more sentimental than real. But at the same time it must be said that the existing law has some advantages from the point of view of the opponents. When such a member, who begins to earn, claims a partition, there is the force of public opinion which will, more or less, be brought into play on such occasions, and things eventually adjust themselves to the satisfaction of all parties concerned. The acquirer himself in these circumstances makes a reasonable concession to the other members for the expenditure of family funds on his education. This is a decided advantage in the existing law. But the Bill interposes and says that whatever a man may earn in such cases is his exclusive property, independent of any action on his part and in spite of, it may be, his own intentions. For aught we know, the man might have intended that his earnings should go jointly to his own heirs and the other members of his family. Nevertheless when he dies, the proposed law will say that all his earnings are his exclusive property for the benefit of his own heirs. It is to meet this difficulty that I have brought forward my amendment. If a member of a joint Hindu family desires that his earnings should go to himself, although he continues to be a member of that family, let him say so by an overt act which cannot be questioned. Let him, I say, make a registered declaration in writing that from the date of such declaration he will treat his earnings as his self-acquired property. It is simply an unilateral act on his part, and is not attended by the difficulties, expense, worry and uncertainties of a suit for partition under the existing law—difficulties, expense, worry and uncertainties upon which stress is laid by the Honourable mover in charge of the Bill and all its supporters, and the consequent necessity of amending the law pointed out by them. It therefore seems to me that the amendment proposed by me meets the wishes of the promoters of the Bill in regard to their complaint that the existing law entails a great hardship in the matter of effecting partitions—without, at the same time, detracting from the principles of the proposed measure. On the other hand the opponents of the Bill cannot object to the proposed amendment; because it is a distinct concession to their objections; because even

under the existing law, it is open to the acquirer to claim a partition, and make all his earnings his own thenceforward, they cannot with any propriety insist that the acquirer should be compelled to go through all the troubles and expense of a partition suit to make his earnings his own. By the procedure I indicate, there is still the advantage of a moral incentive to the acquirer to make a fair compensation to the other members before he declares himself divided. The principle of my amendment has been already admitted by the Select Committee, though in a less definite and less unambiguous form. Clause (e) in section 4 has been introduced by the Committee to provide for the cases of the kind I have referred to. Clause (e) says that an acquirer may by conduct indicate that his earnings should go to the joint family. This opens up a wide field for speculation and litigation. Instead of *conduct* which may be interpreted in different ways, let there be an *overt* act. Let the matter be placed beyond the possibility of any doubt, by means of a registered declaration. My position is shortly this: I approve of the principle of the Bill. When the opponents of the Bill are told that their opposition is unreasonable, because, under the existing law itself, it is open to an earning member educated at the family expense to divide himself off by partition and make all his earnings his own, they say that it is true that by partition an earning member may make his earnings his own: but there is the force of public opinion to control him, and generally before he effects a partition he makes some reparation to the family for the expenditure incurred upon his education. I don't see why the incentive to behave handsomely towards the other members of the family which now exists should be taken away. That incentive will continue if my proposed amendment be accepted by the Council. If, as pointed out by the Honourable mover, there are difficulties under the existing law in the way of an acquirer making his acquisitions his own, if resort to partition to effect this object is attended with difficulties, by all means remove those difficulties by legislation. But there is no need of undertaking legislation beyond the actual necessities of the case. With these remarks I beg to propose the amendment which I have already read. My amendment runs exactly on the lines of the existing Hindu Law. I cannot see what objection could be advanced by the learned Advocate-General to accepting my amendment, proceeding as it does on the line of least resistance.

The Hon'ble Mr. EARDLEY NORTON:—Your Excellency, I desire to second this amendment, and I do so on two grounds. I am entirely in favour of the principle of the Bill, and it is because the amendment in no way conflicts with that principle that I desire to give it my support. The two grounds on which I feel that the amendment should be carried are these: the first is on the ground of evidence, the ground of making perfectly clear the intention of the man whose direct heirs are to participate in the benefit of his self-acquisition. That intention can be made absolutely clear by the proposed amendment which enjoins the acquirer of the property to register a document in which he shall state that from such and such a date he shall hold his property separately. Clause (e) of section 4 declares that nothing in this Act contained shall affect the right of a member of a joint family to or in property in which the acquirer has put his self-acquisition into hotch potch and desires that the rest of the family should enjoy it. The matter should be elucidated by making the intention of the acquirer quite clear. It seems to me that those who desire to have their earnings declared as self-acquired property and not the property of the joint family should have the courage of their conviction and stand forth before the world and declare their intention openly once for all, so that there may be no possible doubt "this is our intention, this is what we desire to do." It seems to me that their position at present is an untenable one, and not a very honest.

one. They are trying to run with the hare and to hunt with the hounds. The position seems to be that the self-acquirer in future is to enjoy the legal advantage of leaving his property to his own heirs, but at the same time by his being a member of the undivided family he is to secure whatever sentimental benefits there may flow from that union in the eye of his friends. I do not think that is advisable. I heard the Honourable mover in the course of his legal lectures to-day state that the time had come when persons should be bold enough to meet caste prejudices and stand before the world in their true colours. I do not see why that principle should not be applied in this particular instance. There is nothing in the suggestion of my Honourable friend which, in any way infringes upon the principles of this Bill. In view more particularly to avoid the more complicated procedure of getting evidence if a declaration of this nature is not made, I second this amendment and I would suggest that inasmuch as the votes of Honourable members are unfettered they should carry this suggestion.

The Hon'ble M.R. Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Your Excellency, I rise to oppose this amendment. In the first place this has nothing whatever to do with the Bill which deals entirely with the substantive portion of Hindu Law. This refers more to the procedure portion or evidence portion of it. Although instances can be quoted wherein both the Indian and local legislatures have introduced some rules as to evidence in local and special laws, yet it is seldom done. The principle of the Bill being conceded, I would ask the Honourable Council to say whether the intention to treat this kind of earning as self-acquisition should be reduced to writing and registered, while other kinds of self-acquisition are not placed on the same footing. The Hon'ble Mr. Ratnasabhapathi Pillai agrees in the remarks of the learned mover that it is extremely embarrassing, delicate and difficult to bring about a partition. I respectfully submit that this amendment is next door to it. I do not see the difference between the attempt to bring about a partition in a family, and this declaration before a Sub-Registrar or Registrar that "in spite of everybody else in my family I mean to say hereafter that what I earn shall be my own." Those that agree in the remarks that partition is practically a difficult thing from the point of feeling and sentiment in the Hindu family, will agree with me in saying that this amendment is on the same footing, except that we do not want the consent of others to this. There is a stronger objection. Let us analyse the amendment. It says that it shall be a declaration in writing duly registered like a bond that from the date of the declaration one's earnings shall be deemed one's self-acquisition. I ask you how are the earnings before the date of declaration to be treated? I only say that this would be a fruitful source of litigation. Probably on the day of the declaration, he will have to summon a family council, inform them what his earnings are, ask them to give assent to the memo of account which he may prepare and afterwards say "my earnings in future shall be deemed to be self-acquisition." This is a process to which the persons who would be profited by the new Bill would be subjected. No reason has been given; on the other hand there will be a great deal of practical difficulty in regard to earnings anterior to the date of declaration. Instead of suppressing litigation, this amendment will give rise to it. My Honourable friend Mr. Norton spoke of the courage of conviction. Honourable Members of this Council ought not to be mere philosophers in matters of practical legislation. We, as legislators, have nothing whatever to do with what a man ought to be. We are all practical politicians and take men as we find them to be and consider what they will do under particular circumstances. In the presence of womankind we, Indians, are almost slaves in matters of this kind. What is the use of talking about the courage of conviction? We all know that one of

the proudest conquerors, Alexander the Great, left his country in the hands of his minister and begged of his mother not to interfere with the administration of the province. Letter after letter came from the minister stating that the old lady interfered with the administration of the province even to the detriment of the country. Alexander the Great said "Poor minister, when I go before her, one tear would wash away all these letters and melt me completely." That is exactly what we should say. We are not made up of better stuff than Alexander the Great in such matters. You may call it a declaration in writing or a suit for partition, but it would be absolutely impossible that we can bring about this in the presence of womankind. I do beg of you that those who accept the principle of the Bill will be pleased to reject this amendment.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—Under the existing law, gains made by means of general education are the separate property of the acquirer. But if the amendment is carried this will not be so until the declaration insisted on is made; and thus we will be worse off than under the present law. I would therefore oppose this amendment.

The Hon'ble Sir V. BHASHYAM AYYANGAR :—I bestowed my careful and anxious consideration upon this amendment in view to see if I can possibly accept or support it by way of a compromise. As we all know in matters of legislation it is found desirable to give and take to a certain extent, and I should have been very glad if I could have seen my way to supporting this amendment. I regret to say that I find it impossible to support this amendment, either consistently with the principle of the Bill or consistently with the very object of the amendment. So far as this Bill is concerned, the principle of it is: what a man acquires by his own learning is his self-acquisition. And if it is not to be claimed as having become joint family property, then you can very well propose the amendment that no member of the joint family shall claim it as joint family property, unless the acquirer has declared in writing that it is his intention that, though it is self-acquisition, yet his brother or cousins are to have a share or shares, or that on his death it is to go not to his wife and children but to the surviving members of his joint family. Secondly, the most formidable objection to it was anticipated by my Honourable friend Mr. Venkataratnam Pantulu. Can you expect a cobbler, a carpenter, a shoe-maker or a potter to declare his intention in writing and register such declaration? So far as English-educated people are concerned, viewing the question from a practical and not from a juristic point of view—how it would be consistent with the basis of the Bill is another question—they will have no objection. No courage or anything of that sort is required to satisfy the proposed amendment. He may write his declaration in his study without anybody knowing it, and he may go to a Sub-Registrar and have it registered. It will have to be registered in book No. 4, and the Sub-Registrar cannot allow anybody to inspect it and cannot furnish anybody with a copy of it except to the executant or to his heirs. I am not sure that a Sub-Registrar himself would not be indictable if he were to divulge the contents of book No. 4. I would just draw the attention of this Honourable Council to sections 51 and 57 of the Registration Act. This does not require any bravery or courage and he can do it without any of the undivided family knowing it. He must simply reduce the declaration to writing in the presence of himself; and nobody else need see it, as it need not even be attested, and he can then present it to the Registrar or the Sub-Registrar and it will be registered in book No. 4—that is the miscellaneous register book. If you turn to section 57, it says that subject to some provisions, copies of entries in book No. 4 can be given only to a person who executed the declaration or to his agent or representative and nobody

else can get them. Therefore, I submit the very object aimed at by the amendment is not carried out. I could well see that the logical amendment would be in the opposite direction; that inasmuch as self-acquired property might be claimed by an undivided member on the ground that he merged it in the joint family property, if you propose that it is only after registering the declaration this property is to be regarded as joint, it shall be joint property. I am unable to appreciate the consistency of the present amendment with the provisions of the Bill. By accepting the amendment, I shall be practically withdrawing the protection which the Privy Council has judicially now given to those who have made their earnings with the aid of ordinary education, such as artisans, bricklayers, smiths, cobblers, shoe-makers, purohīts and the village astrologers. It is very unreasonable to expect that they should make their declaration in writing and register it before the Sub-Registrar. What are to be the consequences of this amendment if cobblers, shoe-makers and others do not take this precaution? They will not have the benefit of the current judicial decisions which are now in their favour. Moreover as I have already pointed out, the very object aimed at is defeated. My Honourable friend says that this is a unilateral secret Act. You do not propose that it is to be attested by the undivided members of a family. Then what is the use of this amendment? This unilateral declaration is to be registered in a private book and is to lie buried in the Registration office in a book which will not be accessible even to the other members of the joint family, much less to the public or any one of that sort. This will be doing a great harm to his credit with the mercantile community who give credit to him. When they see that this law declares the gains of learning his self-acquisition, then merchants and others will give credit to him. Are they to find out whether he has registered this declaration? How are they to find it even if they are willing to do so? I submit that this will give rise to many unexpected complications and though I may desire to accept it if possible by way of compromise, I am unable to do so. On these grounds, the amendment should be rejected.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—Your Excellency, I have to make a few observations in reply to the several remarks made by the other speakers. The Hon'ble Mr. Vijayaraghavachariar said that my proposed amendment had nothing to do with the substantive portion of the Bill and it was simply a question of procedure. The Hon'ble Mr. Vijayaraghavachariar forgets that the Bill before the Council is not to enunciate a purely substantive law. It also deals with the conduct of parties as may be seen from clause (e) of section 4. The next remark of the Honourable Member is while other kinds of self-acquisition are not regulated by any declaration, why should this particular acquisition be regulated by a registered declaration? It is simply for the reason that the other branches of self-acquisition are not before the Legislature. Because this happens to be dealt with by the Legislature, I bring forward an amendment for the purpose of facilitating matters and making this new provision of law work in as agreeable a manner as possible. It is stated that all the difficulties attending a partition suit would apply to the proposed declaration in writing. I do not see why a unilateral act which depends upon the pure will and pleasure of the person should be attended with what are called the expensive uncertainties of the law that attend the partition suit. Then the Honourable Member asks what about the earnings which a person makes before the date of declaration? My answer is that such earnings would be governed by the existing law. From the date of the registered declaration, his acquisitions will be treated as his own property and whatever property he might have earned before that time will be governed by the existing law on the subject. If the existing law said that in the case of ordinary

education the property earned shall be his exclusive property, it would be so, and in the case of the property acquired by extraordinary education before the day when the declaration was made by him, that would be partible family property. With reference to the second point referred to by the Hon'ble Mr. Venkataratnam Pantulu, he seems to think that all properties acquired by an acquirer before the date of the declaration in writing will be treated as joint property. The reply which I have just made to the Hon'ble Mr. C. Vijayaraghavachariar's observation applies to this also. If the property acquired before the date of declaration was the result of ordinary education, surely it will be his own property. If, on the other hand, such property was acquired before the date of declaration by means of extraordinary education, it will be governed by the existing law and will be treated as joint property. The Honourable the Advocate-General asks: "can you expect a cobbler or a carpenter or a shoe-maker to make" a declaration in writing. May I ask how do these people transact their matters of business, conduct litigation, execute documents or conveyances? Surely they resort to legal advice. If the observation applies to this declaration in writing in the case of illiterate persons, then what about their everyday concerns falling under the Stamp Act and the Registration Act which apply to them? Nevertheless we expect these poor rustics to conduct their everyday concerns in the proper form. We expect them to know the law and even the amending law and to conform themselves to the provisions of such law. Another difficulty that was pointed out by the learned Advocate-General is that this particular document will be registered in book No. 4 and during the declarant's life time no copy would be furnished. Book No. 4 does not deal exclusively with such documents as these. A number of other documents are registered in Book No. 4. Because a document is registered in book No. 4, because the Registration Act says that no copy could be furnished during the life-time of the executant—[The Hon'ble Sir V. Bhashyam Aiyangar Avargal (interrupting):—Except to heirs?] The Hon'ble Mr. Ratnasabhapatil Pillai Avargal (continuing)—it does not follow that the transactions of book No. 4 are confidential. A man who wants to convert all his earnings as his exclusive property and goes to the length of making a registered declaration surely does not mean to keep his act confidential, as there is nothing secret about it. On the other hand, as I said, it would be an incentive for people—they will be forced to do it by the sheer force of public opinion—to make ample reparation for the expenses incurred upon their education by the other members of his family. Because an act which is an unilateral act does not partake of the nature of a contract, it does not follow that it is a secret act. The whole thing would be known, provided he does not put the declaration in a sealed cover and lodge it before the Sub-Registrar. Lastly, the learned Advocate-General thinks that it will injure the credit of the acquirer among the mercantile community. I do not see how this can arise. On the other hand if the acquirer makes a declaration that from the date of that declaration all his earnings become his exclusive property, then the credit which he will be able to command in his mercantile concerns will be enhanced rather than depreciated. For all these reasons I would commend my amendment to the favourable attention of the Council.

The amendment was put to the Council and lost.

Section 4.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI AVARGAL:—Now that my first amendment has been lost, I propose to introduce a verbal change in clause (e) in section 4. The presumption of Hindu Law is that when a man continues to be a member of an

undivided family and acquires property, such property is his joint property in which all members are interested. The wording of clause (e) puts the presumption exactly the other way. Clause (e) presumes that all property acquired by a member of an undivided Hindu family shall be treated as his exclusive property until and unless he terminates such presumption by incorporating such property with his family property. In conformity with the existing presumption, I have drafted the new clause. I therefore propose that the following be substituted for clause (e) of this section:—

"The right of members of a Hindu joint family to or in property being the gains of learning of any one of them in cases in which the latter has not by express conduct or act treated such property as his self-acquisition."

In other words, if a member who begins to earn property does not by express conduct or act indicate that all his earnings should be treated as his exclusive property, the provisions of this Bill ought not to apply. Seeing that the wording of my amendment is in accordance with the existing presumption of Hindu Law, I trust that it will receive favourable consideration at the hands of the Council.

The amendment fell through for want of a seconder.

The Hon'ble Sir V. BHASHYAM AIYANGAR:—With your Excellency's permission I beg to propose the substitution of 1900 for 1899 in clause 1 of section 1 so that this Act may be called "The Hindu Gains of Learning Act, 1900."

The Hon'ble Mr. G. Stokes seconded the amendment.

The amendment was put to the Council and agreed to.

The Hon'ble Sir V. BHASHYAM AIYANGAR:—I now move that the Bill as amended by the Select Committee with the further amendment made in section 1 be passed into law. No substantial amendment has been made and under the rules I can now move that the Bill be passed into law. I think it is unnecessary to make any speech in making this motion.

The Hon'ble Mr. EARDLEY NORTON:—I desire to second this motion and in doing so to make a few observations. This Bill, I believe, is asked for by the natives of this Presidency, and that is one reason why I rejoice at its impending translation into law. I congratulate the Honourable mover of this Bill that his name has been linked with what is one of the most important pieces of legislation which has for many years been passed in this Council, in so far as it unfetters restrictions placed upon this particular branch of Hindu Law, and leaves the members of the joint family in a position of freedom with regard to their earnings which hitherto they have not enjoyed. Personally, I am always glad to be associated with anything which is in the nature of progress and reform, and doubly glad am I on this occasion because to me it seems absolutely imperative that we should busy ourselves as much as possible in removing, so far as it is legitimate, every restriction which places an impediment in the way of property being transferred by its owner. The request has been made that the acquirer of property should be freed from the anomalous, I was going to say absurd, restriction which removes the fruits of his own industry and patience from his children and from his wife and hands these over in some cases to the drones of his family, who have possibly been doing nothing for years past except anxiously awaiting in idleness for the realisation of their descent upon wealth in the accumulation of which they have had no share. It is in that view I am glad personally to see and support the trend of this legislation. The Privy Council have been for years past trying to make

property more free in this country. Although, with great respect to those who occupy the position of a Judge, it is not easy to reconcile their Lordships' reasoning with the long-established and accepted principles of Hindu Law in their latest judgment in the Pittapore case, and in spite of my feeling that their Lordships have in truth been legislating and not declaring the law as we are told it resides in their breasts, I nonetheless welcome their enunciation. It is another act in the process of that unfettering of property which must tend materially in years to come, to promote the advancement and prosperity of landholders and to render more easy the influx and the use of capital in India. All who listened to the address of the Hon'ble Mr. Venkataratnam must have felt admiration both for the matter which that address contained and for the mechanism with which it was reproduced on paper. They must also have felt no inconsiderable sympathy with the Honourable Member who in his conservative orthodoxy endeavoured to interpose himself as a barrier between customs which he has been taught to regard with reverence and that advancing tide of progress which will sweep him away as it must resistlessly ever sweep away all who try to impede the majesty of its advance. With all respect, however, for his Toryism and his courage it is impossible to admit that the place which he proposes to assign to this Bill is really the place which it is entitled to occupy. What he proposes is to exclude from the operations of this Bill nineteen out of the twenty-one districts and to leave it applicable only to a small and remote corner of this Presidency on the West Coast. It is obvious to most of us that he was thereby, as was observed by the Acting Advocate-General, practically conceding the principle of the Bill and trying to stave off the application of that principle from the people on the East Coast who are anxious to secure its benefits for themselves. Dealing shortly with what he said, his objections are two-fold. First of all he objects that the principles of Hindu Law are of divine origin, and, being intertwined with the very religion of the people, should be respected for their sanctity and be not made the subject of reform or innovation, and secondly that the Bill is only a specimen of piecemeal legislation. So far as the first ground is concerned I cannot understand how the Honourable gentleman can put forward such a proposition. He must recollect and admit that for many long years past there have been serious legislative and judicial invasions upon the principles in whose protection he invokes the aid of religion. Over and over again human agency has interfered to destroy or to engraft some new doctrine upon systems which he claims to be divine. There is nothing to show, when these particular statutes repealed, or judicial pronouncements invaded, the teachings of revelation, that any one in the country protested against such inroads upon their holiest beliefs. I cannot help thinking that my Honourable friend put his defence upon a position which it is impossible to sustain. His other ground is that this is a bit of piecemeal legislation. Still less defensible is that argument to me. If the Honourable gentleman cannot arrest the Bill by open and conclusive logic, he still endeavours to arrest it by putting forward the fallacy that you ought not to legislate for the people unless you can remove all their grievances at once in an assembly which shall be really representative of the people. The answer to that suggestion is conclusive. I conceive that piecemeal legislation is often as admirable as it is necessary to this extent, that it admits the existence of an evil and proceeds forthwith to deal with it without delay, according relief for pressing difficulties as they arise on each separate occasion. Obviously the Honourable Member's idea is that we should not legislate until we can accumulate all our grievances. One has only to put his proposition in that way to see its untenable character. This assembly is a quite sufficiently representative body to acknowledge

evil, and if that be true it is in my opinion bound to cure it without awaiting the vent of another complaint. I am exceedingly glad that this Bill is shortly to become law, and when it does become law I shall feel glad also that a person so humble as myself should have his name associated with its final acceptance. I think I am entitled to claim some merit of unselfishness in my support for I cannot forget that I am only a Barrister, and that the Honourable mover—whose criticism of to-day may acquire fresh weight if fostered and redelivered shortly from the Bench—was good enough to tell this Council that the education of a Barrister was a matter, at any rate in his eyes, of not much value or importance!

The motion was put to the Council and agreed to.

His Excellency the PRESIDENT:—There is yet on the agenda paper important business with which I am afraid at this late hour of the day we should not be able efficiently to deal. I think, therefore, that I should be meeting the wishes of Honourable Members if I adjourn this Council till 11-45 A.M. to-morrow.

H. TREMENHEERE,
Secretary to Government.

in Adjourned Meeting of the Council of the Governor of Fort George assembled for the purpose of making Laws and Regulations the provisions of the Acts of Parliament, 24 and 25 Victoria, p. 67, and 55 and 56 Victoria, Cap. 14.

The Council met at the Council Chamber in Fort St. George, at 11-45 A.M., on Saturday the 27th day of January 1900.

P R E S E N T :

His Excellency the GOVERNOR OF MADRAS, G.C.M.G., G.C.I.E.—*Presiding.*
The Hon'ble Mr. A. T. ARUNDEL, C.S.I.
The Hon'ble Mr. H. M. WINTERBOTHAM.
The Hon'ble the RAJA OF BOBBILI, K.C.I.E.
The Hon'ble Mr. G. STOKES.
The Hon'ble Mr. G. S. FORBES.
The Hon'ble Lieut.-Colonel Sir GEORGE MOORE, *Kt.*, C.I.E.
The Hon'ble Mr. J. THOMSON.
The Hon'ble Mr. F. A. NICHOLSON, C.I.E.
The Hon'ble Mr. EARDLEY NORTON.
The Hon'ble M.R.Ry. P. RAJARATNA MUDALIYAR Avargal, Diwan Bahadur.
The Hon'ble Sir V. BHASHYAM AIYANGAR, *Kt.*, C.I.E., Diwan Bahadur
(Officiating Advocate-General).
The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal, B.A.
The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal, B.A., M.L., Rao Bahadur.
The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal, B.A.
The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu.
The Hon'ble Mr. G. H. STUART, M.A.
The Hon'ble Mr. F. J. E. SPRING, C.I.E.
The Hon'ble Mr. G. G. ARBUTHNOT.
The Rev. W. MILLER, M.A. LL.D., D.D., C.I.E.
SIR MUHAMMAD SAHIB Bahadur.

Council will now resume the business of

COFFEE-STEALING

, 1878.

report of the Select Committee on
the Report be taken into consider-
item of business is that I should
the Coffee-stealing Prevention Act
ber was read at the meeting of the

Council in November and which is in my charge. I am glad to be it has not been found necessary to alter the Bill as originally read particulars, the amendments proposed by the Select Committee being verbal amendments, except two embodied in sections 7 and 8 of the amendments, however, are important. They relate to sections 13 and Section 13 of the Act of 1878 provides that any person found in coffee for which he cannot satisfactorily account may be punished for offence with corporal punishment in substitution for, or in addition to, Hon'ble Mr. Vijayaraghavachariar proposed to repeal this provision altogether. The Committee propose to repeal only that portion which allows of the infliction of corporal punishment in addition to fine. It was led to this decision because it seems that there are cases in which corporal punishment is preferable both in the interest of the coolie and the planter. In the case of an adult coolie it is to the interest of the coolie himself that the money with which he has to buy food should be left to him for that purpose. If whipped, not fined, he will have less incentive to commit the offence again either from necessity or to recoup the fine while his punishment is in itself deterrent. On the other hand, the planter does not lose his labour as he may if the fine is not paid. Again, in the case of a child pilfering coffee it would probably be let off with a warning for the first offence, but I do not think that a whipping for the second would be derogatory or out of place. In this case, too, the fine would fall on the parent, and the result, I cannot help thinking, would be a worse whipping for the child than the magistrate would give. It is obvious, however, that the grounds which render whipping preferable in the cases which I have quoted do not apply if fine be awarded in addition. As no facts showing any misuse of the section have been put forward through any channel, I think the Council will agree with the Committee that it is not expedient to go beyond what the Committee recommend. Section 14 of the Act of 1878 provides for the grant of rewards to informers giving information of coffee thefts. There seems to be an essential difference between the conditions under which fiscal rewards are usually given and those given under this Act. The former are mostly given under fiscal acts to stimulate the zeal of officers in the performance of duties for which they are paid. Here, however, we hold out an inducement to the public or to the coffee estate coolie himself to give information of the delinquencies of his class—a class, too, which is not a little banded together. In the absence of rewards it is no one's business to bring to light what is often thieving on a large scale. The Committee have thought it sufficient to provide that rewards should not be given without due consideration. I hope that the hopes will be attained by requiring the magistrate to give his opinion in every case where rewards are given. The magistrate, but will enable the applicant to state his case, and therefore, that the Bill as amended is a good one.

The Hon'ble Mr. J. THOMSON said—

The motion was put to the Council.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR said—The first amendment of mine relates to the insertion in the statute book itself of the words "in the neighbourhood of" I believe that the Government itself is not to every petty estate, but at the same time to be able to say in what area—of

at it is not, so that I am not in a position to say the magnitude of the plantations and the value of the provisions which have been given to the planters in those places. I presume, however, that the Government will exercise due discretion before giving the benefit of the preamble to the Act runs thus: "Whereas the object of the Act is to prevent thefts of coffee and to repress and punish offenders; and whereas the value of stolen coffee in the neighbourhood of the plantations and what estates shall have been ascertained, I find no corresponding Act anywhere in the world, and I find no corresponding Act in Ceylon. In Ceylon, however, there is a similar Act, and I may add that that Act is now in force in Ceylon. I may also further add that the Act was confined to green gathered coffee. But in the present case, other kinds of coffee, so that offences under this Act are not confined to the future. Thus it is extremely necessary that the scope of the Act should be extended to cover all kinds of coffee. This practically supersedes the general criminal law of the country, and greater safeguards for the protection of the innocent and the prevention of false prosecutions. I therefore propose to add the following to the Bill:—

"(1) In section 2 of the said Act, the following words shall be inserted as its second paragraph:—

'Provided that the areas, to which the provisions of this Act may be so applied, form coffee estates, or, are in the neighbourhood of coffee estates which, from their extent and value and owing to the existence of special facilities for the commission of thefts of coffee, need, in the opinion of the Governor in Council, special protection.'

I copied this proviso from the spirit of the preamble, and I hope the amendment will be accepted. This would not tie the hands of Government in any way. The whole discretion is left to them.

The Hon'ble Mr. G. STOKES:—Your Excellency, this amendment leaves the Act practically where it is now. Everything depends, both in the case of this amendment and the existing law, on the discretion of Government. If it is desired to limit the action of Government in the manner in which the Honourable Member desires in this amendment, he must say not in the neighbourhood but in the immediate neighbourhood of the coffee estates. If he says that we are at once confronted with the difficulty that it would be impossible to deal with the carrier question. The Act applies mainly to places between the ghâts and Calicut. It is there that thefts mainly occur of coffee in transit. But if this amendment is adopted, the Government will not be able to apply the Act at all to that portion of the country. My experience for years in Salem is that the only provisions of this Act which I have ever known to have been used are those relating to the question of carrying, because they enabled the police to deal with improper removal of coffee and thereby check the operation of the receivers. There might perhaps, be some reason for the amendment which the Honourable Member has proposed, if it could be shown that the Government has been recklessly extending

the Act to districts where it is entirely u if reference be made to the Enquiry Com which is in the possession of Honourable on the constant representation of planter experienced Collectors, such as Mr. Logan extended the Act to the immediate neighbor of Government towards the planting comm call one of pronounced impartiality. I ca that the coffee industry of Southern India is of Assam. When I urge how important an purely agricultural country as Southern I coffee industry has raised the cooly, as the Pl the position of being a slave to that of being and in fact the master of his masters, I requirements of this great industry with symp and res therefore, no reason at all to vary the existig provisio definite and has been in no way abused, and is not likely to tute for it the proposed amendment can only lead to dif cannot therefore accept the amendment.

The Hon'ble Mr EARDLEY NORTON:—Your Excellency, this amendment, and I should like to explain my vote. Ag principle which necessitates the application of the present Act, do with the necessity for extending that protection to the coffee- Southern India, I cannot understand how the Honourable gentleman who proposes this amendment bases his relief upon any logical footing. It seems to me that he is really trying to give the large and rich coffee planter privileges as against the isolated small coffee planter. I think that the isolated and small coffee planter needs the special protection of this Act, quite as much as does his larger and richer brother. If my learned friend's amendment is carried, the result will necessarily be that he will give to the large and rich proprietor preferential advantages and privileges which he desires to take away from the isolated and small proprietor. That is as illogical as it is unjust; and it is a direct contravention of the spirit in which the Bill is proposed. For these reasons, I shall vote against the amendment.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR AVARGAL:—Your Excellency, I beg to support this proposition, and I wish to give the reasons briefly why I do so. It has been pointed out by the Honourable mover of the Bill that the amendment leaves the Act where it is. If that is so, all the dangers and difficulties that are predicted in the subsequent portions of his speech do not seem to be consistent with what is mentioned in the earlier portion. If the Act is left where it is, there is no danger involved in accepting the amendment. The preamble to the Act, which has been read, shows that the Act is to be applied to repress and punish offences of receiving or disposing of stolen coffee in the neighbourhood of coffee plantations and estates, and the proposed amendment simply carries the wording and spirit of the preamble into the enacting portion of the law itself. It has been held very often that the preamble to an enactment is not the enacting portion, and whatever may be said in the preamble, if the enacting portion is contrary to it or do not conform to it, it is the enacting portion that is to be taken into consideration and not the preamble. Now the desire of my Honourable friend is to bring into the enacting portion of the law what is aimed at in the preamble itself, so that the real intention, as shown by the

d out in the proper portion of the Act itself. Then it has idment should be of any use at all, the word "immediate" e the word "neighbourhood" and that the word neighbour- meaning unless it is qualified by the adjective "immediate." t that the word neighbourhood has a definite, well-known nguage. When the Act says that this is to be extended to in places, the rational and reasonable construction of that parts and cannot go further. No doubt the discretion is rnment. In this matter we must accept or reject this have no doubt absolute confidence that the Government properly and understand the language used in the Act any improper manner. Then it is said that this amend- on. If I support this amendment, it is for that purpose It is true that after repeated representations made by this Act to this or that portion of the country, that the gratified to see that the Government, time after time, s for the purpose of giving extension to this Act. One

have seen if stated in the papers—is to extend it in such a way to bring the carrier question within the Code. Once that view is taken, we do not now where it will stop. Coffee may be exported from the Shevaroy's or the Nilgiris to Bombay. It may be asked why should not the Act be extended to Raichur or Chuddapah or to other districts through which coffee may pass? Is that the real intention of the framers of the Act?

The Hon'ble Mr. G. STOKES:—The Act does not apply to clean coffee, coffee fit for consumption.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR AVARGAL:—But coffee defined in section 9 is not specific but is general. However, if we once abandon this amendment or recommendation on the ground of the carrier question, that at once raises the apprehension of the people that it may lead to very serious difficulties. On that ground, I should like to support the amendment strongly. Even the objections stated by my Honourable friend, Mr. Norton, do not seem to have any force whatever. He says that small coffee planters are denied protection and it is only big people to whom the Hon'ble Mr. Vijayaraghavachariar is very partial—that is to say the small fry are left in the lurch. But at the same time it must be borne in mind that if a person has a coffee plantation in the backyard of his own house, his whole concern will be to watch the coffee berries and absolutely no protection is needed in this case, because the man himself, his wife and children will watch the coffee. Whereas in the case of rich and large estates persons immediately interested in them will not be able to keep watch and it is in such cases that this special Act is needed, giving special protection apart from the general protection given by the criminal law. In the case of big plantations there should be some sort of protection. Therefore, the only reason upon which the Hon'ble Mr. Norton bases his argument has absolutely no force whatever. Owing to the exceptional nature of the industry which gives employment to thousands of coolies, it is impossible for all persons who have direct interest in the coffee to keep ward and watch over them. But the maistries who are paid servants and who have no direct ownership in coffee have to watch them and it is therefore that a special Act is necessary. It is after very great consideration and after very long trial of the Ceylon Ordinances, that Government very reluctantly gave assent to make a special law. For these reasons, I support the amendment which, I hope, will be carried.

The Hon'ble Sir V. BHASHYAM AIYANGAR:—It seems which is intended to be inserted conveys nothing more to the Governor in Council as to the exercise of his discretion. by the Hon'ble Mr. Jambulingam Mudaliyar, if the words "if" were inserted, that it will carry certain legal consequences in the Governor in Council to extend the Act to any local area the provision that it must be in the immediate neighbourhood word neighbourhood, as my Honourable friend says, will be the Governor in Council, and so I think too. There is really a substantive provision of law something which amounts to a mere piece of advice to the Governor in Council as to the exercise of his discretion, he might extend the Act. between what is in the enacting portion and what is in the preamble how courts interpret the law; and that the preamble portion of the Act. They will only construe the law with reference to the preamble. But you may be sure that so far as the execution of the law is concerned, the authorities who have to administer the law as experience, that they attach great importance to the preamble. scope of the Act, so far as laymen and executive officers are concerned, is primarily ascertained from the preamble. But the lawyers may say "we have nothing to do with it and the preamble is no part of the law, we must ascertain the object of the Act by the enacting portion." Therefore I think the Governor in Council, in exercising his discretion, will attach as much importance to the preamble in which the word "neighbourhood" is used. Therefore, I submit that unless the mover of the amendment wants to insert the word "immediate" before the word "neighbourhood," this amendment, for all practical purposes, is useless. And, as a guide to the exercise of discretion by the Governor in Council, it carries the matter no further than the preamble.

The Hon'ble M.R. Ry. C. VIJAYARAGHAVACHARIAR Avargal:—After all, your Excellency, the opposition seems to shake hands with me. The utmost opposition to my amendment is that it is useless. There is no reason therefore why it should not be accepted. The Honourable and the learned Knight says that the executive who administer the law attach importance to the preamble portion. So far as he is an exponent of the feelings and workings of the executive, I bow to his statement; but I do not agree with him if he goes further and says that the administrators of the law attach much importance to the preamble. I must say that my experience is quite different from his except in one case—that is when it is a question of extending their functions, they do look to the preamble, but if it is a question of extending the liberty of the people and increasing the safeguard of the innocent, I respectfully deny the statement. So far as that objection is concerned, the learned Advocate-General's opinion is useless exactly in the sense in which my amendment is useless. I consider that this amendment of mine should be welcome. If you have no such test in the Statute, any coffee planter may ask the Government "why do you make an invidious distinction?; you say you would extend the Act to A, but why don't you extend it to me?" What reply would the Government give? If there is no statutory provision to say that you are called upon to exercise a wise discretion, but if it is left to your sweet will and pleasure, how will you act? A man may ask you "I have 5 acres of coffee plantation, you have extended the Act to another man, why don't you extend it to me?" If this amendment is accepted, then neighbourhood would also

neighbourhood and therefore any objection on that ground is unavailing. The amendment is a comprehensive one, and I respectfully submit that the amendment will strengthen the hands of Government which will be left to its discretion and decline to extend the Act to particular estates.

G. G. ARBUTHNOT:—Your Excellency, I did not intend in the amendment to say anything; but in the absence of my Hon'ble friend I am sure, we all regret very much, I just wish to say a few words to what is called the "carrier" part of the question. It is the object of the amendment which the Honourable Member has moved is to include in the provisions of this Act, and that it should extend to any area where there are special facilities for the commission of coffee thefts. I think any one who has to do with the protection of coffee planters is when the coffee is being transported from the estate to the market. I think my Hon'ble friend Mr. Jambulingam Mudaliyar is right in saying that the amendment should be extended to Raichur. But that is not quite necessary, because if the coffee is taken by railway there is no necessity for any special protection. It is required only when the coffee is being taken down to the coast by personal experience, and I think there is very great necessity for an amendment which would prevent the proprietor from being robbed during the time that coffee is being transported to the coast.

The amendment was put to the Council and lost.

The Hon'ble M.R. Ry. C. VIJAYARAGHAVACHARIAR Avargal:—My next amendment is divided into three clauses. I beg to move that the following section be added after section 2 of the Bill—

"(2) In the proviso to section 5 of the said Act—

- (a) insert the word 'for' between the words 'intended' and 'bona fide';
- (b) substitute the word 'private' for the word 'for' between the words 'bona fide' and 'consumption'; and
- (c) omit the words 'in the house or on the premises of the person purchasing, taking in barter or exchange, or receiving the same as aforesaid.'

Section 5 of the Act runs thus:—"It shall not be lawful for any one to purchase, take in barter or exchange, or receive coffee from any person other than a labourer employed on a coffee estate unless the person so purchasing, taking in barter or exchange, or receiving such coffee shall immediately thereupon enter or cause to be entered in a book to be kept by him for that purpose a true record of such transaction specifying, certain particulars named in the section. My amendment relates to the proviso and the proviso reads thus: "Provided that this section shall not apply to coffee purchased, taken in barter or exchange, or received from any person other than a labourer employed on a coffee estate and intended bona fide for consumption in the house or in the premises of the person purchasing, taking in barter, or exchange, or receiving the same as aforesaid". I object to the expression "in the house or in the premises of the person purchasing . . . aforesaid." My proposed substitution is "intended for bona fide private consumption". That is the language which I have taken from the Abkari Act of Madras. I doubt very much if the present wording is altogether correct; it is almost vernacular English to say "in the

house or in the premises of the person purchasing." I do not intend by the framers of the Act. As I have said already, I language of my amendment from the Abkari Act which deals with 13 of the Abkari Act deals with the possession of liquor or any in the proviso to that section says "No fee shall be charged for any for the possession of such liquor or intoxicating drugs for *bona fide* or use." Proviso No. 2 to this section says "Nothing in this s foreign liquor in the possession of any warehousemen as such person for his *bona fide* private consumption and not for sale. restriction here as "in the house". Suppose I purchased goods my friends, the consumption would not be within the house or purchasing it. Mine is more or less a verbal amendment and

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI AVARG ment.

The Hon'ble Mr. G. STOKES :—Your Excellency, as the H out we have this phrase intended for *bona fide* private consum I can understand the necessity for the existence of this phrase I confess I find it difficult to understand what is meant by bo tion of coffee. *Bona fide* private consumption of liquor mea in private houses. *Bona fide* private consumption of coffee m consumed in one's house. If the object of the amendment is to make a valueless and worthless, this amendment may have some meaning. But if we desire to enact, so to speak, a sensible Act, the introduction of this provision will defeat our object. I can well understand the expression which is already in the side-note to the section "*bona fide* personal consumption". The proviso to section 5 of the Act means that a man may purchase and keep in his house coffee sufficient for the *bona fide* consumption of himself, his family and his friends without any question being put by anybody; but if you introduce the phrase which this amendment desires to introduce, it means there is no criterion established as to the amount of coffee which a man may possess and which may not come under this section. You must remember that this proviso ousts the application of the section. We want some definite criterion, some means of drawing a line. A line is drawn by saying that a man may keep in his house without any question from anybody as much coffee as he would *bona fide* consume. If he chooses to lay in a store of a year's coffee, he might have that and the amount he may reasonably require is a question of fact. A rich man who has many friends may consume a greater quantity of coffee than a poor man. The section is open to a reasonable construction. It seems to me that to introduce what the Honourable Member desires to introduce is simply to substitute a generalisation for a definite statement which is capable of being tested. It is a matter of evidence and a matter of reason as to what is the reasonable quantity which a man may possess. If you say *bona fide* private consumption, for how many is the private consumption intended to apply? Is it the private consumption of a family or of the whole world? As it stands, this section has a criterion for the *bona fides* of the transaction, which is what is wanted and which is easily applied and perfectly fair. You must remember there is also an alternative. If he wants to buy a greater quantity, he has only to enter it in a note-book. I think the amendment is anything but an improvement on the section, and the Government cannot therefore accept it.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR AVARGAL :—I confess your excellency, I have not been able to follow the Honourable Member. I do not quite

understand the distinction he makes between the private consumption of liquor and the private consumption of coffee. I should think coffee is pounded and made a liquid of before it is drunk. I do not see the difference between the private consumption of coffee and the private consumption of liquor. I was therefore unable to understand in my ignorance the distinction drawn by him, and I cannot quite understand the Honourable Member's objection. It does seem to me that the real object is to provide for the sale of coffee for private use and the proviso does not cover it. In my amendment *bona fide* is an adjective. My Honourable friend Mr. Stuart suggests that it might be an adverb. I would, however, leave it to the Hon'ble Mr. Stuart to decide what it should be. My object is to make the intention of the Act clear. If the Honourable Council thinks that the intention of the Act is very clear—I believe it is not—I have no objection to withdraw the amendment. What is the meaning of the phrase "in the house or premises." Suppose I go to my stables and have my coffee, I should be prosecuted for it. Suppose I purchase coffee at the foot of the ghât and send it to one of my friends, shall I be prosecuted? The intention of the Act is if I purchase coffee not to be consumed by me but my friends, I shall be protected. The existing law taken literally does not give effect to this intention. If my amendment is passed I shall be protected. Suppose I go to Yercaud to purchase coffee and I intend to send it to a friend of mine, and I do not intend to consume it either in my house or premises. What is the effect? If you say private consumption, it covers all such cases. If you say "in the house or premises" I shall not be protected. I have often committed this crime before without knowing it. I hope I shall not be answered by a quibble that I originally intended to use it in my house, but I subsequently changed my mind. Suppose I don't like to quibble so and suppose I said that the original intention was to send it to a friend of mine, where is my protection? I had a talk with the Hon'ble Mr. Hodgson and the only answer of his was "they would not prosecute you". What will be the result if I am prosecuted? I respectfully place it before your Excellency to see whether the expression "in the house or premises" is necessary. I have no objection to make *bona fide* an adverb. My object is to omit "in the house or premises." The amendment may be altered in the form suggested by the Hon'ble Mr. Stuart. Suppose I purchase coffee and use it not in my house or premises, but at a pic-nic party, I would not be protected. If you accept my amendment, it would cover all such cases. Now that you understand me, I leave it to the Honourable Council to accept it. It may be easily conceived that any of us may be brought under the purview of this Act if too literally construed.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR AVARGAL :—My next amendment is that after section 6 of the Bill be inserted "(1) section 12 of the said Act be omitted." Section 12 of the Act reads thus: "If it shall appear that such gathering, moving, loading or unloading was for the purpose of committing a theft, the person or persons so engaged shall be liable to be charged with theft, or abetment of theft, and be proceeded against for such offence under the provisions of sections 378 and 379 or sections 107, 108 and 109 of the Indian Penal Code as the case may be." It does seem to me that this is not very artistically worded and also this is uncalled for. This special law need not tell us what abetment is. That is very carefully defined in the Indian Penal Code. The previous section reads: "No coffee shall be gathered, moved, loaded or unloaded on any coffee estate between sunset and sunrise." Section 12 says that a person so engaged shall

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be liable to be charged with theft or abetment of theft. Are they to be charged with theft or abetment of theft? Who is to decide it? It speaks of a certain act and the act is that of unloading in the night with the object of committing theft. Then the law says that the person or persons so engaged may be charged with theft or abetment of theft. Sections 378 and 379 relate to theft and sections 107 to 109 relate to abetment of theft. Thus persons will be prosecuted either as principal offenders or as abettors. Who shall decide as to who should be principal offenders and who should be abettors? I respectfully submit that this section is absolutely unnecessary. The Indian Penal Code will tell us whether the offence of a man was abetment or a principal offence, so that the person who is to be charged will be charged accordingly. For these reasons I move that section 12 be repealed.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal seconded the amendment.

The Hon'ble Mr. G. STOKES :—Your Excellency, this section is one which I think it will require a lawyer to explain better than I can and I would therefore leave any explanation of the law to the Honourable the Advocate-General. There is one thing which seems to me plain, and that is that under this section it is more difficult to prove any offence than it is to prove ordinary theft. You have to prove all the facts of the theft and then apply the section. The section says "for the purpose of committing theft". You will have to prove that the intention of the person was to commit theft. Thus, you will have to prove a great deal more than under the ordinary law. It is not surprising that this section should never have been used. I have never known it used. It seems to be a fact that it has never been used. What the exact circumstances are that this section is intended to meet I do not myself realise. Probably, a practical coffee-planter might be able to tell us what facts it is intended to meet. The fact remains that this section is a much more difficult one to apply than the ordinary law. It seems to me therefore we may leave it to the operation which it has hitherto had.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—Your Excellency, I beg to oppose the amendment before the Council. My difficulty is to understand where the Honourable Member's difficulty arises, what it is that so much perturbs his mind, raises so much fear, difficulty and danger in his mind. As pointed out by him, the previous section relates to a special offence which says that gathering, moving or unloading coffee between sunset and sunrise is an act punishable with a fine of Rs. 500. Nothing else has to be proved by the prosecution. They will have to simply take a man and say to the magistrate that he has done this act between sunset and sunrise. The onus will be on the defendant to show that he did not do so. A person who comes under section 12 of the Act is also chargeable under certain sections of the Penal Code. We all know that in regard to offences treated in the Penal Code the prosecution will have to prove every item which makes up the offence, and until the whole thing is proved no charge of an offence can be laid against the prisoner. So far he is safe. The presumption is in favour of innocence, till the prosecution can prove their case to the hilt. One of the important points is the purpose or intention, and it is only when the prosecution proves bad intention of the person, that the offence is under the Penal Code either for theft or abetment of theft can be laid against the person. Under section 11 of this Act, no question of intent comes in. Therefore, if any magistrate is good enough to try a prisoner under section 12 of this Act, it means that he must be tried under sections 378, 379—theft sections—of the

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Indian Penal Code, and the prisoner must be thankful for it, and if the magistrate does show that leniency to the prisoner, he shall not have the burden of proof; but if the prosecution is to be made under section 11 of this Act, then the prisoner has to prove everything and the prosecution nothing. My friend said that there was some difficulty in distinguishing the principal offenders from the abettors. But there is the wording at the end of this section, "as the case may be," and that settles all difficulties. These words are used when several matters are mentioned consecutively for the purpose of distinguishing one from the other. So that, if under the Penal Code a certain act is treated as an abetment, then the offence with which the person will be charged is abetment. But if it is a substantive offence of theft, it will be theft. All that is provided for by the phraseology at the end of the section, "as the case may be." There is one other point touched upon by the Honourable mover of the Bill. The exact reason why this section was introduced is not clear. The words used are "loading or unloading for the purpose of committing theft." What this section specifically provides for is a certain action of the person prior to the complete offence of theft. The act may not amount to actual theft. But a certain action prior to that which did not in the technical language of the Indian Penal Code mean theft, may be punished under this section. It may be imagined that in a large coffee estate a labourer or a coolie or a maistry may not be able to carry away coffee from one portion of the estate to another or pass it over the hedge. For that purpose, the coffee that has been gathered might be secreted just near the hedge so that after lamp-light he may go up the other side of the hedge and draw it up quietly. The question might be whether the removal of coffee and placing it near the hedge—here coffee is technically in the possession of the owner—could amount to theft. Practically this person, by his bad intention, has made everything ready that would ripen into theft. If the owner had not been watching, the person who removed the coffee to the hedge would have completed the offence of theft. Therefore, this section means that all the acts which are committed prior to the commission of theft but which fall short of the completed offence of theft, because some superior officer has detected the man, are provided for. All those acts which are treated as attempts to commit theft are specially provided for in this section. Whereas, practically, it would be unnecessary to provide for them if it is only said, as it is done in various other special Acts, which say that in regard to special offences created by an Act, if any act would fall under any particular section of the Indian Penal Code the man may be tried under that section of the Indian Penal Code. It may be said that the wording is not very artistic and does not follow the usual plan of the saving provisions of general law. But all the same, I do not find any specific undesirable danger created by this section which, if possible, out of feelings of pity and mercy to the prisoner, we should try to get rid of.

The Hon'ble Sir V. BHASHYAM AYYANGAR :—I did not intend to say anything in connection with this amendment; but as the Honourable Member in charge of the Bill desires that I should express my view on the legal aspect of section 12 of the existing Act and the legal aspect of the omission of that section as proposed by the amendment, I have to refer to section 378 of the Indian Penal Code and the illustrations thereto. My present impression is: that the object of inserting section 12 in the Coffee Stealing Prevention Act was to constitute "gathering, moving, loading or unloading on any coffee estate between sunset and sunrise" the offence of theft, though the gathering, moving, loading or unloading are on a portion of the same estate and thus the coffee remains in the possession of the owner. That is probably

the reason why section 12 was inserted. If the meaning of the section was simply that wherever gathering, moving, loading or unloading of coffee is an offence under the Penal Code, it could be legally prosecuted as theft under the Penal Code then the section would be superfluous. What I fancy is that having regard to the malpractice which obtains in connection with coffee, it must have been brought to the notice of Government that labourers and servants very often gather, move, load or unload coffee and place it in a place in the possession of the owner himself, but in such a way as to enable them with facility to remove it out of his possession, either when the master is likely to be absent at the end of the month, or some such occasion; then his first gathering and moving by itself is to be regarded as theft, and I think that it was with that object the section was inserted. Section 378 of the Indian Penal Code runs in these terms: "Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft." I understand this section to mean the moving of the property and taking it out of the possession of the person without his consent; both must be intended as a simultaneous act and the illustration to the section also confirms that view. For instance, suppose a butler knowing that his master is likely to be shortly absent from Madras for a fortnight, having some engagement at Ootacamund or some other place, takes out certain bottles of liquor from the receptacle which is under the lock and key of the master and places them in some open shelf or some other place in the possession of the master, intending to commit theft during his master's absence. In a case of that sort, under section 378 of the Penal Code, he would not have been guilty of theft though he removed the article from one place in the possession of the master to another place in his possession, both places being accessible to the master, with the intention at some future day of removing it from his possession. In a case of that sort the first moving will not amount to theft. In some cases, it may amount to the offence of attempt at theft. The word "attempt" in the Penal Code has given considerable difficulty in construction. There is one illustration that throws some light: "A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z."—that is to say, he buries it, which is not uncommon in native household—"with the intention of taking the ring from the hiding-place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft." There he practically removed it in the very first instance out of the possession of the master, because it will be simply ridiculous to say that though he has buried it several feet below the surface and though, in that sense, the thing is in the possession of the master, it is really a case in which he has removed it out of the possession of the master. That is stated to be theft under illustration (h). That, I submit, indicates a principle when a certain thing will be considered as having been practically removed out of his possession. It is probably by reason of the facility for committing the offence of theft in regard to coffee, that section 12 was inserted. The effect of that section is that in a case in which according to the Indian Penal Code the first loading or unloading may not amount to theft, it shall amount to theft under this section if the first moving was with intent to commit theft on a future and convenient occasion.

The Hon'ble Mr. EARDLEY NORTON:—The presence of section 12 may possibly be explained on the ground stated by the last speaker. It is explicable to me on another ground. If section 12 is read with the immediately preceding section 11, its scope and intention will be easily understood. The object contemplated under

section 11, for reasons of its own which are not found anywhere in the Act, is that the removal of coffee between sunset and sunrise is an offence in itself, irrespective of the person by whom it may be removed. Even if the owner of the coffee should gather, load or unload it between sunset and sunrise, he would be indictable under the Act. I do not see how he can escape conviction and he would be liable to a fine not exceeding Rs. 500. There is no provision which says that the owner of coffee shall be entitled to deal with coffee between sunset and sunrise in any way he likes and shall not be liable to a fine. Even the honest removal of coffee by its owner between stated times is prohibited. Unquestionably he lays himself open to a fine if he does anything which is forbidden by section 11. It contemplates two classes of removal, one honest and the other dishonest. By honest removal, curiously enough, the owner himself may bring himself within the purview of the Act and may lay himself open to a fine. The Act goes on to say that in addition to honest there may be a dishonest moving. The dishonest moving is that for which special provision is made in section 12. Section 12 says: that if a removal be dishonest it shall constitute theft. Irrespective of that section, dishonest removal is theft and therefore section 12 is redundant. It only comes to this: that if theft shall be committed it shall be theft. I quite agree with my Honourable friend Mr. Vijayaraghavachariar that section 12 is unnecessary, because it only repeats what is the law. It only says that if theft is committed it is theft. The other provision is as to abetment. Suppose ten persons are connected either remotely or directly with the removal of coffee. No one can tell until the facts are actually established what are the respective responsibilities of the various persons engaged in this nefarious transaction. That is a question of fact to be decided on evidence. It may be that some persons as prime movers may be guilty of theft. It may be that others may not be guilty of theft, but may be guilty only of abetment. The section says that if theft or abetment is committed it shall be theft or abetment of theft. On that ground this section is useless. But its retention does no harm and I do not see why it should be removed. We are not concerned in rectifying legislation as a whole. All we have to do is to see that no Act shall, if we can help it, contain anything positively harmful. The section may be unnecessary: it is not harmful.

The Hon'ble M.R. Ry. C. VIJAYARAGHAVACHARIAR Avargal:—In view to understanding the matter I asked for papers connected with the passing of this Act. Neither the proceedings nor the report of the Select Committee throw any light on the subject. I listened to the debate. The Honourable mover very frankly left it where it was and he is no better than I am in understanding it. The Hon'ble Mr. Jambulingam Mudaliyar says that it is intended to transfer the prosecution from the special to the general law; and in that sense it would be a difficult prosecution. The learned Advocate-General differs from him; he seems to think that this is an addition to Penal Code. And the Hon'ble Mr. Norton thinks that this is redundant. So that the three lawyers take three different views. May I, therefore, be at liberty to accept my own? I believe I shall be. I respectfully submit that this section is one which ought to be omitted. Here is a section which has been inserted, but the object of which has not been explained. In my humble mind it is not only useless but worse than useless. The Honourable mover says that he is not aware whether prosecutions ever took place under this section. If a prosecution has never taken place, should it be the policy of the legislature to place in the Statute Book a law which it is so very difficult to understand? What is the use of sending it forth into the world when the prominent Members of the Council take different views of it

If we thoroughly understand it, it may go forth into the world with all the weight of the opinion of the Council. We are now told that this is obscure and being obscure nobody could understand it and no harm would therefore accrue. Then why should it be there? I respectfully submit that the contrary conclusion would be better. I take a slightly different view from the learned Advocate-General as regards the definition of theft. The learned Advocate-General seems to think that under section 378 the removal must be out of the possession of the person, beyond his possession. I believe not. The intermediate taking need not be beyond his possession. The wording of the illustration quoted by him covers the removal which may take place in the night—although the coffee may remain within the premises of the coffee planter—with a view to commit theft in the morning. I respectfully submit that no addition is necessary to the Penal Code and within the four corners of the Penal Code this would be theft. The section is conceded to be obscure and unworkable and may therefore be removed altogether.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The next amendment is one to which I attach the highest importance. What I propose is "that section 13 of the Act shall be omitted." That is, the law relating to whipping under this Act be repealed. All Honourable Members may not be aware that this punishment of flogging was introduced into the Indian Statute Book under exceptional circumstances and in the teeth of opposition by men to whom both India and England are beholden for ever, founders of the Indian Empire. Lord William Bentinck, Lord Macaulay, Sir Charles Trevelyan and a host of others opposed the introduction of the law of whipping in India. But somehow or other it crept into the Indian Statute Book and I shall show presently under what circumstances. But before I relate the history of it, I respectfully submit this observation: That in no other special Act or local Act enforced in any part of India is the punishment of flogging inserted. Take any law in the Madras Presidency, the Abkari Act or the Forest Act or the Salt Act and even the Mappilla Outrages Act. In all these Acts very serious punishments are provided. In the Mappilla Outrages Act, even the forfeiture of property is provided. Singularly enough, the punishment of flogging is absent in all these special and local laws—I say this subject to correction. I tried to find out if there is any provision for flogging in any special or local Act in Bombay, Bengal, the North-West Provinces, the Central Provinces, the Punjab or Assam. Except in the Indian Statute Book nowhere is the punishment of flogging provided. Ours is the only instance of a special offence being made punishable by flogging. Having premised so far, let us see whether the necessity does exist. Take the Indian Penal Code. You know that the Penal Code was the making of a quarter of a century, very great minds have thought over it, different committees sat over it, and more than one Viceroy thought it. Chapter 3 of the Code provides for punishments and the list did not originally include this cruel and exceptional punishment; and whipping was added to the list under Act VI of 1864. Before the Indian Penal Code was enacted in India there were various regulations which were in force in the various Presidencies dealing with criminal offences for some of which flogging was provided. Lord William Bentinck abolished flogging by Regulation III of 1834. He said that it was not advisable either in the interests of Government or the welfare of people to retain flogging as an instrument of punishment; and he was justly denominated the second founder of the Indian Empire. Then we go to the Indian Penal Code. When the draft Indian

Penal Code was published the authors of it, chiefly Lord Macaulay, added a footnote that they were averse to include flogging as a punishment. He considered that flogging should not be introduced as a punishment. The Penal Code was passed without this punishment inserted in it. It is worthwhile to quote the views of the Law Commission on this matter. The Law Commission say that they have not thought it desirable to place flogging in the list of punishments. Then they make a large number of observations with reference to the state of things in England and India and add: "Being satisfied therefore that the punishment of flogging can be proper only in a few cases, and not being satisfied that it is necessary in any, we are unwilling to advise the Government to retrace its steps and to re-establish throughout the British territories a practice which by a policy unquestionably humane and by no means proved to have been injudicious has recently been abolished in a large part of those territories." Then the Select Committee introduced flogging, but the Council rejected it. Later on a separate Bill was introduced in 1861 which was passed. But that great Viceroy, Lord Canning, refused to give his assent to it and therefore it was not law. Later on Act VI of 1864 was passed in which whipping was introduced, and I shall try to show under what circumstances it was introduced. Sir Charles Trevelyan, whose name is a household word in Southern India and whose example—with due respect to his successors—in winning the Indian mind and Indian affections is worthy of imitation, makes important observations in a long speech, too long to be quoted which was published in the proceedings which can be had in the library. He characterises flogging as a "legalised torture."

Torture it is and torture it will continue to be. I wanted to look into the history of the word whipping and searched for it in the Encyclopædia Britannica under corporal punishment, whipping and flogging. Curiously enough, I did not find it under any of those headings but under the head of torture. It says that torture has ceased to be a punishment in England, except for the serious offences of mutiny and attempts on the life of the Queen. Long before that Sir Charles Trevelyan called it a legalised torture throughout India.

So long ago as that he said it was an emblem of a low state of civilisation and of a barbarous country. There is also the High Court of Calcutta which was against it and in spite of all this somehow or other it is still in the Indian Statute Book. Before Act VI of 1864 became law, opinions were invited from various Local Governments and the pressure came not from Bombay or Madras or Bengal but from the administrators of non-regulation provinces—pressure to introduce flogging as a punishment. Mr. Ritchie said that the supporters of the Bill greatly regretted the necessity, and their own feelings were against it. Thus those that introduced the Act also agreed with those who opposed the introduction of flogging, but they said they introduced it on account of some necessity. I forget now who was the Lieutenant-Governor of Bengal in 1864, but he too opposed it. We may take it that the Bengal Government was against it and the Calcutta High Court as I said before, was also against it. The Calcutta High Court said that they would not advise the Executive Government to retrace the step, very much in the language of the Law Commission. That being the history how whipping was introduced into the Statute Book of India, we ought not lightly to allow flogging in a law which is special in nature and applies to matters of trifling importance. The existence in it of this barbarous punishment should be proved by grave necessity. This special provision is intended to protect an industry

law. Notwithstanding that the Honourable mover said that the attitude of Government is one of strict impartiality, I must say that this is a one-sided law, as no corresponding responsibilities have been imposed upon planters. I respectfully submit that there is no necessity for retaining this cruel punishment. I again and again looked into the proceedings of Council of 1878 and no light has been thrown by any speaker or even by the report of the Select Committee on the subject. I am not therefore in a position to say under what circumstances this crept into the law. The Select Committee to whom the present Bill was referred say, as regards this clause, that it is better that this punishment should be kept up in preference to a fine. Conscientiously, I take a totally different view from them. The Government very often say that the higher orders of India are not the representatives of the lower orders, and if that charge is deserved, I say, with due respect to the Select Committee, it is deserved in this instance. They have no right to say that so far as the lower orders are concerned, they deserve the punishment of flogging better than the higher orders of India. What right have they to say so? Do they know what just motives and aspirations inspire and guide these lower orders? Do they know what songs the coolies and other lower orders sing? Can any of the Committee quote a single song? What right have they to say that they deserve flogging more than the higher orders? Go any day amidst these coolies, mix with them forgetting your position and then you will thoroughly understand what they are and amidst them you will find born gentlemen. The lower orders of India, I most respectfully submit, are much less savages than the corresponding classes of England. That has been admitted by Englishmen. It is exceedingly absurd to say that, having regard to the class of people whom this Bill would affect, the punishment of flogging is more useful, as if they should be treated like children. Do they say that flogging is better than fine? Will they quote a single authority to show that beating adults is a reform. It is admitted that beating adults is not reform. There are gentlemen who are schoolmasters who believe that beating is not reform. Popular teachers have been those who never used the cane. I respectfully submit that so far as the beating of adults is concerned, it is in the highest degree barbarous, and further it demoralises the man. The punishment inflicted depends on the temper of the man who uses the cane, the sufferer, the medical officer, the Magistrate and a host of other people and it is impossible for Government and for the Legislature to regulate this punishment. It is in the highest degree undesirable that a means of torture should be given in this law, which is likely to be greatly abused. Honourable Members are aware that coffee planters are greatly in the hands of maistries and maistries are middlemen, they are everything to the coffee planters who are often absentee landlords. What I intended to say on the last occasion has been said by the Honourable Mr. Rivaz about recruiting agency and the recruiting agents are the maistries in Southern India to whom every word of his speech applies. They decoy and kidnap women—that is what Mr. Rivaz says. Instead of “recruiting agents” say maistries and the picture drawn is as accurate in Southern India as in the Northern. From the Planters Enquiry Committee’s report you will see that the estate coolies are averse to bring down their families, notwithstanding they are given large privileges to settle down with families. They are unable to find an explanation. Why? You go and ask the coolies. They will tell you why they are unwilling to bring down their families. Would you place this means of torture in the hands of maistries. A maistry may say to a cooly, “Will you do this or not, if not I will put coffee in your possession, and you will be beaten.” The coffee planter may or may not be a party to it. To put this means of torture in the hands of the maistry

is to degrade the cooly. I hope that the Government, which is the custodian of the moral and physical well-being of the people, will see the sheer necessity for this provision before continuing it in the law. These coolies live in feverish heights, not always in the salubrious heights of Ooty, and they are of inferior health. On what grounds are we to find the justification to flog them while you will not be allowed to flog similar men in England? It is admitted that ordinarily Indian physical life is inferior to that of English life and less able to resist tyranny and oppression. Under what circumstances then are you able to say that the Indian deserves to get the punishment of flogging which you will not be allowed to inflict on an English peasant? Flogging has been abolished in the Army Act. In the Navy it is only kept up to meet very serious offences. Honourable gentlemen will remember that this Act provides for fines alone as a punishment. This it is very necessary to bear in mind. The Penal Code provides three years’ imprisonment for theft. Do you think that a maistry or a coffee planter, when he can establish the essentials necessary for a successful prosecution under the Penal Code, will proceed under this law? No. Here the accused will get only a fine. But there he will get imprisonment. You will take it for granted that when the prosecution is unable to place before the Court all those materials necessary for securing conviction under the Penal Code, then recourse would be had to this Act. It means that a man will get acquitted under the Penal Code, but he will get convicted under the special law. Taking into consideration this thing the framers have proposed the levy of a fine. A man whom you would pronounce innocent if the ordinary law and the ordinary tribunals are resorted to is to be flogged because you have chosen to give special protection to coffee planters. Is it at all fair? If you think he deserves flogging, proceed under the Penal Code. If you can prove the case under the ordinary law, let him be flogged under the Penal Code. If he cannot be convicted under the Penal Code, let him not be subjected to a brutal punishment under an exceptional law. Under the special law the whole responsibility of proving is shifted on to the accused. I also very much regret the absence of the planting member to-day. I would only call the attention of the Council to one or two quotations which will show that the planters themselves do not want this punishment. I wrote to Mr. Romilly who was a member of this Council and who was the President of the Planters’ conference last year. He writes thus:—

“Mr. Hodgson had already written to tell me that you wished for the two first amendments that you mention, and I advised him to meet you on both points. I quite agree with all you say with regard to flogging. It may not be given except as punishment for brutalities.”

I am sorry that the Honourable Mr. Hodgson is not here. Mr. Romilly writes to me to say that he agrees with me that flogging should be abolished. The next quotation I would make is from a letter written by a prominent member of the Civil Service, a man who is well acquainted with the habits of the people and the vernaculars of country. He says that “flogging is altogether unnecessary and mischievous in the Coffee Stealing Prevention Act.” This is Mr. Dumergue, whom the Government honoured by appointing him as their representative on the Enquiry Committee. We are making this law on the representation of this committee, and I have placed before you the opinion of Mr. Dumergue and Mr. Romilly on this matter of punishment by whipping; and I doubt not that the Planters’ Committee would have recommended the abolition of flogging if the point had been referred to them. In these circumstances, I hope that the Government will be pleased, to see its way to accept the amendment notwithstanding the remarks of the Honourable mover in anticipation of the amendment.

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The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—Your Excellency, I beg to second this amendment, and I do so with pleasure, as I have myself given notice of a similar amendment. The Act is a special enactment intended for the protection of special interests. For the purpose of affording this special protection, the Act departs from the usual law, and lays down that an accused person should be presumed to be guilty, till he establishes his innocence. The offence for which the Act provides whipping is under section 9. It is for being found in possession of green-gathered coffee. Many an innocent man may frequently be unable to prove his innocence, and if he is punished with whipping, the punishment may be beyond recall, even though his conviction be set aside on appeal. Further, the sentence of whipping once inflicted upon a person stamps him with a disgrace which sticks to him to the end of his life-time. Of course, I do not deny that whipping may be necessary as a corrective in certain cases. But in such cases there is the ordinary law of the Indian Penal Code and the Whipping Act. In grave cases, proceedings may be taken under these enactments. I certainly think that corporal punishment, which is inhuman and which excites the tender feelings of humanity, is entirely out of place in a special enactment, which creates artificial offences and departs from the usual law of procedure. A miserable creature starving for days, may have been tempted to pluck a handful of berries. Fancy his being visited with stripes of the cat-o'-nine tails and his piteous howlings. A general Whipping Act is on the Statute Book, and I don't see why it should be added to.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—Your Excellency, with all deference to the authorities who are opposed to the punishment of whipping, I, for, one cannot say that whipping would be an altogether inappropriate punishment in several cases of petty thefts committed by coolies and other lower classes in this country. They cannot pay a fine and if they are imprisoned, they will have to be maintained in jails at the expense of society. Who is to maintain their families during their incarceration in jail? Whipping would be the only effective punishment in some of these cases, if punishment is to serve its real purpose. In applying the principles enunciated by the Honourable Mover of this amendment, we must have due regard to the stages of civilisation of the lower orders. We must take facts as they are and not as they ought to be.

The Hon'ble Mr. G. STOKES :—The Honourable mover of the amendment gave us a long and interesting history of the question of whipping in this country. He pointed out that the punishment of whipping existed in no local Acts. But I think the explanation is very simple. Whipping is a punishment under the Penal Code, and it is a matter of general law and of general application. The general subject of whipping can only be properly dealt with by the Imperial Council. If it should be introduced into any local Act, it can only be done with the consent of the Governor-General, and therefore it seems to me that it is quite conceivable that in such cases as the Abkari Act and other Acts of that description, subjects with which local Councils generally deal, we should find that whipping does not exist. But in the case of a special law such as this, it is quite conceivable that the Governor-General consented to its insertion. I do not think that this Council is competent to discuss the general question of the expediency of whipping. It is a punishment under the general law of the land, that is, the Penal Code. This is a local Council, and the subjects for discussion in this Council are, by law, limited. I think, therefore, it is quite proper that we should avoid any general discussion in this

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Council as to the advisability or otherwise of whipping, and certainly it is not my intention to open that general question. The only point to which I would confine my remarks is whether whipping is a suitable punishment. It certainly seems to be so. I have given, in presenting the report of the Select Committee, some instances in which I think it is perfectly plain that, for the reasons I therein stated, whipping is not only a suitable punishment but a proper punishment. The Hon'ble Mr. Ratnasabhapatil Pillai referred to the case of a poor starving cooly picking up a handful of berries, and he spoke of the inhumanity of whipping. The Honourable mover of the amendment claimed to represent the coolies. Take the case of a child. I must ask these Honourable Members what will happen to the child if the father has to pay the fine? What do they think will happen to him? It seems to me that, in all probability, the child will fare a great deal worse at the hands of the father than he will fare at the hands of the Magistrate. The Honourable mover of the amendment referred to maistries and represented them as oppressing the coolies and so on. The first question that struck me when I heard this remark was what connection has this with the Magistrate. It struck me as if he thought the maistry had only to get the coolies before the Magistrate and they got a whipping. If there is anything in the Honourable Member's remark, it must mean that there is some influence which the maistry can bring to bear upon the Magistracy, and which induces them to whip the cooly for the mere asking. If that be so, Your Excellency, it seems to me that we must have some evidence of that influence. He must show in some way that it is so, and the only way in which he can show it is by the use or rather the abuse of this section. I have had enquiries made and I had returns called for from the District Magistrates of Malabar, South Canara, the Nilgiris, the great coffee districts. I find that in the years 1895, 1896 and 1897—and I have no doubt even up to now—this section has been never used in any one single instance. The Honourable Member seems to think that this is so, because instead the Penal Code was used. How does that justify the repeal of this section? It is not sufficient to justify us in repealing this section to say that it is useless. But we must show a great deal more—that it is objectionable. Before you take the section off the Statute Book, as you have been already told, we must have something positively against it. It is not enough to show negatively that it is useless, but we must show that it is positively harmful. I confess I can find nothing in the Honourable Member's speech which would, in any way, justify us in taking this provision off the Statute Book or in modifying it or in dealing with it further than as the Select Committee has done. "Some of the planters don't want it, the leading planter does not want it." That may be all right. But that is not a sufficient reason for repealing it. It only affords an argument that all that the Honourable Member has been saying about oppression which is exercised in the name of this Act is certainly not justified in the opinion of planters. If it had been their opinion they would have come to Government and said "take it off." If the planters desired to take this thing off, they could have easily sent an objection to the Council and the Select Committee would have considered it. If they considered that the facts were such that it was desirable to take off this section, the Select Committee would have taken it off at once. But nothing of the kind has been done. It, therefore, seems to me that on general grounds we are not justified in taking this section off the Statute Book by anything that is put before us to-day. For these reasons, I regret to say that in the case of this amendment, the Government cannot accept it.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—Your Excellency, I do not desire to take up the time of the Council with any résumé of the law of

whipping in this country or in England. But if there was any relevancy for the introduction of such a *résumé*, it has been dealt with in an able manner by my Honourable friend, the mover of the amendment. The point that strikes me with reference to this provision is not the general suitability or otherwise of whipping as a punishment in this country. As has been observed most pointedly by the Honourable mover of the Bill it is not a matter of consideration, it is beyond our province to consider it. But we are certainly competent to consider whether this punishment is a suitable one with reference to this law which we have the power to enact, modify, or repeal as we think best. In considering that question, the only point that arises is one single fact: the punishment of whipping except under certain special circumstances ought to be inflicted at once and that one circumstance is provided for in the Indian Penal Code, *i.e.*, when that punishment is combined with imprisonment then alone this sentence can be suspended and suspended only for fifteen days—the time within which an appeal can be preferred. If the appeal is not preferred within that time, then after the lapse of fifteen days, it must not be delayed. In all other cases whether it is combined with any other sentence or whether it stands alone, it has to be inflicted at once, no matter whether the sentence is by a First-class District Magistrate or a Second-class Magistrate whose sentences are appealable. Suppose a Second-class Magistrate passes a sentence of whipping. His sentences are appealable. But before the person can obtain redress from the superior tribunal and obtain a reversal of that sentence, the mischief has been done and the person has been whipped. It is not like levying a fine. In the case of a fine, if, on appeal, the sentence is reversed, the fine will be refunded. But in the case of whipping, it is an irreparable damage and injury, permanent injury done to the man, beyond recall. It is only that feeling which induces me to support the amendment of my Honourable friend. I do not associate myself with various other reasons that have been adduced for supporting this amendment. But this one reason weighs strongly with me and so long as we recognise the general principle that a person in a criminal court should have the utmost liberty given not only for defending himself but also for invoking the aid of a superior court to correct the errors of a lower court and so long as we see that the sentence of whipping would cause an irreparable injury in every case, I submit most respectfully the punishment of whipping should not find a place in the present law. Moreover, it finds a place in the general law where it could be combined with imprisonment. If the Magistrate is inclined to give him the whipping and the prisoner is willing to undergo it, he may receive it, or if he is innocent and has been wrongly dealt with and if he wishes to prefer an appeal, he may do so. A Magistrate has power to try a case summarily and inflict an unappealable sentence. But if a representation is made on behalf of the prisoner, it is not unusual that the Magistrate is kind enough to add another kind of punishment for the purpose of giving him the privilege of appeal and getting the sentence reversed if possible. Under the present law that is impossible. The only sentence is fine and whipping, and imprisonment could not be given. Practically it is denying the right of appeal which every prisoner tried by a second-class Magistrate has. Under the Penal Code, the sentence of every second-class Magistrate is appealable. But if a person is prosecuted under this specific law it has no imprisonment. It is open to the Magistrate either to levy a fine or sentence the prisoner to be whipped. If he chooses to give whipping, it practically bars the right of appeal which, under the general law, he has. It is this reason that strongly weighs with me and it is for this reason I support the amendment.

The Hon'ble Mr. EARDLEY NORTON:—I am sorry to hear the Government has pronounced against the amendment. Although I agree with the Hon'ble Mr. Stokes that the limits of our discussion forbid us from attacking the general policy of whipping as a whole, yet I think we may fairly maintain that those of us who disagree with that policy, either in whole or in part, are entitled to express our aversion to the extension and enlargement of its principle by refusing to acquiesce when an endeavour is made to introduce it into a specific law such as this. I should like very shortly to deal with one or two arguments that have been advanced. The Hon'ble Mr. Venkataratnam Pantulu suggests that one reason why whipping should be made applicable is that persons of the description of coolies cannot pay fines. That is a position which has been elaborated by the Hon'ble Mr. Stokes. Adding to that enunciation, the Hon'ble Mr. Venkataratnam made the further remark that if a man cannot pay the fine he must be sent to prison which means that an extra cost must be placed on the shoulders of society. The Honourable gentleman went further and argued that such a desertion by the bread-winner entailed suffering on his children. I would sooner entrust a child, deprived of its father's aid, to the charity of its friends and relatives than be a party imposing an additional and unnecessary degradation upon the person and morale of that father. I would also sooner inflict upon society the extra cost of the temporary upkeep of the father in prison than forcibly push the parent further down the ladder by the infliction of a punishment which by the consent of many thoughtful and excellent authorities is held to be demoralising and brutal in its effects. This, in my opinion, is the right answer to the objection of the Hon'ble Mr. Venkataratnam. If persons are too poor to pay their fines, then, in my opinion, it is better that the Legislature and not the Magistracy should deal with them. It has been stated to-day that the incorporation into the proposed Act of this piece of general law with regard to whipping is a matter which is left to the discretion of the Governor-General. If this be so, all that I can say is I trust that the Governor-General when he comes to review this item of legislation will take into consideration and give effect to the protests of those who like myself are most anxious not to extend to special local legislations the provisions of a general law, the existence of which, even if necessary, they deplore. In that view, I trust that in spite of the expression of the intention of Government to resist it, those who agree with me will have the courage of their convictions and will vote for this particular amendment. I wish, Sir, to lodge a clear and emphatic protest against the suggestion made by the Hon'ble Mr. Venkataratnam that you must take the facts of life as they are and not as they should be. I protest against the universality of such a doctrine. That is a very good rule if kept within due limits. It is admirable if you accept it not for the purpose of evading responsibility but as the ground-work for intervention when an evil calls aloud for redress. It distresses me that such a principle should be sought to be applied to-day in limitation of reform and by one from whom I had hoped to receive assistance not obstruction. But from the practical point of view, I disagree from it. If we are really as serious men throughout our lives to take the world as we find it to be and not endeavour to make it better, I do not see how we can introduce any reform or labour to elevate character. The doctrine I combat to-day would make impossible the existence of the martyr, the prophet or the reformer. It is because we are dissatisfied with the crude and hard facts of the world, that we struggle, for instance, by piecemeal legislation to improve the condition of those among whom, less fortunate than ourselves, our lives are cast. I venture to suggest that amongst the many missions of Englishmen in this country one of our chief and highest missions is to try to elevate the moral character as well as the

material condition of the peoples whose lives are committed to our trust, and if it be conceded that this particular form of punishment is a degrading punishment, I venture to suggest it should not be applied except under the gravest and most exceptional circumstances. I dare raise my voice against the extension of such a punishment to such a class of offence as that with which the Bill is dealing. I have often said, and I am glad to have this opportunity of repeating here, that one reason why our rule has been and is so universally admired and why we ourselves are respected is that for all these many years we have been endeavouring to elevate the people and not to degrade them. It is a dangerous thing in my opinion to adopt any measure which implies that we are receding from the position to which we have so publicly and so continuously affixed our seal. The Hon'ble Mr. Vijayaraghavachariar has made out a strong case by his array of great names who have lent the weight of their protest against the punishment of whipping. Personally, I am not prone to attach over-much weight to authority. To me a thing is good or bad, because it is good or bad and not because great men or little have declared it good or bad. But it is impossible to shut one's eyes to the fact that men whose names have been and always will be received with reverence both in this country and in England have loudly and emphatically declared against the extension of that very class of punishment which this Bill seeks to incorporate and extend. This is a matter, which it seems to me, rests upon high questions of policy and humanity; and I for one shall be glad indeed if before the vote is taken we can have the benefit of the opinion of our only Hon'ble and Reverend Member Dr. Miller who is not merely an educationist, but a Christian missionary. I should like to know how that Honourable gentleman intends to vote, and if he intends to vote against this amendment, I should like to hear his reasons for his position.

The Hon'ble Sir V. BHASHYAM AIYANGAR:—This amendment is moved on the supposition that section 13 of the Coffee Stealing Prevention Act is now proposed to be enacted by this Council. I think it is very inexpedient and injudicious that in a legislation which is started for the purpose of amending an Act, you should raise questions of principle unconnected with the amending Bill to remedying the defects and hardships which have resulted from a statute passed by your predecessors. This Council enacted the Coffee Stealing Prevention Act in 1878, and among other provisions of the Act then enacted was section 13, and that was assented to by the Governor-General. If my Honourable friend wants this Council to repeal it he should have some ground or other to show that it has produced some mischief or hardship and not to ask this Council to pass a vote of censure on scientific and humanitarian principle upon the action of this Council as it was constituted in 1878. This is a Government Bill, though, no doubt, the inquiry was the result of some representations made on behalf of planters; and the Bill has been introduced by Government with a view to remedy certain defects which have been ascertained after due inquiry to have resulted from the operation of Act VIII of 1878. The object aimed at by the legislature in enacting Act VIII of 1878 has not been fully carried out, and in the practical working of it certain defects have been discovered. The arguments advanced by the Honourable mover of the amendment and by the Hon'ble Mr. Norton would have been very relevant and proper for the consideration of this Council, if the Government is now proposing to enact section 13. I think the Honourable Member in charge of the Bill told us that for the last three years, at any rate, there has not been any case in which whipping was inflicted under this section; but even if there had been cases of whipping, that would not justify the Council as now constituted to amend it, unless it were shown that the provision has been abused or was productive

of hardship. The remarks that have been urged by the Honourable mover of the amendment and the gentlemen who supported him amount to this: that they consider that the imperial legislature committed a grave blunder in introducing whipping as a punishment into the Penal Code, though at the time the Penal Code was enacted it was rejected. We must assume that the legislature from experience became wiser, and though in 1861 it was considered inexpedient to add whipping as a punishment, yet in 1864 we must take it that the legislature acted properly in introducing whipping as a punishment. What I submit to this Council is: that all this is out of place in connection with the debate on a Bill to amend the existing Act in certain particulars and the measure before the Council is not a measure to repeal or re-enact the Coffee Stealing Prevention Act. I submit that the gentleman who proposes amendments must show the necessity for them and not simply say that "I am not prepared to say though the Act has been in operation for upwards of twenty years, there has been any practical case of hardship or there has been any abuse of the section, but if I were a member of the Council in 1878 when this provision was introduced, I should have opposed it on the ground that I now urge, and therefore I want you now to regard this Bill not as an amending Bill but you are now to translate yourselves to the year 1878 and consider what you would then have done with section 13 and you are now to vote in the same way in which you would have voted then if you were a member of the Council." Such is the argument on the other side. I submit that no public body can ever proceed on such a principle. Any gentleman who wants to amend an existing enactment should convince the Council that some evil has resulted from the enactment passed by our predecessors in this Council. I submit that all this general discussion is quite irrelevant, and I earnestly beg that the Members of Council in voting for this amendment should consider whether the Honourable Member who moved this amendment has at all established that this section which was enacted by our predecessors has been misused or proved mischievous or that there is a great probability of its being misused. As regards the abstract question whether whipping is barbarous or not, I think it is a pure waste of time to discuss that matter. For my own part, I consider that solitary imprisonment is more barbarous than whipping. If one is to go upon his own conviction, I, for one, have the courage of conviction to say that solitary confinement is more cruel and barbarous than whipping. We should not debate on the question whether whipping is or is not barbarous, and whether certain classes of people will not prefer whipping to being fined or imprisoned and thereby be debarred from earning wages for the support of their families. A person who is imprisoned is fed at public expense. We find this section in the Statute Book, and it has been in force for upwards of twenty-two years, and my learned friend has not cited a single instance to show that it has been abused or it has produced any hardship. It may be that my learned friend is quite right or quite wrong in asserting that it is inhuman and barbarous. But when children are whipped you do not consider it inhuman or barbarous; and I do not see why it should be considered inhuman or barbarous when adults are whipped. All that is perfectly irrelevant and not a single remark has been made to induce this Council to pass a vote of censure upon the Council as it was constituted in 1878. In cases where you establish that some enactment has not worked satisfactorily you do not pass a vote of censure. You say that experience has shown that certain provisions in the enactment has produced mischief or evil, and that we are now remedying it. If you do not show us that but simply say that "it is true it has been in existence for twenty-two years and that it has not produced mischief or hardship in any single instance and I am

not prepared to say that there is probability of its producing hardship in the future," then I submit that the mover of an amendment of this kind invites this Council to pass a vote of censure upon the Council as it was constituted in 1878. For these reasons, I vote against this amendment, and I must say that in connection with an amending Bill it is inexpedient and even injudicious to discuss such an abstract and general question as this which is quite outside the scope of the amending Bill. I say it is injudicious for this reason: it may be that the Council votes against it, simply because it sees no reason to repeal an existing enactment, but at the same time if the provision should be proposed to be introduced in some other enactment for the first time, it may be that this very Council would be disposed not to introduce it by way of an amending section and substitute whipping for fine or anything of that sort. I say it is injudicious, because when once the vote of the Council is against the amendment its present action is liable to be construed as being in favour of the introduction of the sentence of whipping in future new measures. If whipping were proposed to be introduced in an existing enactment or in a new measure, one may be disposed to vote against it, but that very person would not be prepared to vote in favour of the amendment when that provision has been in operation for a number of years and the person desiring to amend it has shown no reason whatever why that should be amended.

The Hon'ble The Rev. Dr. MILLER:—Your Excellency, I intend to vote against this amendment very emphatically and decidedly and shall state in a few words the reason why I do so. The amendment is founded entirely on the assumption that in all circumstances, places, and times, corporal punishment is degrading and barbarous. That, Sir, I most emphatically and fully deny. Undoubtedly there are circumstances and times, in which it is degrading, barbarous, and injudicious. But all depends upon the state of feeling of the particular section of the community to which this applies. How entirely the present opposition to this particular provision of the Bill is based upon the general and entirely false assumption appears from the way in which my Hon'ble friend Mr. Vijayaraghavachariar actually dragged into the discussion the question of the corporal punishment of boys at school. He told us that it was barbarous and degrading even there, and that the most popular teachers were those who never used the cane. Sir, I have had large experience both in the way of receiving and inflicting corporal punishment, and I most emphatically say that my experience is the very opposite of Mr. Vijayaraghavachariar's statement. In my experience those teachers who are most popular and who are most respected in this country and in every other country are those who at the proper time, to the proper extent, and in a proper way, were most liberal in inflicting that kind of punishment. Sir, some of the members may have heard of the famous case—I think it was in the Charter House School in London—wherein, when it was proposed to abolish corporal punishment by some who were ardent lovers of modern and fanciful ideals the boys actually made a rebellion against the rule by which it was abolished and insisted that if they were to be punished at all they should be punished in the old fashion and for the rebellion they were indulged largely in what they wished to have. The question of corporal punishment depends upon times and seasons and the feelings of different sections of the community. Amongst healthy minded boys not prejudiced or led astray by silly sentiment or foolish fads, undoubtedly there is not the slightest feeling of degradation about that particular kind of punishment. On the other hand there is a general feeling, and I approve of it, that in a majority of cases it is for adults a degrading and unsuitable kind of punishment; and in most cases I certainly should not like to see it applied to adults.

amendment should be accepted? If people have not been flogged, why retain this provision? In these circumstances, I am a little surprised and feel greatly pained that grounds not stated by me and also grounds which cannot fairly and inferentially arise from what I have said should be set against me. In these circumstances, I hold it is not illegal to propose the amendment. The learned Advocate-General has not said that it is illegal, but said that it is injudicious. The Select Committee have amended sections 13 and 14, and if I am injudicious in my amendment, I err in very good company. It does not lie with the learned Advocate-General to say that. The whole argument against me is, why should we bring an amendment, in an amending Bill, to amend section 13. The law says that when an amending Bill is before the Council, we can amend any part of the law. I am therefore legally before the Council and I have shown that the punishment of flogging crept into the Indian Statute Book exceptionally, and being exceptional, you ought not to introduce it as a matter of course in every law you might pass. In 1878, it somehow crept in, and we are unable to find facts which justified its introduction. As regards the remarks of the Hon'ble Dr. Miller that he greatly profited by being beaten, I am sorry to say that I do not shake hands with him. I am fortunate in not having been beaten, and as a schoolmaster—like him I was schoolmaster—I never beat the boys. Dr. Miller cannot contradict me, because I was not his pupil. I would ask the venerable teacher again to read "Christ's Hospital" in Lamb's Essays of Elia. There he will find that when the news of the death of a famous teacher—whose name I forget—who was partial to the rod was received by his pupils, among whom there were philosophers, the pious ejaculation went forth that his faults might be forgiven and that he might be wafted up by little cherub boys without those parts of the body on which the Madras Government directs that stripes under the Whipping Act should be inflicted lest the dead man's sublunar infirmities be reproached. I trust that Honourable Members will not oppose me, lest when they shall have paid the debt of nature, such pious ejaculations may reproach their infirmities. Therefore I beg leave to say, even in the case of students, flogging should be very sparingly used if at all. Some of the best students, the brightest, were never or seldom caned. Apart from that, we are not now dealing with juvenile offenders, but are dealing with adult offenders. It is stated that with regard to adult offenders that flogging would be degrading in most cases, and if that be so, we should not leave the adults to the tender mercy of the magistrates. We should re-consider the whole ground. Frank and conscientious as he is, I hope that Dr. Miller will re-consider his vote, and instead of giving it to the opposition will give it to me.

The amendment was put to the vote and lost.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I request that votes may be recorded by names.

The names of Honourable Members were then recorded as they voted.

Pros—

The Hon'ble the Raja of Bobbili.
The Hon'ble Mr. Eardley Norton.
The Hon'ble M.R.Ry. C. Vijayaraghavachariar.
The Hon'ble M.R.Ry. C. Jambulingam Mudaliyar.
The Hon'ble M.R.Ry. P. Ratnasabhapati Pillai.
The Hon'ble Nawab Saiyid Muhammad.

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Cons—

The Hon'ble Mr. A. T. Arundel. *tham.*
The Hon'ble Mr. H. M. Winterb
The Hon'ble Mr. G. Stokes.
The Hon'ble Mr. G. S. Forbes. *George Moore.*
The Hon'ble Lieut.-Colonel Sir G
The Hon'ble Mr. J. Thomson.
The Hon'ble Mr. F. A. Nicholson. *a Mudaliyar.*
The Hon'ble M.R.Ry. P. Rajaratnam. *yangar.*
The Hon'ble Sir V. Bhashyam Aiyangar. *ratnam Pantulu.*
The Hon'ble M.R.Ry. G. Venkata
The Hon'ble Mr. G. H. Stuart.
The Hon'ble Mr. F. J. E. Spring.
The Hon'ble Mr. G. G. Arbuthnot
The Hon'ble the Rev. Dr. Miller.

His Excellency the PRESIDENT:—At this stage it will be convenient for
Honourable Members to adjourn for a short time. The Council will accordingly meet
at 3-10 P.M.

The Council re-assembled at 3-10 P.M.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—My next amendment
is an important one, and it is that section 14 be amended. I don't mind the first portion
of this section, which is "all fines paid or levied under this Act shall be paid into the
public treasury." If the Council chooses to have it, I do not mind it. My amendment
relates particularly to the proviso. The proviso is "provided that the magistrate trying
any case under this Act may grant the whole or any portion of any fine levied therein as
reward to persons furnishing such information as may have led to the conviction of
offenders under this Act." All that I say is that the offer of rewards with respect
to offences of this kind is calculated to do mischief. No doubt occasionally true cases
are detected by this incentive. But there are hosts of cases in which it is mischievous.
Having due regard to the isolation of these people who are all put together on one and
the same estate, often quarrelling and getting drunk. I say that the idea of putting
money into their hands as rewards is tantamount to holding out a premium to these
people to launch false prosecutions.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—Your Excellency,
I beg to second the amendment. I have myself given notice of a similar amendment.
The principle of granting rewards to informers is sound in cases in which state
interests are concerned. The provision is necessary when private persons cannot be
expected to watch over public interests and promptly to bring to law offenders against
such interests. The cases of State revenue are in point. Breaches of the Salt and
Abkari Laws, and offences relating to the Forest Regulations involve losses of public
revenue, which no private individuals can be expected to watch and bring to light.
It is meet and proper that in such cases private persons should be provided with an
incentive to furnish information of the commission of offences. But in cases like
coffee plantations, where there are private owners of estates and their agents and
watchmen, surely no such provision is called for. Grant of rewards to informers in
such cases may be demoralizing in effect. Such a provision will be holding out a
premium to false accusations and vexatious prosecutions. It is sufficient that

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special facilities are afforded by the law in such cases for the punishment of offences,
by the departure from the usual law of procedure. The further provision for the
grant of rewards to informers is wholly unnecessary, and uncalled for, and will be
demoralizing in effect.

The Hon'ble Mr. G. STOKES:—I do not think it is necessary to say much in
regard to this amendment. The only reason that has been put forward against this
section is that it affords a premium for false cases. Here again as in the last case no
evidence has been produced to show that false cases have been brought and that this
section has been abused. The Honourable seconder of the amendment admitted that
the principle of granting rewards was sound. In that we must all agree with him.
But I must point out that the suppression of crime is a matter of public interest.
The granting of rewards in this case is necessary for the suppression of crime.
I submit that no case has been made out against the retention of this section and
therefore it should remain on the Statute book. The Government cannot accept the
amendment.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I would only point
out that the admission made by the Hon'ble Mr. Ratnasabhapati Pillai is as regards
the offences against the State. By this is a special law. The highest offences under
the Penal Code are detected and prosecuted without the system of rewards under the
Statute. Whatever may be any departmental custom, I do not know that there is any
Statute under which informers of the commission of offences under the Penal Code
are rewarded. The provision in this special law is a departure from the ordinary
criminal law and I therefore respectfully submit this ought to be removed. It is not
for me to make out a case against the retention of this section, but it is for those who
opposed me to make out the necessity for the insertion of it in this law.

The Hon'ble Sir V. BHASHYAM AIYANGAR:—There is no motion to insert it.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I mean for the reten-
tion of it. The burden of proof is on the Honourable Members who oppose me. I ask
for the abolition of the section, and I say the burden of proof is on those who say that
it should be retained. This is a departure from the ordinary criminal law and this
being so the burden of proof is on those who say that this should form part of the
law. It has over and over been mentioned in this Council that the system of rewards
is open to great objection. I do not say that rewards do not occasionally bring out the
truth. I admit that they occasionally do bring out true cases; but very often they
bring out false cases. The Honourable mover of the Bill asks me for examples. I would
only appeal to the experience of everybody present here. The grant of rewards will
only give rise to false cases, and it is not likely to serve any beneficial purpose. I do
not see why in so many ways this special law should have so many departures. As
regards the possession of coffee, you have thrown the burden of proof on the accused,
and you have introduced so many other provisions for the protection of coffee. What
is retained for high purposes of State is now proposed to be transferred to these
offences. It is possible that the Council may see their way to find a reason for the
thing, and if so they should vote for it but not otherwise.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to withdraw,
with your Excellency's permission, the amendments which stand in my name, as
they cover the same grounds as the amendments proposed by the Hon'ble Mr. Vijaya-
raghavachariar.

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With the permission of His Excellency the President the amendments which stood in the name of the Hon'ble M.R.Ry. Ratna abhapati Pillai were withdrawn.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—Your Excellency, the next amendment which stands in my name is an important one, specially important if the Council be pleased to remember that I lost the amendment to remove flogging. This relates to the insertion in the Act of a provision to enable persons convicted of offences under this Act, no matter what the nature of the offence may be, to have the right of appeal. My amendment is that after section 9 of the Bill the following section be added :—

- “(1) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, being Act V of 1898, or, in any other law for the time being in force, any person convicted by any court of an offence under the provisions of this Act may appeal to the court to which appeals ordinarily lie from the former court under the provisions of the said Code of Criminal Procedure or other law for the time being in force.”

I suppose that there can be no serious objection to giving a person the benefit of appeal. To withhold the right of appeal is an exception both in civil and criminal law; to give the right of appeal is the rule. I do hope that I shall not meet with serious opposition in regard to this amendment. We have now retained the provision about flogging. It has been retained in the form in which the Select Committee have recommended its insertion. It follows that in future the punishment of flogging will be inflicted by itself and no other punishment can be combined with it. The Criminal Procedure Code says that while the punishment of flogging is inflicted under a sentence of a court, superior to that of a magistrate of the second-class, no appeal lies unless it is combined with some other punishment. If any person is convicted of an offence under this law and sentenced to flogging by such a court, he will have no longer the right of appeal. Under the Criminal Procedure Code I need hardly say that third-class magistrates have no power to inflict the punishment of flogging and second-class magistrates have not got the inherent power, but in special cases the Government may authorise them to impose the punishment of flogging. In cases in which any second-class magistrates are empowered to impose this punishment, no doubt there will be the right of appeal. Barring this exceptional case, the right to inflict the punishment of flogging vests especially in the courts of the first-class Magistrates. According to the Criminal Procedure Code there is no appeal from a sentence of whipping passed by a first-class Magistrate. That being so, I respectfully submit there is absolutely no harm in granting the right of appeal to the accused. I would call the attention of the Council to the Ceylon Criminal Procedure Code. There the right of appeal is given in every case. This is a law which is copied from the Ceylon Ordinance, and I ask you to keep this thing also, which is a safeguard. I will only mention to the Honourable Council that there are three kinds of courts in Ceylon, namely, the Police court, the District court and the Supreme court. The District court corresponds to our Sessions court and it cannot take cognisance of cases unless committed by magistrates. As usual it borrows the language of our Code. The cases in which appeals are disallowed are the following: “Except as hereinafter mentioned there will be no appeal in cases in which male offenders under sixteen are sentenced to whipping, in which the accused person has pleaded guilty and has been convicted by a District court on such plea.” If the conviction follows on the plea

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of guilty, the accused has the right of appeal if it is against the conviction by magistrate. Then in certain cases—it is an advance upon our Procedure Code—appeal are allowed with the permission of the convicting court, but where an accused person is sentenced to three months—this corresponds to our summary jurisdiction—absolutely there is no right of appeal. You will find that in all cases except those of juvenile offenders or persons who plead guilty and of persons who are sentenced to a certain term, appeals are allowed. Our case does not come within this list. If you take this as a guide—I do not see any reason why we should not follow this as a guide—an appeal may be allowed in all cases, for no other reason than that two heads are better than one. I would only call the attention of the Council to a number of cases some of which are published in Weir's Criminal Law wherein the High Court has pointed out the illegality of the sentence of whipping inflicted by the lower courts but by the time the High Court came to that conclusion, the unfortunate men had received their stripes which could not be recalled by the judgment of the High Court and they will only have the grim satisfaction that the records would be corrected. You will lose nothing by accepting my amendment. Instead of leaving the conviction to rest with the opinion of one court which is an exception, please give these unfortunate men the right of appealing to a superior court.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—I beg to second this amendment. The amendment is of such a character that I am sure it requires no long speech to commend it to Honourable Members.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—With your Excellency's permission, I wish to ask one question of the Honourable Member. He spoke of first-class courts in connection with the Police courts. I wish to know whether there are three classes of Police courts.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—As far as I remember there is only one class of Police Courts there. The Police Court can only imprison a man for one month. It corresponds to our third-class magistrates' courts.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—I beg also to support this amendment, without drawing any analogy from the Ceylon Ordinance because the constitution of criminal courts in that country, as explained by my Honourable friend, seems to be entirely different from the constitution of criminal courts in this country. Perhaps what he calls a District court in Ceylon corresponds to our District Magistrate's Court, because the next lower court is the Police court. The position stands thus: According to the constitution of our courts there will be no appeal from the conviction by a magistrate in cases where the sentence is only imprisonment or fine. The combination of whipping and fine will not give the right of appeal, but only the combination of whipping and imprisonment. From the sentences of second-class and third-class magistrates there is the right of appeal irrespective of the quantum of sentence. If a second-class magistrate gives a sentence, however small it may be, there is the right of appeal to the District Magistrate. In these special cases if the sentence fortunately happens to be a fine inflicted by a second-class magistrate, there will be an appeal. If it is whipping, there will also be an appeal provided that the suggestion now made is adopted. But it is a nugatory provision, because the other provisions of the Criminal Law require that it should be inflicted at once. If the other amendments recommended by the Select Committee are approved, even the first-class Magistrate's sentences would, in all cases, be unappealable.

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ordinary law, even the District Magistrate's sentences, in summary cases, could be made appealable at the request of the prisoner, if he makes known his intention to appeal and begs of the magistrate to add another sentence to the primary one. So that practically under the general law even in the case of petty offences which the first-class magistrates are empowered to try summarily and in which they can inflict an unappealable punishment, the prisoner has a right to appeal if he means to do so or is so advised to do, provided he makes known his intentions to the first-class magistrate. I have not known any first-class magistrate to give one punishment only in spite of the prayer of the accused to give a double punishment to enable him to prefer an appeal. The right of appeal has been practically granted wherever the prisoner asked for it. As to the sentences of subordinate magistrates that is a right granted in every case. Unfortunately in this special law an accused can only be whipped or fined, because the magistrate could not combine whipping and fine, if the present recommendation of the Select Committee is approved; and the sentence is virtually an unappealable sentence because by the time the appeal is preferred under the general law whipping has been inflicted and is irrevocable. In the case of first-class magistrates, the sentence is also practically unappealable though under the general law he could exercise his choice and get the privilege of appeal by asking the superior court to combine two punishments. It seems absolutely necessary that there should be a provision granting the privilege of appeal. In small offences tried by first-class magistrates there need not necessarily be the privilege of appeal except under special circumstances. But under this Bill there is a virtual denial of all right of appeal. Anybody examining this law will find that this is practically a virtual denial of all right of appeal, unless the second-class magistrate who tries the case inflicts a fine. In all other cases where the second-class magistrate inflicts a sentence of whipping and the first-class magistrate inflicts any kind of punishment, there is no right of appeal. The frame of this law proceeds on a different basis from the frame of the general law. On these grounds I heartily support the amendment proposed by the Hon'ble Mr. Vijayaraghavachariar. I submit that this is an absolutely necessary provision that ought to be incorporated in the Bill. The Bill, as it stands, is a virtual denial of the right of appeal and I do not suppose that anybody will say that a prisoner ought to be denied his right of appeal.

The Hon'ble Sir V. BHASHYAM AIYANGAR :—If it is a fine of above Rs. 50 by a first-class magistrate there would be an appeal.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR AVARGAL :—I meant fines under Rs. 50.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI AVARGAL :—I wish to draw the attention of the Council to section 413 of the Criminal Procedure Code which lays down "notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only." The Select Committee has made the position much worse. They recommend that if the sentence of whipping is to be inflicted it shall not be added to any other punishment. If a magistrate is inclined to punish a man by whipping, under section 430 no right of appeal exists. This amendment is perfectly in order and I hope the Council will consider it favourably.

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The Hon'ble Mr. G. STOKES :—The Honourable mover of this amendment has started his argument by saying that his amendment was not an exception, but that in fact it followed the general law. I have to point out that the matter is just exactly the opposite way. The general law says that there shall be no appeal in certain cases. But the Honourable Member wants to give it. Therefore his amendment is not in accordance with the general law but an exception to it, and it is in that light we must regard it. The only argument which was put forward at all that seems to be of any weight in regard to this matter is the argument that if the sentence of whipping is inflicted it is beyond recall. Granted that, how will this amendment better it in any way? The position will be improved if the other amendments are carried, but that is quite another matter. As the matter stands, if the amendment is carried it would be absolutely useless. If the amendment were to postpone the sentence of whipping being executed in order to give the right of appeal, then it would meet the objection. But, as it stands, this amendment is useless. However that may be, I would point out, that there is an appeal from a conviction by any second or third class magistrate, and it is only in the case of first-class magistrates there will be no appeal. I may state, as a matter of fact, no cases within the last three years have been tried by a first-class magistrate under this section. The whole of this section and Act has always been worked, as it must be in all such cases, by second-class magistrates as original courts. Any danger that is supposed to arise under this section is purely imaginary, unless we are to suppose that there is some influence brought to bear on a first-class magistrate to induce him to take up this case originally. That such an influence does not exist is proved by the fact that such cases are never taken up by first-class magistrates. As I have said before, this is an amendment which is an exception to the general law, and until some case is made out, we cannot accept it. The Government does not therefore accept it.

The Hon'ble Sir V. BHASHYAM AIYANGAR :—I have no right to anticipate that the subsequent amendments on the agenda paper will be passed by this Council, and therefore, in considering the amendment now before the Council, it should be considered with reference to the existing law and without presuming that certain other amendments, of which notice has been given, will be passed. The matter shortly stands thus: The effect of the amendment proposed by the Honourable Member is to give in all cases a right of appeal. Even under the existing law there will be a right of appeal if a fine were inflicted by a third-class or a second-class magistrate, or if a fine exceeding Rs. 50 were inflicted by a first-class magistrate. There will also be a right of appeal if whipping were inflicted by a second-class magistrate when that second-class magistrate is especially empowered to pass sentence of whipping. In the absence of the amendment proposed by my Honourable friend, that will be the state of the law, namely, there will be an appeal against the sentence of fine passed by a third-class magistrate, there will be an appeal against the sentence of fine or whipping passed by a second-class magistrate, and there will be an appeal from the sentence of fine passed by a first-class magistrate, if the fine is above Rs. 50. There will be no appeal from a sentence of whipping passed by a first-class magistrate, but there will be an appeal from a sentence of whipping passed by a second-class magistrate which, as was pointed out by my Honourable friend, will be simply nugatory because the sentence of whipping cannot be delayed pending an appeal, and because under section 38 of the Criminal Procedure Code it can be delayed and delayed only for fifteen days in addition to whipping there is imprisonment. If a person were imprisoned he will be in the custody of the court and therefore whipping may be postponed, but if the

only whipping he cannot be detained in custody, and though there is a right of appeal given, the sentence of whipping is not suspended because he will be at large and he will have to be re-arrested if the sentence of whipping is to be executed. That is the state of the general law. Whether that is anomalous or not is another question. But I only indicate to you that if there is imprisonment in addition to whipping, whipping may be stayed. But if there is only fine in addition to whipping or there is only whipping, then, inasmuch as he will be at large, pending the appeal the execution of the sentence cannot be stayed. The result of the amendment will be this: That you give a right of appeal from sentence of fine passed by a first-class magistrate, even if it be below Rs. 50. That is to say, in the absence of the amendment, there will be no appeal in one case only and that is when the fine imposed by a first-class magistrate is below Rs. 50. No case has been made out for giving a right of appeal against sentence of fine when the fine is below Rs. 50. If in graver offences under the general law there is no right of appeal against the sentence of fine passed by a first-class magistrate when the fine is below Rs. 50, there is no reason why a right of appeal should be given for a special class of offences when the fine is below Rs. 50 and is inflicted by a first-class magistrate. So far as whipping is concerned, the reason urged is that from the sentence of whipping passed by a first-class magistrate there will be no appeal under the general law, and if the sentence of whipping were passed by a second-class magistrate there will be an appeal under the general law. But if the amendment were accepted the only difference between general law and this law as modified by this amendment will be that you will give a right of appeal against the sentence of whipping passed by a first-class magistrate. Without anticipating that some of the subsequent amendments will be accepted I submit that this amendment is altogether nugatory. The right of appeal against the sentence of whipping passed by a first-class magistrate does not exist under the general law and can only be secured by accepting this amendment. Is there any tangible ground for deviating from the general law? That is a matter for the consideration of the Council. If the sentence of whipping can be stayed, the question may stand on a different footing. Inasmuch as no case has been made out for giving a right of appeal when a conviction is followed by a sentence of fine below Rs. 50, I am obliged to vote against the amendment.

The Hon'ble Mr. EARDLEY NORTON :—The last speaker is not quite correct when he states that no appeal lies against the order of a first-class magistrate unless the fine imposed is less than Rs. 50. I think my friend has forgotten section 408 of the Criminal Procedure Code which allows an appeal in the case of European British subjects.

The Hon'ble Sir V. BHASHYAM AYYANGAR :—Even without this amendment you will have that right of appeal.

The Hon'ble Mr. EARDLEY NORTON :—My Honourable friend has been arguing that the Criminal Procedure Code made no difference in the application of what he says is a universal law that in all cases except that of a fine below Rs. 50 there is no appeal. That is not quite absolutely correct and I point out section 408 as providing an exception. So far as that argument is concerned, that does not disturb me very much. Section 404 of the Criminal Procedure Code says that "no appeal shall lie from any judgment or order of a criminal court except as provided for by this Code or by any other law for the time being in force." That section contemplates specially what we are discussing and refers to the making of a special provision with regard

to the question of appeal. Upon the bill I feel that I am precluded from asking for with reference to a special law, in laying down an extremely harsh law. Code, but we are discussing a particular of the Criminal Procedure Code. There has been no argument advanced against the discussing the Criminal Procedure to this special legislation when we see lation greater and larger relief than the respectfully submit that there has to another class of legislation. With request which we make in regard personally be happy, if occasion arose, to with regard to this special legis- ting to make with regard to this particu procedure Code provides with regard the next amendment is likely to be acci e to other legislations, I should any doubt about it, the present one sh same innovation that I am attempt- the second amendment is carried and if a Council. But if there should be this. As we are told that we should not spec t should be quite content if the present one is disposed of, upon the broad principle that t strongly about suffer, we cannot shut our eyes to the fact that hundreds of innc until annually convicted and it is but right and just that an appeal should not these persons irrespective of what the Criminal Procedure Code may are so that they may not be sent back to their homes with the remorse of know to only they have been wrongly convicted but wrongly and irremediably punished the Salem riots this particular class of punishment was often resorted to and peren orily administered. Appeal after appeal came before the late Chief Justice, ng Charles Turner, in which these convictions were all set aside. He expressed himself in a half joocular but in a somewhat grim manner as to the speedy infliction of this form of punishment which, he said, imposed a gross hardship upon men who had committed no offence and with regard to whom the particular class of indignity could not be recalled. In that view I have much pleasure in supporting this amendment.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—Your Excellency, I thank the Council very much for the very kindly way in which Honourable Members who believed themselves called upon to oppose the amendment expressed themselves. There seems to be no real opposition to the demand I have made, but some technical difficulties have been raised and I respectfully submit that two amendments are provided for remedying the defect I have pointed out and if Your Excellency permits me I shall put the two amendments together to meet the objection of some of the Honourable Members. Logically I cannot put the latter first because the second amendment depends upon whether the first amendment is carried or not. Whether the second is carried or not, there is no reason why the first should not be accepted. If the Council desires I will call the two amendments as one putting a semicolon between the two. I therefore ask your Excellency's permission to allow me to combine the two amendments. I will call them two paragraphs of one amendment and the whole may then be considered together. I thought it more convenient to put these amendments separately.

His Excellency the PRESIDENT :—At this stage I find it impossible to give the permission you ask for.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—At any rate I do hope that there will be no real difficulty in carrying this amendment. If this amendment

is accepted the next amendment on ground, sequential and will be carried by the Council. If you give me the right a leniency and if I ask you in the case of flogging to stay the execution of the sentence on consequence of the appeal is known, surely the members of this Honourable Council are not obliged to pass the other amendment. The objection taken on the ground of law. I say that is not serious. I do not know any other way of putting it. The grant of the order thus: Under the recommendation of the Select Committee flogging can be extended when no other sentence can be given. I want the right of appeal. Criminal Procedure is a technical difficulty in the way. On that account I hope the first amendment reference will not be lost. The Criminal Procedure Code does not give the right of appeal to the superior courts beginning with first class Magistrates and upwards inflict a fine of Rs. 50. But that is no reason why, since we have the power granted, as proposed by the Hon'ble Mr. Norton, by the Criminal Procedure Code to make provisions for appeals in special laws, we should not take advantage of it. It is carryable Council will remember that we have practically thrown the burden of proving innocence on the accused. How far the account he gives of his innocence is to be accepted might be left to two men instead of one. I base the chief portion of my argument on flogging. Under the Criminal Procedure Code the prosecution is called upon to do a very important duty, and therefore, no great harm will accrue if no appeals are allowed in petty cases. But here we are to have coolies prosecuted, and they will have a great deal of burden of proof shifted on to them, to which they are not to be subjected under the general law. I respectfully submit that even experienced Judges, with their knowledge of the people of the country, do find it a difficulty as to how far an account given by accused persons can be believed in opposition to the account given by the prosecution. Both on account of the fact that it requires special knowledge of the people, how far any statement they may make is to be believed, and also on account of the perilous nature of the action of the Select Committee, I respectfully submit this Honourable Council would be pleased to accept my amendment. Otherwise a sentence of whipping will be passed on coolies, and like cattle they will be flogged without one man asking whether it is right or wrong.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I should like to have a division, not necessarily by names.

Votes were again taken by show of hands, with the result that there were 6 for and 13 against the amendment.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—My next amendment, though it will be useless as regards—

The Hon'ble Mr. G. STOKES (interrupting):—I rise to a point of order. I am advised that this amendment is out of order, because it needs the previous sanction of the Governor-General in Council, and therefore it cannot be discussed in this Council, as it is contrary to the Act and as it is also contrary to the rules. I ask your Excellency's ruling on the point of order whether this amendment can be discussed or not.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Will your Excellency permit me to say a few words? I should like to say a few words with regard to the point of order. I think I am entitled to speak.

His Excellency the PRESIDENT:—There will be no discussion on any point of order. The President's decision is final.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—That is after the decision is given.

His Excellency the PRESIDENT:—“There will be no discussion on any point of order.” This precedes the words “The President's decision shall be final.” The discussion of the proposed amendment would, I rule, be in conflict with section 5 of the Act to amend the Indian Councils Act of 20th June 1892. I therefore rule it out of order. Furthermore, the conditions required by Rule 50 of our standing rules and regulations have not been complied with in the case of this amendment. “The President may declare that a proposed amendment to a Bill should not be discussed or put to the vote on the ground that it is irrelevant or incomplete.” I declare this amendment is incomplete in the sense in which that term is used in Rule 50, and therefore it cannot be put to the vote or discussed. The same ruling and declaration will apply to the amendment which stands as No. 3 in the name of the same Honourable Member.

The amendments 2 and 3 which have been disallowed and which, together with the last amendment that was lost, the Hon'ble M.R.Ry. Vijayaraghavachariar proposed should be inserted as the last three sections of the Act run as follows:—

“(2) No sentence of whipping shall be executed until the time for appealing has expired, or, if an appeal is made, until the sentence is confirmed by the Appellate Court.

“When a sentence of whipping is passed, the Court shall inform the accused person of the period within which he may prefer his appeal, and that the sentence would be executed on the expiry of that period if no appeal is preferred within that time.

“(3) When an accused person is convicted of an offence under this Act, he shall be furnished, without any delay and free of cost, with a copy of the complaint or information, the evidence, the charge and the judgment in the case.”

The Hon'ble Mr. G. STOKES:—As no amendments other than purely verbal have been made in the Bill which we have been considering, I move that the Bill, as amended by the Select Committee, be passed into law at once.

The Hon'ble Sir V. BHASHYAM AIYANGAR seconded the motion.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I do not mean to detain the Council long. When this amending Bill was introduced, I honestly said that I was going to accord my vote in favour of it, but I am sorry to say that I feel compelled to give my vote against it, which I do decidedly. I tried my best to relieve the hardships that will entail upon the unfortunate coolies drawn away from their homes by maistries and subjected to malarious climatic and other untoward influences over which they have very little control, with hardly any friends or legal advisers to advise them in moments of difficulty. I tried to remove some of the hardships with the assent of coffee-planters and of a distinguished representative member of the Council.

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Service, but all my endeavours have been in vain. Act VIII of 1878 has now been expanded and provisions have been introduced under which offences have been multiplied and safeguards diminished, and under which these unfortunate people will be brought to book. They are to be whipped and nobody is to ask why they are to be whipped. In these circumstances, I feel that I must, according to the dictates of my conscience, give my vote against the motion.

The motion was put to the Council and agreed to.

BILL TO AMEND MADRAS ACT VII OF 1865.

The Hon'ble Mr. H. M. WINTERBOTHAM, in introducing the Bill and moving that it be read in Council, said:—The object of the Bill, which I have now to introduce, is to amend Madras Act VII of 1865, which is entitled an Act to enable Government to levy a separate cess for the use of water supplied for irrigation purposes in certain cases. I will explain, as briefly as I can, the circumstances under which the proposed legislation has become necessary. It will, I suppose, be accepted as a truism that one,—perhaps I may say the one,—great persistent cause of agricultural distress in this country is drought, and that the continual cry and prayer of the ryot who has not got water is that the public funds may be spent in placing the means of irrigation within his reach. The desire of the cultivator for cheap and certain irrigation is in general as strong as his desire for food, and thus wherever the Government has been able to provide irrigation, the cultivator (speaking generally) has joyfully welcomed it, in so much that in the past it has been usually taken for granted that if irrigation could be supplied it was needless to ask the ryots whether they desired that this precious boon should be conferred upon them. As regards the future, perhaps some persons may be found who would contend that before any large irrigation project is undertaken, Government should ascertain the irrigable area and should obtain from every landholder within that area an agreement in writing registered expressing his consent to receive the water and pay water-cess, and that the lands of all persons not willing to enter into such agreement should be acquired by the State under the Land Acquisition Act. Well, that may sound very plausible in theory, but it is not in this manner that the mighty irrigation works, which are the boast and pride of our Presidency, have been carried out in the past; and I will venture to assert that, if the procedure I have alluded to were insisted on, no great irrigation project could hereafter be undertaken; for the inordinate delay, expense and labour of coming to terms with many thousands, and scores of thousands, of ryots would present such difficulties and discouragements as no Government could be expected to face. The most that Government can in general undertake is that it will so contrive its works that some huge volume of water, hitherto swallowed by the ocean, may be poured over some great level plain, leaving it to the swarm of cultivators to arrange amongst themselves the details of distribution from field to field—to lower the surface in one place, to fill up hollows in another, and to reap a golden harvest from the fertilising flood. Before such a project is undertaken the most that should be demanded is that Government should make sure that irrigation is keenly, earnestly desired by an overwhelming majority of the cultivators concerned, and any small dissentient minority should be left to accommodate themselves to the interests of the greater number. It is, I take it, on this view that the immemorial and general revenue practice of this Presidency is based. I refer to the rule under which all

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wet rate. The pattadar can only claim remission from this wet rate if his crop is wholly lost, either from excess or deficiency of water. If the pattadar chooses to leave his land waste when water is available he has to pay the wet assessment all the same, and the charge is not liable to be contested by civil suit. I ask the Council specially to mark this that immemorial custom sanctions the charge of a wet rate on all ryotwari land supplied with the means of irrigation, whether or not the pattadar chooses to avail himself of it, and that the charge cannot be challenged in a civil court. In 1865, some ten or fifteen years after the construction of the Gódvári and Kistna anicuts, the then Secretary of State desired to ascertain what return was being obtained from the enormous outlay upon these enterprises, and to this end it was resolved that the charge for water should be kept separate from the land assessment. It was also necessary that Government should be legally empowered to charge for water supplied to inam and zamindari land, and to Government land assessed for a term of years as "dry." Act VII of 1865 was accordingly passed, and under its provisions Government may levy at pleasure a water-cess whenever water is "supplied or used" from a Government source. Mark the words "supplied or used." For about five and twenty years this Act worked smoothly enough under the construction put upon it by the Revenue officers, viz., that it authorized the levy of water-cess under very much the same conditions as the general rule of practice to which I have just called your attention. If the means of irrigation were available by reason of Government water being placed on the land, that land was held liable to pay the water-cess, whether the individual cultivator had asked for the water or not. Since the year 1889, in a series of judgments, the Madras High Court has held that crops may be raised by means of Government water without that water being either "supplied or used." This seems a paradox, but it follows from the ruling that no water (whatever benefit the cultivator may derive from it) can be said to be supplied or used unless the cultivator had the option of either taking it or refusing it. Now it no doubt seems *prima facie* inequitable that a charge should be leviable for water poured on to a man's land without his asking for it; and yet it can be shown that the recognition of this principle is indispensably necessary in the public interests, and that it can be worked in the future as in the past so as to occasion no hardship. Take, for example, the Gódvári and Kistna deltas. I have not got at my fingers' ends the exact area under irrigation from the two anicuts, but I shall not be wide of the mark if I state it at two thousand square miles, or rather more than one and a quarter millions of acres. I must ask the Council to stretch their imaginations and picture to themselves this vast level plain, almost as flat as a billiard table, with a slope towards the sea of about one foot to the mile. To distribute water over this area there are, of course, thousand of miles of canals and channels; but in general the water must pass from one field to another through cuts in the field bunds. The ease and absence of dispute with which this enormous task of water distribution from field to field is managed by the ryots is really wonderful. But over the greater part of this huge expanse of wet cultivation it is impossible for any individual cultivator to exercise an option as to whether he will or will not accept the water by which his fields are surrounded. To secure drainage the water must be passed from the higher fields to the lower, and where a field is in the midst of wet cultivation percolation renders it impossible to exclude the water. Such land becomes unfit for the cultivation of "dry" crops, and a small minority of the cultivators, to whom the water may possibly be occasionally unwelcome, have no alternative but to grow crops which will stand constant irrigation. Various estimates have been made of the area from which it is practically impossible for any individual ryot to exclude the water by which his fields are surrounded, and the

estimate varies from one-third to nine-tenths of the total area of the deltas. For the last 45 years and upwards the deltas have, year after year, with unfailing regularity been irrigated from the anicuts to the incalculable benefit and profit of the cultivators as a body, and I suppose there can be no difference of opinion that we cannot now allow individual ryots, who are growing wet crops with the aid of Government water, to come forward and say, "I cannot exclude the Government water. Please therefore exempt my land from the water-cess." But this is precisely the predicament in which Government is placed by Act VII of 1865 as expounded by the High Court. Every individual cultivator has it in his power, while continuing to grow wet crops, to evade the charge of water-cess by simply declaring that he does not want the water, and that his land has been inundated with it without his consent. No doubt the cultivators as a body have too keen an appreciation of the benefits which the irrigation confers to contest the charge of water-cess in this way; but it is clearly inexpedient that one and all of them should retain the power so to do. In 1895 Government raised the rate of water-cess from Rs. 4 to Rs. 5 an acre, and, taking advantage of the defective state of the law, the ryots sought to check-mate the Government by a wholesale relinquishment of water. That is to say, the ryots, although they could not individually keep the water off their fields and had in truth no desire to be deprived of it, proposed to prevent the charge of water-rate by declaring that the water was forced upon them. Had the opposition continued, Government might possibly, for one year at least, have been unable to collect any water-cess within the large area from which water cannot be excluded at the option of the individual ryot; but this would only have demonstrated the urgent need of the amendment of the law which I am now advocating. Wiser counsels prevailed, and the opposition to the enhancement collapsed; but during the last five years 77 suits have been filed against Government to contest the charge of water-cess, and not only is the legal position fully understood by the vakils but the cultivators themselves are beginning to understand how easily the payment of water-cess may be evaded. The Revenue officers also see that it is useless to charge water-cess in respect of crops grown with the aid of Government water, unless they are in a position to prove that the cultivator applied for the water or had it in his power to exclude it, and there is no doubt that the number of exemptions claimed and granted would rapidly increase if the law were to remain as it is. The amendment of the Act has been under the consideration of Government for upwards of ten years and cannot now be any longer postponed. The principle of the Bill may be summed up in a sentence as follows:—Where a crop is grown with the aid of Government water, and where, in the opinion of the Collector, the irrigation is beneficial and sufficient, it shall be open to Government to charge such water-rate as it thinks proper, and no assessment of water-rate shall be liable to be contested by civil suit. I am not at all sure that the Bill does not concede too much in favour of the ryot. The Council will observe that it is proposed not to charge water-rate if the landholder chooses to leave his land uncultivated. I have already explained to the Council that in wet areas, subject to a consolidated wet rate, *i.e.*, throughout almost the whole Presidency, no Government ryot claims or enjoys this privilege. If a ryot leaves his land waste when water is available, he is told that he must pay the assessment or relinquish the land and let in another ryot who is able and willing to cultivate. However, the probability of any considerable extent of land being wantonly and needlessly left waste appears so remote that probably the concession which the Bill proposes may be regarded as not open to serious objection. I now beg to move that the Bill be read in Council.

The Hon'ble Mr. C. S. Forbes seconded the motion.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—With your Excellency's permission I beg to move that, under Rule 4, the debate on this measure be postponed till the next meeting. I am aware that half a dozen members are prepared to take part in the debate, and oppose the Bill. It is already half-past four, and I do not believe that we will be able to get through the business in less than three hours.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—I second the motion. I believe the debate will take much more than three hours.

The Hon'ble Mr. H. M. WINTERBOTHAM:—I have not the slightest idea at the present moment on what lines the Bill is going to be opposed. It is only half-past four, and His Excellency is willing to stay half an hour or three-quarters of an hour more. I should like to know what the Honourable Members, who are going to oppose the Bill, have to say against it.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—If that is all the objection against the adjournment, I would write to the Honourable Member in charge of the Bill a syllabus of my objections, so that he may know exactly on what lines our objections proceed. Within half an hour we can only hear the objections of one member. Just as we do in regard to the budget, I shall send a syllabus of my remarks. I don't write out my speeches—that is my difficulty—otherwise I could send a copy of my speech.

The Hon'ble the Rev. Dr. MILLER:—The Hon'ble Mr. Vijayaraghavachariar is proceeding on a false assumption. It is not only the Honourable Member in charge of the Bill that wants the information, but those of us who may call ourselves intelligent jurymen wish to be informed of the matter. If the Hon'ble Mr. Vijayaraghavachariar informs all the Members of the Council what he proposes to say, there may be something in the proposal he has made, but any secret communication to the Hon'ble mover of the Bill will not satisfy the conditions of the case.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—Your Excellency, I accede to the arrangement just proposed and agree to the adjournment at 5 P.M. I shall now proceed with the debate. In answer to one of the questions put yesterday at the Council meeting as to whether there has been any tangible loss of revenue from the absence of a legislation of the kind now before the Council, the Hon'ble Mr. Forbes said that the loss of revenue to Government has been inconsiderable and that the object of this legislation was to protect prospective losses which the Government fears might happen. From the papers circulated to the Council I cannot find what led to the immediate introduction of the Bill now introduced by the Hon'ble mover. It is true that the subject of amending the law on the lines now indicated has been engaging the attention of the authorities from 1889. In September of that year the Revenue Board decided that no amending legislation was needed. I cannot find that any events have recently transpired to justify the introduction of the Bill at the present moment. The Bill, short as it is, is calculated to have the most far-reaching consequences in its operation if passed into law. Agriculture is the main stay of the country, and I am deeply concerned to find that the proposed measure is not intended for the betterment of the agriculturists. I had the privilege of addressing your Excellency in this Honourable Council at the budget meetings of 1898 and 1899, and on both the occasions I dwelt at some length on the hard and precarious lot of the land-owning classes, with the heavy assessments to pay—assessments which are systematically increased at every recurring settlement and which leave little or no margin to the ryots to keep themselves in anything like affluence. The first failure of seasonal rain throws the country upon the charity of

he State, and I availed myself of the opportunity afforded me at the budget meetings to make a personal appeal to your Excellency to place the land laws of the Presidency on a sound and efficient footing. The time for the introduction of the measure is no opportune. Famine stares us in the face in proportions of an unprecedented magnitude. Even Tanjore, which had hitherto escaped the dire affliction—Tanjore which has been erroneously designated the "Garden of Southern India"—may not this time escape from its cold clutches. Difficulties in the levy of a water-cess in cases of involuntary flow or percolation were experienced only in Gódvári and Kistná. But these difficulties must cease with the introduction in these districts of consolidated wet assessments. In the case of dry lands, no such difficulties can be experienced, and further it must be inequitable in their case to levy water-cess for involuntary flow or percolation or leakage. No wet crops can be cultivated on such dry lands by means of water by leakage or involuntary flow. The Council can easily fancy a plot of dry land standing in the midst of wet lands, and it may be said that water percolates into the dry lands. I would ask the Council to consider whether it would be just or equitable to levy a water-cess in those circumstances. Again, take the ordinary case of a plantain garden standing on the margin of an irrigation river or channel. The river or channel water may rise and overflow the plantain garden. I would ask the Council to consider whether it would be just or equitable to assess the plantation with water-rate in those circumstances, when the overflow or percolation of water may be more harmful than otherwise, or at any rate would be of doubtful utility. Such impositions of water-rate on the plantain gardens were brought by me to the notice of Government at the Council meeting of the 3rd December 1898, and the result of the inquiry showed that the cess had been levied in the case of a plantation which had been flooded by the river. Again the question in these and similar cases as to whether the land was benefited by the involuntary flow or percolation is an exceedingly difficult question to be decided. The Bill makes the solution of such difficulties dependent upon the opinion of the Collector, which, in the last resort, means the opinion of the village curnam from the very nature of things. This by itself is exceedingly unsatisfactory, and to make matters worse, the Bill proposes to abolish the jurisdiction of civil courts which had frequently been setting aside the cess imposed by the Revenue authorities under the Act as illegal. The High Court of Madras had to interfere on several occasions of illegal impositions of the cess, and if the existing Act had barred the jurisdiction of civil courts, the ryots would have been left without a remedy. In 1889, in 1895 and in 1896 the High Court had been called upon to interfere. In fact the Honourable mover has cited these judgments of the High Court in his Statement of Objects and Reasons to justify the insertion in the Bill of a provision to take away the jurisdiction of the civil courts. In justification of this rather exceptional provision of law, the Honourable mover cites as a precedent three enactments of the Legislature—one of the Government of India and two of the Madras Legislature. These enactments bear no analogy to the proposed measure. The proposed measure relates not to taxation but only to cess. A tax differs from cess, in that the latter is a fee levied for some benefit or service rendered. The cess is a matter of implied or express contract, and, as such, cannot be taken away from the cognizance of judicial tribunals which adjudicate upon all matters of contractual relations. It may be in accordance with the principles of general jurisprudence to place questions connected with the assessment of taxes proper beyond the pale of the jurisdiction of civil courts. But to place the "cess" in the same category as "tax" is repugnant to the first principles of law. Even the Madras enactments cited by the Honourable mover do not support his proposal completely. Madras

Act II of 1864—The Revenue Recovery Act—does not bar the jurisdiction of civil courts entirely. Section 58 bars the jurisdiction of civil courts only as regards the rate of land revenue payable to Government or the assessment fixed upon subdivisions of permanently-settled states. The next section 59 recognizes the jurisdiction of civil courts in all other matters. Similarly Madras Act III of 1896—The Malabar Land Registration Act—does not take away the jurisdiction of civil courts altogether. Section 10 expressly recognizes the jurisdiction of civil courts to set aside or modify the order for registration passed by the Collector. Section 16 is subject to the provisions of section 10 and bars the jurisdiction only in regard to the procedure adopted by the Collector. The Bombay Irrigation Act of 1879 contains no such provision barring the jurisdiction of civil courts. Considering the nature of the questions which may arise in the actual working of the proposed law, questions relating to the benefit accruing from the involuntary flow of water, from its leakage or percolation, it is of the highest importance that the ryots should be enabled to protect themselves in the last resort against arbitrary proceedings and improper exactions by an appeal to the civil courts. For these reasons I earnestly trust that your Excellency's Government will see its way to dropping the measure altogether, or, if that is impracticable, to invite the opinions of representative men and associations in the several districts before proceeding with it.

The Hon'ble the RAJA OF BOBBILI—Your Excellency, from the file of papers circulated and from the Statement of Objects and Reasons, it is gathered that the High Court decided that Government could not levy water-rate under Act VII of 1865 on lands irrigated by involuntary flow of water, and that, by reason of this decision, a large portion of the public revenue is jeopardized, and that it is, therefore, proposed to amend the law so as to safeguard the public revenue. It is also stated that any cultivator holding fields not assessed with a consolidated wet rate in the midst of an expanse of wet cultivation from which water cannot be excluded has merely to allege that he does not want the water to escape from water-tax. The difficulty pointed out seems to be confined to the Kistna district and though it was feared that the operation of the ruling of the High Court would prejudicially affect the revenue in the Gódvári delta also, no case has hitherto been reported to have been brought from that district. Final orders appear to have been recently issued regarding the re-settlement of the Gódvári and Kistna deltas introducing consolidated wet rates, and the majority of cases are thus taken away from the operation of Act VII of 1865. The scope of the Act is now, therefore, very much narrowed. It was feared that a large amount of public revenue was at stake, but no statistics have been furnished to show what amount of revenue would be lost to the State by reason of the interpretation which the High Court put upon the law. There is no information whether there are still sufficient number of cases to call for legislative interference. It would have been satisfactory if definite information had been forthcoming as to the extent of the area that would be benefited and the amount of revenue that would be lost to Government under the ruling of the High Court. Even an approximate statement is not furnished. Under these circumstances there does not seem in my humble view to be any clear necessity for the proposed legislation. It is regretted that the jurisdiction of the civil courts is intended to be taken away in a matter like this. But the Collector cannot very well act both the part of a judge and a tax-gatherer; he cannot impartially and leisurely investigate each case that comes before him. He is burdened with other work and must depend mostly upon his subordinates. If the Government is still of opinion that there is necessity for the Bill, I earnestly beg that the lowest water-rate will be levied on lands benefited by involuntary flow.

BILL TO AMEND MADRAS ACT VII OF 1865.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu then rose to address the Council.

His Excellency the PRESIDENT:—How long will you take to deliver your speech?

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—About 40 minutes.

His Excellency the PRESIDENT:—I take it that it will be convenient to adjourn the Council for a short time. The Council is adjourned till 12 noon on Monday, the 29th instant.

H. TREMENHEERE,
Secretary to Government.

Proceedings of an adjourned Meeting of the Council of the Governor of Fort St. George assembled for the purpose of making Laws and Regulations under the provisions of the Acts of Parliament, 24 and 25 Victoria, Cap. 67, and 55 and 56 Victoria, Cap. 14.

The Council met at the Council Chamber in Fort St. George, at 12 noon on Monday the 29th January 1900.

PRESENT:

His Excellency the GOVERNOR OF MADRAS, G.C.M.G., G.C.I.E. —*Presiding.*
The Hon'ble Mr. A. T. ARUNDEL, C.S.I.
The Hon'ble Mr. H. M. WINTERBOTHAM.
The Hon'ble the RAJA OF BOBBILL, K.C.I.E.
The Hon'ble Mr. G. STOKES.
The Hon'ble Mr. G. S. FORBES.
The Hon'ble Lieutenant-Colonel Sir GEORGE MOORE, Kt., C.I.E.
The Hon'ble Mr. J. THOMSON.
The Hon'ble Mr. F. A. NICHOLSON, C.I.E.
The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal, B.A.
The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal, B.A., M.L., Rao Bahadur.
The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu.
The Hon'ble Mr. G. H. STUART, M.A.
The Hon'ble Mr. F. J. E. SPRING, C.I.E.
The Hon'ble the Revd. W. MILLER, M.A., LL.D., D.D., C.I.E.
The Hon'ble NAWAB SAHYID MUHAMMAD SAHIB BAHADUR.

BILL TO AMEND MADRAS ACT VII OF 1865.

His Excellency the PRESIDENT:—The Council will now resume the debate on the motion to introduce a Bill to amend Madras Act VII of 1865.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—Your Excellency, I respectfully crave leave to make a few observations on the principle of the Bill placed before this Council. At first sight, the Bill seems to be a perfectly innocuous one. The opposition to a Bill which embodies the principle of charging for irrigation only when it is beneficial to and sufficient for the requirements of the crop may appear to some of the Honourable Members as even unreasonable. But I venture to think that, if Honourable Members carefully analyse the different parts of the Bill and contrast them with the existing law, they will easily realise the enormity of the changes proposed to be made—the unsoundness of the principle involved in the Bill. Under the existing law, Government stands only in the position of an Irrigator Company. Government supplies water for irrigation only to those who apply for it. Water is sold by the acre, and the only principle recognised for charging differential rates is, that the value of lands of different classes would be affected in different degrees, according as they are capable or not of bearing sugarcane, rice, garden stuffs, and the more valuable kinds of crops generally. If self-interest induced the

ryot to purchase water; he purchased it, otherwise not. As stated by the Hon'ble Mr. Grose at the meeting of this Council on the 22nd January 1895 "the rate of the water-cess is determined on the principle that a fair commercial value should be put on all water supplied." This is the system which has been in force till now in the Gódvári and Kistna deltas and in the tract of country under the Cuddapah-Kurnool canal. Government has imposed a combined land-tax and water-rate or what is called a "consolidated wet rate", in the case of the other irrigation systems in this Presidency and is shortly going to do the same in the Gódvári and Kistna deltas which are now under revision settlement. But such a rate is imposed only in the case of irrigated lands held under ryotwari tenure. In the case of other lands to which the Water-cess Act applies — I mean the inam and zamin lands whose quit-rent or peshkash was fixed for ever — Government is pledged not to touch the profits, which the inamdars or zamindars may derive from their lands without the aid of artificial irrigation provided by Government. Only a fair price can be charged for the water supplied to them as well as to the ryotwari lands which are allowed the option of taking or refusing water, irrespective of the benefit derived by its use. Honourable Members will be pleased to note that it is these lands that will be specially affected by the Bill before us, if passed into law, as a vast majority of the ryotwari lands are taken out of the purview of the Water-cess Act by the imposition of a consolidated wet rate. Under the existing law, the supplier of water cannot fix the rates too high, for the demand falls as the price rises. The gross receipts of the supplier of water under a high charge would be less than those which he obtains with the lower scale of prices. In other words, the maximum gross income is obtained by making rates low enough to develop a good volume of traffic, instead of by raising them so high as to reduce that traffic to a small amount. Accordingly, Sir Charles Wood laid down as one of the cardinal principles of policy "that the water-rate should be so adjusted that even the land which benefits least by the application of water will yield to the cultivator an increased profit fully sufficient to enable him to pay it." One of the great reasons for the extensive use of canal irrigation in this country has been its cheapness and the manner in which the price of the water has been adjusted to the crops grown. Under a system of voluntary sale, the interests of the supplier and of the purchasers of water are identical. The system has produced excellent results in practical working, and the Hon'ble Mr. Alfred Deakin, M.L.A., truly says that, "taking all things into consideration, it may be questioned if there is a more beneficent or more profitable public work in the world" than the Gódvári anicut. No cultivator is under an obligation to pay water-cess, under the present law, if it is practically impossible for him to divert the water and prevent it coming over his land, that is to say, where the use of the water is not voluntary. If any cess not authorized by law is levied from him, he has his remedy against the supplier of water in the ordinary constituted tribunals. If the cultivator has power to relinquish water under the present system, it is to be remembered that Government has full liberty of action to withhold the water from any place and to distribute it wherever it is most remunerative, unshackled by any guarantee or even implied promise to keep up a certain supply in a certain place. The system is very simple in practice and easily understood. Now we are asked to abandon this self-acting system in favour of one which removes us from the region of fact into that of speculation. The first change proposed is, that Government shall be empowered to levy any water-rate it thinks fit under such rules as it may prescribe and alter or amend from time to time, whenever water, by direct or indirect flow, or by percolation or drainage, from any river, stream, channel, tank or work belonging to, or constructed by, Government, from or

through adjoining lands, or otherwise, irrigates any land under cultivation, and such irrigation is beneficial to and sufficient for the requirements of the crop on such land. The second change is, that the opinion of the Collector shall be final on the point whether such irrigation is beneficial to and sufficient for the requirements of the crop; that he shall be the sole interpreter of the rules under which he professes to act; and that his inquiry shall not be a judicial proceeding. The third change is, that the civil courts shall be divested of jurisdiction to question any assessment made by the Collector under the Act or any decision of the Collector regarding "mamúl wet" lands. And the fourth change is, that the proposed amendments shall be deemed to have been incorporated in the Act of 1865 at the time when it came into force, though no water-cess which would not have been leviable if these amendments had not been incorporated in the Act would be leviable for any period prior to the 1st July 1898. The result of enacting provisions such as are proposed would be, as pointed out by Sir George Campbell, the Lieutenant-Governor of Bengal, during the debates in connection with the Northern India Canal Bill which became Act VIII of 1873, to introduce the principle of compulsion. The man who did not ask for a canal found that a canal was brought through his grounds, and he was told "you are benefited by it in the opinion of the Collector, and therefore you must pay as if you had voluntarily taken water from the canal." I submit, therefore, that, if it is not intended by this Bill to make the water-rate *directly* compulsory, it is intended to make it *indirectly* compulsory. The poison will be absorbed into the system imperceptibly, and the victim dies without a struggle it is true, but not the less surely. The option of refusing irrigation is the only safeguard open to the cultivator against any injustice and inequality in the imposition of water-rates—which rates it is left to the supplier of water to fix at his pleasure. When you give power to the supplier of water to charge any rate on any land according to his own view of the benefit caused by such water without regard to the volition of the cultivator, it may be imagined what the consequences of such a drastic change will be. The supplier can enforce his own rates. It will no longer be to his interest to get the cultivators to take water for irrigating a great many acres but to get a maximum price for a few acres. His policy will be one of *high prices* rather than *large sales*; you will place the cultivators at the mercy of the supplier. Water will no longer be an article which the cultivator may or may not purchase, according as it benefits his land or not. In short, the price paid for water will be converted into a tax or forced contribution, just like income-tax. Every landholder who has the misfortune of owning land in the vicinity of an irrigation channel or of a drain—natural or artificial—would be completely at the mercy of the village officers, Revenue Inspectors and Delta Superintendents, who will have large opportunities of extortion. If the cultivator is not willing to pay the water-rate claimed by the supplier's agents for the water thrust on his fields, he has no other alternative but to relinquish his land—be it an inam or permanently-settled estate. No court will take cognizance of his complaint that the water-rate levied from him has trenched upon his legitimate profits, which are exempt from such taxation. Whether it is quit-rent or peshkash that is enhanced, or whether it is a separate tax in the name of water-cess that is levied from him, it makes no difference in the result. It may be said that in cases of injustice a representation might be made to the Collectors. But any one who has any idea of the enormous and varied nature of the work to be done by these District officers would agree with me when I say that these petty cases will hardly meet with that attention which they deserve at the hands of the Collectors. I asked the Government the other day whether Collectors of districts might not well be empowered to hear objections to the

ates imposed by Deputy Commissioners. What was the reply given to me by my Honourable friend Mr. Forbes? He said "the Collector may not be a trained settlement officer and moreover has plenty of other work to do." If he has no time to spare or so important a business—for hearing objections to rates imposed at a settlement which occurs only once in a generation—how can Honourable Members possibly expect him to dispose of a large number of cases of water-cess assessment which crop up every year? In 99 out of 100 cases it will come to this,—that the opinion of the village officer or Revenue Inspector, who always strains more or less in favour of Government, is the opinion of the Collector. Is there any wonder, then, that this new power will be made an opportunity of extortion against many who can never in reality be called on to pay a farthing? The idea of the Revenue officers seems to be that no water would flow on land directly or indirectly, or by percolation or drainage, without conferring benefit—that anything short of total failure of crop should be regarded as a taxable benefit, the water-cess being remitted in the event of total failure only. I cannot understand why an inamdar or zamin ryot who, before the introduction of irrigation, was in a position to, and did, raise an excellent dry crop on his land should be compelled to pay water-cess, though by reason of percolation he is forced to raise another kind of crop which does not yield him more and in some cases yield less than the original crop? In no case that arose in the Kistna district or for the matter of that in any other district was it proved that the water coming by percolation was of real use to the cultivator by increasing his profits. On the other hand, it was distinctly found in some cases that the cultivators had sustained loss, as compared with the average profits they would have obtained without the aid of such water. To pass this Bill would in effect authorize the Executive to levy water-rates in cases of that nature—to re-impose the cess, with effect from 1st July 1898, in all those cases in which the courts have disallowed it. The interpretation put upon the Act by the courts is in accord not only with the policy of the Act, and the traditions of the revenue administration of this Presidency, but also with justice, equity and good conscience. What is now proposed is not to remove any uncertainty of law caused by judicial interpretation but practically to reverse the policy which underlies the beneficent legislation of 1865. Now, Sir, what are the grounds on which this Bill is supported? It is urged that in the present state of the law it is in the power of any cultivator holding fields not assessed with a consolidated wet rate in the midst of an expanse of wet cultivation from which, in the interests of the majority, water cannot be excluded, to escape the payment of water-tax by not applying for water; and that this state of things places in jeopardy a large portion of the public revenue. It would be absurd to suppose that the Honourable Member in charge of the Bill cannot make a plausible case in support of his new departure, but the question to my mind is not so much whether the cultivator possesses in theory such power as whether the mischief likely to result therefrom promises to be so grave as to make it the imperative duty of this Council to intervene in the manner proposed. The case suggested seems to me a highly improbable one. I very much doubt whether any instance could be cited in which the option has been so exercised by the cultivator. With a view to elicit information as to whether any such cases have really occurred, I interpellated Government and the reply given to me was that "Government does not possess the details as to the extent of land or the amount of revenue involved, nor in the opinion of Government would the compilation of such statistics serve any useful purpose." The fields so situated would be unfit for dry crop. The cultivator must necessarily raise a wet crop thereon—a crop which requires continuous flooding for almost the whole period of its growth. Is it to the interest of any cultivator, who has to raise a thirsty wet crop

like rice, to trust to the precarious supply, which he may or may not get without application? Is it not to his advantage to get previous sanction for water, and will he not be charged *double* water-rate under the existing rules as a punishment, if he irrigates without permission and is found out? It is not unusual for the Revenue Department to charge penal rates for water which reaches a field by percolation, on the ground that such water has been taken without permission. Several cultivators have thus been indirectly forced to apply for water, if not in view to obtain increased profits, at any rate to save themselves the difference between *single* and *double* rates. Are not the powers given to Government under the Act, viz., to frame such rules as it thinks fit and to levy its own rates, sufficient for the protection of the interests of Government? Did not Government exercise these powers by framing a rule in respect of the lands irrigated by the Rushikulya project that no relinquishment would be accepted in cases where the surrounding fields are under irrigation, *unless the applicant has arranged to exclude water from his fields*? This is one form of compulsory irrigation and that too introduced in the case of a "protective work" !!! Every cultivator is aware that, if he attempts to gain an undue advantage one year, Government has the power to prevent him from doing so next year. Intelligent self-interest, if nothing else, prompts him—as it prompts the majority of the adjoining cultivators—to apply for water and pay for it. If the proposition that the interests of Government and people are identical is true in any case, it is in the matter of irrigation. What is it that makes the Government think that the cultivator will act in future otherwise than in his own interest—in a way in which no cultivator has ever acted during the forty years since the irrigation works have been constructed, and to start this Bill on that assumption? What is it that has transpired since November 1889, which has induced Government to alter the resolution it then came to that no amending legislation had been required to meet this hypothetical state of things? The circumstances that 77 suits have been filed against Government during the last five years to contest the charge of water-rate cannot, of itself, justify legislation of this character. So far as I am aware, none of those suits have arisen in the Gódvári district from which I come. I believe they all relate to the lands situate in the Kistna delta. None of those lands can be said to belong to the category of hypothetical cases put forward and I do not know how the Honourable mover of the Bill can rely on them in support of this Bill. Further, the extent of land involved is very insignificant. In his letter, No. 485, dated 26th February 1897, to the Secretary to the Commissioners of Land Revenue, the Collector of Kistna refers to these lands in the following terms: "Charge for irrigation by involuntary flow has been practically confined to a few villages in Tenáli and one or two in Bandar taluk. In each case the lands are situated in low-lying tracts called 'badavas' which, towards the end of August, begin to fill with mixed anicut and rain water, gradually getting deeper and deeper till the rains cease. The ryots cultivate "*velvadam*" and other dry species of paddy, because they cannot get water at the commencement of the irrigation season. It is not that they prefer to cultivate 'dry' paddy. On the contrary, many of them have assured me that they want to have their land converted to wet and that, if given a proper supply of irrigation, they would grow wet crops and pay the water-rate without a murmur. On more than one occasion I have communicated these requests to the Public Works Department officer and asked them at least to extend an irrigation channel into these badavas. But the answer has always been the same disheartening declaration that, on account of insufficient allotments and establishments, the work cannot be carried out at present." What of funds is pleaded in the case of irrigation works yielding very handsome returns

The net revenue from the Gódávári and Kistna delta systems, after paying the interest charges, during the year 1898-99 was 15·02 and 11·32 per cent., respectively. In the one case, the whole capital outlay was already paid twice over, and in the other case half as much again. I asked the Government whether any action had been taken in the matter of providing the lands concerned with a proper supply of irrigation and I was told in reply that "an officer of the Public Works Department has recently been deputed to the Kistna district to have maps and lists prepared of the irrigated and irrigable lands and an estimate for such re-modelling or extension of the canals and channels as may be found necessary." I may also tell Honourable Members that some of these cultivators actually applied for water but that their applications were refused on the ground of precarious supply. Is the Honourable mover going to say that their disinclination to pay the water-rates in the existing circumstances is otherwise than proper? As remarked by the High Court, if the cultivators use water in such cases, they use it as the only mode of repairing the injury to their lands and averting the loss likely to arise from it. The Honourable mover, while conceding "that the cultivators, as a body, have doubtless too keen an appreciation of the benefits which the irrigation confers to contest the charge of water-cess," says that "it is clearly inexpedient that one and all of them should retain the power so to do." Government has already taken away that power in the case of ryotwari lands. Will Honourable Members sanction the same thing in the case of zamin and inam lands as well, whose tenure stands on a different footing? Another instance cited by the Honourable mover is, that the enhancement of water-cess by 25 per cent. in 1894 in the Gódávári and Kistna deltas was accompanied by some relinquishments of water and this would not have been the case, had it not been for the defective state of the law. I beg leave to join issue with the Honourable mover on this point. I beg that Honourable Members will note that the cess was raised in August 1894, after the transplantation operations were over in the case of several lands and that Government not only refunded the difference between the old and new rate, after its attention had been called to the matter, but also exempted about 10 per cent., as I believe, of the irrigated lands in the said deltas from the enhanced rate, pending the re-settlement. With the reduction of the rate, the water was again applied for in the case of the poorer soils. I submit there is nothing strange in this. In 1865 when the water-rate was raised from Rs. 3 to Rs. 4, water was relinquished in respect of nearly 100,000 acres and with the rise of prices in 1875, water was again applied for. History simply repeated itself in 1895. Further, it is to be remembered that, as stated by the Hon'ble Mr. Grose, the option to relinquish water was given to the ryots, because it was necessary that certain soils, having regard to their nature, should revert to dry cultivation at periodical intervals. Another point to which I would invite the attention of Honourable Members is, the nature of the soils of the Gódávári and Kistna deltas. Speaking of the Gódávári delta, Mr. Clerk, the Settlement-officer, says: "With the exception of the low-lying tract of land near the sea coast and the Colair lake, both dry and wet crops can be raised on almost all the lands at the option of the ryot. The profits on dry crops are very great in the Gódávári delta. Moreover, the prices of dry grains are higher than paddy, and consequently as the profits on the two dry crops—only one of which is charged for—are almost as large as they are on paddy cultivation, the ryots are not so anxious to obtain water as in other districts." We may reasonably infer that the conditions are much the same in the Kistna delta from the fact that the increase of assessment sanctioned by Government in the present revision settlement on the dry portion of the deltaic part of the Bezvada taluk is as much as 117 per cent. Now, Sir,

I would respectfully ask the Honourable Member in charge of the Bill a few simple questions: What is the extent of land in respect of which water was relinquished in 1895? What portion of it was relinquished under the circumstances mentioned by the Hon'ble Mr. Grose? What portion of it was relinquished for the reasons mentioned by Mr. Clerk? What portion of it belongs to the category of poorer soils on which 4-rupee rate is levied? What portion of it belongs to the hypothetical class of cases put forward by the Honourable mover? In the absence of information on these points, I submit it is not fair to connect the relinquishments with the defective state of the law. There is not an iota of evidence before us that any land in respect of which water was so relinquished was not in a position to exclude it and that its owner reaped the benefit from water, notwithstanding such relinquishment on his part. On the other hand, it can be easily proved that serious mischief is done year after year by the water coming by percolation or drainage in the said deltas. It may frequently happen that the land which is benefited one year would be injured the next, should percolation increase. Is it right that a charge should be made on the owner in the one case, while no compensation is to be given in the other? As Lord Hobhouse aptly put it "If you diminish percolation, and so injure the land, the landlord gets no compensation; if you increase percolation so much as to deteriorate the soil, again he gets no compensation. But, if your percolation is just of that amount which gives the landlord benefit, you make a charge for such benefit." Take again the case of the soils under the Cuddapah-Kurnool canal. The largest and richest part of the district commanded by the canal consists of black, decomposed trap, which needs irrigation very rarely, is difficult to work when wetted, and bears excellent crops with the average local rainfall. If this Bill becomes law, possibly the ryots in these tracts will be compelled to pay percolation rates, though such percolation does them more harm than good. Water can be said to be really beneficial to the crop only when it is given at moderate price and in certain instalments and at certain junctures, which vary with the crop, soil, climate, rainfall, the season and the like. Now the immediate object of this Bill seems to be this: From the Board's remarks on the scheme report of the Gódávári district, we note that the Deputy Commissioner doubts whether water would be taken at the special rates going to be sanctioned by Government, which raise the old uniform 4-rupee rate by 100, 75, 62·5, 50, 37·5, 18·75 and 12·5 per cent. in a large majority of cases and possibly lower it in just a few. The Collector of Gódávári is certain that they would lead to extensive relinquishment. The Board concurs with the Collector that extensive relinquishment would be the immediate result, though it thinks it quite an open question whether the inamdars and zamin ryots would continue to abstain from the water, if once satisfied that relinquishment would not secure a reduction of the special rates. The Bill will, if passed, checkmate any relinquishments on the part of the inamdars and zamin ryots and force them to take the water at the price fixed by Government. Is this consistent, Sir, with the generous policy which actuated the creation and confirmation of such property in this country? Is the percolation rate to be paid by the zamindar or by his tenant? Whatever may be said as to the expediency of enacting the provisions relating to percolation in Bombay, which has but a small area under irrigation and which has no permanently-settled estates, I respectfully submit that they are inadmissible in this Presidency, which possesses practically the oldest, the largest, and certainly the most profitable of all the irrigation systems in India and which has many permanently-settled estates and inams. Gódávári and Kistna are already singled out as the two most heavily assessed districts in this Presidency, and it is they that will be specially affected by this measure, if passed. The consequence

of the proposed law, if enacted, would be far-reaching, and it is a matter that should receive the most careful thought as to whether it would be proper and wise to change the law—and that too with retrospective effect—on lines entirely different from those that had been laid down by the wisdom of legislators thirty-five years ago—lines which, on the very face of them, are such that the land-owning classes cannot possibly be reconciled to by any distance of time. It is one thing to introduce a certain system in the beginning and it is quite a different thing to change a system which has been in force for thirty-five years and thereby cause a serious disturbance of titles. I am aware that the Honourable Member in charge of the Bill says that he is proposing no innovation and that all that is now wanted is merely to invest a uniform revenue custom with legal form. I confess I fail to see the force of this argument. What has the revenue practice obtaining in the case of ryotwari lands assessed to consolidated wet rate to do with the question of determining the principles on which water-cess should be imposed on lands that cannot be so assessed? In the one case Government is entitled to a share of the produce, whereas in the other it is not. The so-called custom has received no judicial recognition. It is opposed to the terms of the despatches of the Secretary of State of 1863, 1870 and 1873. It is opposed to the distinct understanding on which His Excellency the Governor-General accorded his assent to the enactment of the Water-cess Act of 1865. It was abandoned in 1889, if not earlier. It is inconsistent, Sir, with the standing orders now in force, under which no water-rate can be charged even on wet cultivation raised on dry lands with water which percolates from a Government work. It is opposed to the results of practical experience embodied in the Northern India Canal Act of 1873 and in the Bengal Irrigation Act of 1876. Proposals to insert provisions of a similar character under certain limitations were rejected by the Supreme Legislature in connection with the Northern India Canal Act. *And this was done though the charge for percolation had been maintained there since the year 1845 and though the clause relating thereto stood as a part of Act XXX of 1871.* I would respectfully invite the attention of the Honourable Members to the debates in connection with the Act of 1873 and particularly to the observations made by His Honour the Lieutenant-Governor of Bengal, who strongly opposed the clause relating to percolation. Those observations apply with greater force to the facts with which we have to deal. His Honour objected to the clause not only on direct grounds but also on much larger indirect grounds, namely, that there was no provision for compensation on account of injury done by a canal, corresponding to the rate sought to be levied on account of benefits, and that it was not fair that a rate should be levied on account of benefits indirectly given by a canal. His Honour thought that the inquiry into the question of benefits and injuries would be attended with many practical difficulties, and that those who benefited would be a small number in comparison to the cases in which compensation for injury might be claimed, if the principle were allowed. I may also mention here that the Northern India Canal Act was amended last year, but no provisions of the kind now proposed find place in it. I am, therefore, the more surprised to see that, after such precedents, the question should be revived in this Presidency. In the proposal to exclude the civil courts from the jurisdiction which they now possess lies the sting of the Bill. I know no other Irrigation Act which prescribes such a summary and arbitrary method of assessment as the one embodied in this Bill. I submit that, unless the jurisdiction of the civil courts in matters relating to the water-cess is retained, the land-owner gains little or nothing by the right of resort to civil courts given to him by Regulation XXV of 1802 and Madras Acts IV of 1862, IV of 1866 and IV of 1897; for, water-charge forms in the case

of irrigated land by far the larger portion of the payment made to Government. In fact, the Legislature would be taking away with one hand what it gives with the other. Beyond the usual plea of expediency, nothing has been shown to justify this retrograde proposal. Is it likely, Sir, that any cultivator will involve Government in litigation, unless he feels that he has a real grievance? Can it be said that during the thirty-five years the Act has been in force, Government has been harrassed with any vexatious suits? My Honourable friend Mr. Ratnasabhapatil Pillai has distinguished the precedents quoted and shewn in what respects a cess differs from tax. I would only add that in no case cited by the Honourable mover has a constitutional privilege—enjoyed for about thirty-five years—been taken away. In the words of Sir Douglas Straight “a concession once made should never be withdrawn except for reasons of most paramount and pressing necessity.” I trust, therefore, that Honourable Members will look far into the past and the future at the political and economical bearings of the proposed measure upon the welfare of the millions inhabiting this Presidency—millions committed by Providence to the care of your Excellency's Government—and come to the conclusion that no case has been made out for introducing the Bill laid before the Council.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—Your Excellency, I join hands with my Honourable friend Mr. Venkataratnam Pantulu in saying that at first sight there are no elements in this Bill which could be said to be objectionable. At first sight it seems perfectly fair that persons who enjoy benefit out of the property of Government should pay for such benefit. If we exempt them, the result will be that certain people who have asked that water should be let into their lands would pay for it, while those persons who have the same advantages but who did not ask for the water would not pay for it. The position put in that form becomes an invidious one. Therefore, at the outset, the Bill seems to be perfectly fair, but if we go a little deeper into it, I must confess that many of the difficulties which have been portrayed by my Honourable friend in such eloquent language do appear and are real. Before going to the provisions of the Bill, the first thing I should like to address myself to is the reason, the necessity for this amending Bill, a Bill to amend an Act which is now thirty-five years old. After we heard the most valuable argument of the learned Advocate-General and the Honourable the Chief Secretary adduced the other day in reference to the amendments proposed to the Coffee-stealing Prevention Bill, we were pressed by the force of that argument, namely, that unless you show a reason, unless you show a necessity for changing an existing law, that law shall not be meddled with. I was so much struck with the force of that argument that I quietly gave up many of those amendments which I strongly felt ought to be carried. I felt that arguments were not adduced and reasons were not given by movers of amendments to amend the law that had been in existence for a considerable number of years. This argument presses me heavily now, when I consider this question. I, therefore, address myself to the question whether reasons have been given and necessity shown for introducing an amending Bill in regard to an Act which has been in existence for thirty-five years. As I feel very strongly on the question, I beg the permission of the Council to go a little into the detailed history of this matter. This question was first started in 1889, as observed by the Honourable mover of the Bill, owing to the judgment delivered by Sir Arthur Collins and Sir T. Muttusami Aiyar, wherein, under certain conditions, their Lordships held that, if water went into another man's land without his asking for it and if he made use of it for the purpose of raising some crops, he should not be charged. On that judgment the Executive moved the Collector of Kistna, now the Honourable the First Member of

Council, who wrote strongly to the Board of Revenue, criticising the judgment and pointing out the great danger that lay before Government in the matter of public revenues. He pointed out that public revenues were in great jeopardy and he suggested that adequate measures should be immediately adopted for the purpose of averting that danger. It is appropriate that I should read the letter in which the danger was prophesied. I consider, Sir, that in those days, when that judgment was delivered, with the system of Revenue administration then obtaining in Gódvári and Kistna, the apprehensions were perfectly reasonable and justifiable. He said:—

“Under this ruling, therefore, the present system cannot hold together, and the revenue of the Kistna and Gódvári districts from their enormous irrigation works is placed in jeopardy. The ryots have merely to file statements declining to have water any more, and then, if the upper field of a terraced series is irrigated direct from the sluice with the consent of the owner thereof, the owners of all the fields below must under the new ruling receive their supply of water free of charge, because they have no option of refusing it. The same course can be adopted for all fields or plots, but one, irrigated from a single inlet.”

That is the apprehension that was felt in 1889. The Board and the Government did not take any steps in the matter; but at the same time I see from the papers that the Collector of Kistna was asked to watch the effect of the judgment. I am quite sure that the Collector of Kistna “who evinced apprehension of danger” did watch closely the effect of this judgment. Years passed on till 1894 and there is no doubt that the Collector did keep a close ward and watch. In 1894 another judgment was passed by their Lordships Mr. Justice Shephard and Mr. Justice Best. That is the first time when, after the lapse of years, our attention was again drawn to this matter. That was passed over and nothing transpired beyond what the Executive said then. Then we come to 1896, two years later, when their Lordships Mr. Justice Subramania Aiyar and Mr. Justice Boddam passed another judgment by which they definitely declared that even though benefit did accrue to the ryot by reason of the flow of water, he cannot be charged, according to the language found existing in the Act. Inasmuch as the expression used was “water is supplied or used,” their Lordships interpreted it to mean that there was freedom to apply and freedom to reject; and it was not possible to give any other construction for that phrase and therefore they ruled accordingly. Thus from 1889 to 1896, we have passed a period of seven years with three stages, nothing very important transpiring so as to cause any anxiety about public revenues. In 1897 the attention of the Executive was again called to this matter. The matter was referred to the then Collector of Kistna, Mr. Atkinson, who was asked to report on it and who repeated all the apprehensions of the previous Collector in a language very much identical in its scope:—

“The High Court has now laid down boldly that if the ryot has no option in the matter, he is not liable to pay water-rate. The Board is aware that not for one wet field in a hundred is there any option, and I can see no reason why nine-tenths or even ninety-nine hundredths of the ryots in the district should not at once relinquish irrigation, and hereafter, while continuing to cultivate wet crops, claim exemption from water-rate on the ground that they had no option but to let the water flow over their fields.”

The language is identical with that used by the previous Collector and he expressed great apprehensions and fears that the public exchequer might suffer by reason of these rulings. In the very next paragraph which was read by the Hon'ble Mr. Venkataratnam, he points out the extent to which this involuntary flow, as it has been called, in this law, has been availed of and the extent to which we need be anxious. He says “charge for involuntary flow has been practically confined to few villages in Tenali, and one or two in Bandar taluk.” That is, with the close watch for seven years of two Collectors, after three judgments of the High Court giving a most liberal construction, we have found that only a few villages in two taluks of the district had taken advantage of it. We have not yet heard anything about Gódvári. None of the papers in our hands show that any apprehensions were entertained by the Collector of Gódvári of loss of public revenue. From 1896 we have passed another period of four years. We are now in 1900 and I was anxious to know whether these most liberal judgments in favour of the ryots had any serious effect, in stirring up the ryot to take advantage of these liberal judgments and to evade the payment for water which they used and from which they derived benefit. I was anxious to get information and we have heard what the Government had to say the day before yesterday on the point. The Government is not in possession of the desired statistics. Although the Government was closely watching every man who was likely to take advantage of these judgments during the last ten years, yet it does not think it necessary to compile a statement. The Government has stated:—“Had the defective state of the law been extensively taken advantage of, the Government would have been forced to undertake the amendment of the Act at an early date.” That is a clear and tacit admission that in spite of three judgments delivered on different occasions at long intervals, no advantage has been taken, at any rate, no extensive advantage had been taken so as to induce Government to take immediate steps to put a stop to the fraudulent taking of water. Then it was said:—“The ease with which the payment of water-rate may be evaded has recently become widely known and the amendment of the law is now being undertaken with a view to avoid prospective loss of revenue.” I do not know how it became recently widely known except that there was publication of these judgments in Indian Law Reports. There has been no loss of revenue, at any rate, no appreciable loss of revenue during these ten years. Ryots in spite of these liberal judgments were fair, honest and candid and they paid for the benefits they reaped. After the lapse of ten years, a fear is felt that there is a prospective loss of revenue which must be remedied by an amending legislation—by amending an Act which is now 35 years old. From this *resumé* since 1889, when the subject was first started, it would be clear, so far as statistics of actual occurrence are concerned, that we have no basis, no data on which to rest our amending law, no ground, no reason and no necessity has been shown by the previous history of the case to justify this amending law being introduced. There is another aspect of the case. The circumstances at the time when these judgments were passed and when the two Collectors of Kistna took action were entirely different from what they are now. Under the Kistna and Gódvári systems, the right of the free option of taking or refusing water was enjoyed for many years by the people. Under these circumstances there was a very good reason to apprehend when the judgments that I have referred to were passed, that there was a great probability of dishonest ryots not paying for the advantages and benefits they received and that every person had the power of refusing water, while he enjoyed the benefits therefrom; but now the whole phase of the question has been changed. The system of the consolidation of water and land assessment has been introduced into

Kistna and Górávari districts as my Honourable friend informed us and it will come into force very soon. Where water and land assessment is consolidated under these two great anicut systems, the apprehensions entertained consequent on these judgments are practically nullified by reason of the change of the system of land revenue collection in those tracts. Is there any necessity now, I ask, to introduce this amending legislation? Will there be any appreciable number of cases, where the amended law would be used. The presumption is that settlement officers, having examined the land and considered the practicability or otherwise of giving water to any of the areas under the anicut system, would have brought every available plot of land, which could be watered by this system, into the consolidated system of land revenue collection. There could hardly be any case of any land to which this amending Act could apply. If there are some cases, which have not been brought under the consolidated system, and if they get percolation of water, the probability is—that is a fair assumption—that settlement authorities did not consider these lands fit for irrigation purposes, they perhaps thought that by irrigating these lands they would become worse and that to keep them dry was the only method of saving these lands. If the settlement officers have excluded any portion of the land to which water could go, from the category of this consolidated system, they have excluded it on purpose. If in such cases there is direct or indirect flow, if there is percolation, there is no justification to levy water-rate. It is possible that in some cases only a poor kind of paddy might be grown by irrigation; and instead of leaving the land fallow, which has become unfit for dry cultivation because the settlement officers chose to give the ryot water, he might grow a poor kind of paddy. It must be presumed that the paddy must be useless, the outturn would be small as compared with the outturn if dry crops had been raised. Considering the energy of the settlement officers, there is no reason why these settlement officers should exclude some lands from consolidated wet assessment unless it be for proper reasons. Barring these lands under ryotwari settlement—I am specially speaking with reference to Kistna and Górávari districts—the only kinds of lands to which with any show of reasoning this amending law might be extended would be lands in whole inam and zamindari villages. I quite admit that under the present arrangement the land assessment and the water-rate in these tracts must be kept separate and it is possible that by percolation, direct or indirect flow of water, the ryots in these tracts might enjoy the benefits, without paying for it. I ask what are the data and what are the statistics? The Honourable mover of the Bill explained to us that there were 70 and odd suits filed in civil courts against Government in this matter. I should like to know how many out of these 70 and odd suits came from zamindari and inam villages. We have no information about it. What is the loss involved by these 70 suits? We have no information on this subject. In spite of the close scrutiny and watch for these ten years, we are not in a position to say that any considerable area in zamindari and inam villages derived any benefit in this fraudulent manner. In the absence of information on these points and for the reasons I have already stated we have no basis to proceed with this amending legislation.

I take another aspect of the question. Suppose the necessity has been proved. Suppose the matter is referred to a Select Committee and the Government gets the information to show the necessity for it. Proceeding on that basis, even then, I find objections to one or two aspects of the Bill to which alone I wish to confine myself for the present. The important section is No. 1. It reads "Whenever water is supplied or used for purposes of irrigation from any river, stream, channel, tank or work"—they are the existing words—"belonging to, or constructed by, Government, and also

whenever water, by direct or indirect flow,"—they are the words now introduced and provided the necessity is shown for the legislation, I have no objection—"or by percolation or drainage from any such river, stream, channel, tank or work from or to adjoining lands or otherwise, irrigates any land" I think the meaning of the word "percolate" must be understood in the most extensive sense, as it seems to be implied by the language of the section itself. We understand percolation in the sense of surface percolation. There being a field or two in the midst of wet cultivation, they will be marshy and there will be surface percolation. It may also mean percolation into wells from Government works and their vicinity. When water percolates into a well, it may be baled out or lifted up by artificial means and used for irrigation purposes. The word percolation seems to convey both senses, because the words "or by percolation or drainage from any such river, stream, channel, tank or work from or through adjoining lands" cover surface percolation. The words "or otherwise" would make it most comprehensive and would bring into its category percolation into wells or cisterns. I am further confirmed in this view by the very word, percolation, being used in the Standing Orders of the Board of Revenue, where charges for percolation are directed not to be made. I refer to the Standing Order No. 4, paragraph 7, which runs thus: "Wet cultivation raised on dry lands with water which percolates from a Government work is not liable to water-rate. The landholder should be given the option of taking the full supply of water for his crops, and in the event of his accepting the offer he should be charged water-rate; but should he refuse to take a full supply, no charge should be made for water which reaches his holding by percolation." This applies to surface percolation. Percolation from a Government work which gives the ryot a certain benefit, not a permanent benefit, but a temporary benefit, is not to be charged. Then with reference to wells, another Standing Order No. 7 (paragraphs 3 and 4), which refers to private wells, says: "Government has abolished all restrictions on the sinking of wells in the proximity of Government irrigation works, provided only that they are sunk in the land which belongs to the person sinking the well. No water-rate will be charged on dry lands irrigated solely from private wells situated on land which is the private property or constructed prior to 20th August 1884 within whatever distance well may be from a public irrigation source." The question is whether this legislation does not act directly against these two rules in the Standing Orders of the Board of Revenue. I understand that this rule about wells had to go up for decision to the Secretary of State. It was no doubt moved by the Madras Government that well water irrigation should not be charged on the ground that wells were in the vicinity of Government irrigation works. That recommendation went up and received the sanction of the Secretary of State, and after such sanction, a trial of three years, I understand, was given to see whether that system would work well or not. After giving a trial for three years, the Government came to the conclusion that it was the best scheme, that the digging of wells should be encouraged in all parts of the country, and that no presumption or inference should be drawn that Government water had been taken away by these wells. The old rule on the subject, rule No. 8, was "wells in irrigated lands will not be exempt from extra assessment if within ten yards of a tank bund or of the embankment of a river or of a channel," so that ten yards' limit was fixed in the old rule which was abrogated by the Secretary of State, no doubt, on the recommendation of the Madras Government. I ask whether the introduction of the word "percolation" is not to abrogate these wholesome rules which have been in practice since 1884. If, according to the construction I place upon the word "percolation" and with reference to the context in this section, it does cover these cases,

submit that it is a most retrograde step to take. It discourages the sinking of wells. We have recognised in recent years that well-sinking is one of the greatest protections against an impending famine. Lakhs and lakhs of rupees have been given to the Deccan districts for the purpose of sinking innumerable wells all over the country, so that in seasons of drought they might be of help to the people. In tracts where these wells have been sunk, these wells are the mainstay of the people till famine comes in a severe form. This acts as a discouragement to this kind of protection against famine, and it also runs in the teeth of the Secretary of State's order. One question that I would ask is whether the sanction of the Secretary of State has been obtained to repeal or abrogate these rules to which he gave consent sixteen years ago? There is one other case which I wish to put forward and which shows the effect of introducing the word "percolation" and the hardships to which it would lead. There is a G.O., No. 205, dated 9th March 1888, which was passed on a reference from the Collector of Chingleput to the Board of Revenue. The Collector of Chingleput raised the question whether in the raising of paddy from water in achukattus water-rate should be charged or not. For the information of Honourable Members who might not be conversant with revenue phraseology, I will just read a sentence from the Board's Proceedings which explains what "achukattus" means. "They do not think it was meant to render a field liable to charges for water-rate when it is merely surrounded by a small bank or achukattu a couple of feet high to retain the rain which may actually fall on it and because paddy is then grown in the water so retained." "Achukattu" therefore means a bank two or three feet high round the field which holds a quantity of water when it rains, and the ryots make use of that water. The Government resolved that no charge should be made for that. I submit that the present frame of the section would cover even that. It might even be land adjacent to a poramboke, and it might be said by some overzealous officer that this is Government land which contains the pit and therefore the water-rate should be charged. Gentlemen, we go directly against this order which was issued in 1888. I would refer to another instance. If any of you travel in the day-time from Madras by the East Coast Railway, you will see by the sides of the permanent way pits all over. These pits were dug for raising the embankment of the railway, they hold water, and I have seen people using that water and irrigating their land. The question is whether we would bring this under water-rate. It might be said that this being a State Railway, the pits dug are of Government construction and the water in them is Government water and therefore the water taken is chargeable with water-rate. These are questions which have to be considered before we decide upon having a drastic law like the one proposed. One word I should say with reference to surface percolation. We have been favoured by the Honourable mover of the Bill with an instance of there being one or two fields in the midst of wet cultivation which must be marshy and swampy and which take water and which cannot avoid taking water. Even in these cases the present legislation is not called for. With reference to the two districts of Kistna and Gódvári, I have already mentioned to you a recent change in the system of assessment with a view to minimise all difficulties. Perhaps all difficulties will vanish under that system. With reference to other districts, there need be no apprehension. They have been under the consolidation system for many years—for over half a century—and those districts have been settled and re-settled, and it could hardly be said that Settlement officers who went over the whole ground had forgotten to bring under the classification and put under wet classification those lands to which there is a fair probability of getting a sufficient supply of water. It seems to me, whether it be surface percolation or percolation into wells, the insertion of the word

"percolation" in the Bill is extremely dangerous since it aims, though unwittingly, at taking away the privileges which have been given and sanctioned by the Secretary of State several years ago. My Honourable friend Mr. Venkataratnam Pantulu has been referring to the Statute in the other Presidencies, especially the Northern India Canal Act, in which we do not find the word "percolation," nor is there any charge made for percolation. The only other subject that I wish to deal with—the last, but not the least in importance—is the question of jurisdiction that has been dealt with by my Honourable friend Mr. Venkataratnam Pantulu. Here again I would start by saying that absolutely no reason has been shown why the jurisdiction of the Civil Court should be ousted—that is the jurisdiction to which, in the absence of any prohibiting law, every litigant ought to go, whether it be State or a private person. That jurisdiction has existed for all these years, and it is now proposed to take away that jurisdiction entirely by the amending Bill, which says that no suit shall lie in any Civil Court to set aside or modify any assessment of water-cess made by a Collector under this Act. That is a language which is of a completely sweeping nature. There is absolutely no cause of grievance that can be taken by the ryot or the Government against the High Court. I submit there is no reason whatever for taking this drastic measure which proposes to take away the jurisdiction of the highest tribunal in the land. There is one serious aspect of the question which, with all deference and humility, I lay before Government with the fervent hope that that aspect of the question will be seriously considered. We have had three judgments of the High Court which have been referred to in the papers and to which I have alluded. This legislation is proposed in consequence of those three judgments. What will be the effect of this legislation on the minds of ignorant people? Those who are enlightened might understand the exigencies of the State or other circumstances which necessitate the change—the change of jurisdiction. The impression on the minds of common people—it is a belief to which we must give great weight—would be that either the Government has lost confidence in the wisdom of the highest Court of Her Majesty, or that the Government is timid and feels nervous about the examination of the orders of its executive by the highest Court in the land. I submit that neither of these impressions should be allowed to gain ground among the masses. If there is one thing in this country in which the masses have confidence, the most unbounded confidence, it is the Courts of Judicature, especially the High Court of Judicature of Her Majesty. Nothing that we do here and nothing that we say or write should in any manner shake that confidence and undermine it. This aspect of the question strikes me strongly and makes me feel very much. This aspect of the question I most humbly and fervently hope will be given serious consideration. I find there is no necessity whatever to bar the jurisdiction of Civil Courts. What have the High Court done? They, as the highest authorities vested by law with the power to interpret all laws, have interpreted the existing statute and put a reasonable construction, which they thought proper, on these words. If we consider that that interpretation leads to mischievous consequences or to any political danger or to sacrifice of revenue, here we are to change that law by inserting appropriate words, so that the future administration of the law will not be fraught with danger. The Government have pointed out what the amendment they desire to make is, and what the existing Act is. If you consider that the interpretation that has been put on the existing Act leads to disastrous consequences from a financial point of view, we have to amend it in a suitable manner. Is there any ground whatever for supposing that the High Court would insist on putting a construction on the new law which the words would not bear? Is there any reason to believe that the highest Court would persist on putting

an old construction on the new words we put in? I submit far from deprecating the jurisdiction of the Civil Court I consider it an advantage that we should have the close scrutiny of the Civil Courts and the High Court in this matter. They show us from time to time the faultiness of our language; they show us by their interpretation what consequences the law would lead to. If there should be any mischievous consequences of law, we are here to rectify the law. Far from there being any reason for the jurisdiction of the Civil Courts being taken away, I consider it most necessary in the interests of the ryots and in the interests of Government that the jurisdiction of the Civil Courts must be continued and they must have ward and watch over our faults of language, faults of policy, and apprise us in proper time. In the marginal notes to the Bill, the only reason which I find given is the quotation of three Acts—Income-tax Act II of 1886, section 39; Madras Act II of 1864, section 58; and Madras Act III of 1896, section 16. It is said that these Acts contain provisions by which the jurisdiction of Civil Courts is ousted and the jurisdiction of Collectors established. My Honourable friend Mr. Ramnasabhapatil Pillai yesterday pointed out the distinction between the provisions as contained in those Acts and those made here. I go a step further and say that the existence of a provision in those Acts, even in the terms of this Bill, will not justify us in introducing it into this Bill. If I understand aright, the reasoning by analogy in this case is faulty. I can understand the reasoning by analogy if the things compared are exactly identical; but if you bring two dissimilar things and try to compare them, we must land ourselves in absurdity. Now I consider that the Income-tax Act has no analogy with the Water-cess Act as observed by the Hon'ble Mr. Venkataratnam Pantulu. The Income-tax Act is an Act, as the name imports, for the collection of taxes for purposes of administration. There is absolutely no question of any person deriving any benefit from it. For purposes of State exigencies, a tax is collected by the State in its sovereign capacity, and no question of benefit or absence of benefit comes in. Then we go to the other Act, the Revenue Recovery Act. In this matter the State is recognized by all as the paramount landlord, and as such it collects a tax or rent for purposes of administration. In the collection, the State gives such equitable and reasonable consideration for protection and providing sustenance to ryots and takes such equitable sums as are necessary for the administration of the State. In these two Acts it may fairly be said, if there is any hardship or grievance felt by the ryot, the proper authority to which an appeal should be made by way of objection is the Collector. The present Bill is entirely different. As pointed out by my Honourable friend Mr. Venkataratnam Pantulu, this water-cess is said to have been levied on a purely commercial basis. Question after question was put in 1895 when the cess was proposed to be raised from Rs. 4 to Rs. 5. I should like to read the answers of Government *in extenso*: "The rate of the water-cess is determined on the principle that a fair commercial value should be put upon all water supplied, provided that the price charged is not so great as to bar its use on lands which really derive benefit from canal irrigation. There is no obligation on Government to leave a margin to the landlord to enable him to increase the rent. As a consequence, it follows that the Government cannot guarantee the fixity of the charge, at the same time it will not arbitrarily"—that is no doubt kind, as a paternal Government ought to be—"or capriciously be altered otherwise than on fair and reasonable ground." The principle is: there is no limit for the enhancement of the water-rate except the limit of the market, except the limit of the point that would bar the use of the water by raising it still further. Another answer is given defining and explaining what is meant by a fair commercial value: "A fair commercial value is what the supply of water is worth in the open

market, but it does not follow that Government would always charge its full value thus gauged." That is the answer given by Government. I, therefore, take it that this Bill is a Bill which is intended to regulate a purely commercial aspect of the business, to regulate transactions between Government and its people, the former in the capacity of merchants as vendors of water for irrigation purposes. I would compare it with a Railway Act which regulates the transaction of business between the Railway Company and the people. Will any one consent to the Agent and Manager of a railway being made the arbiter and sole umpire in matters relating to dealings between the company and the people? Could any canal company be asked to be the sole umpire and judge of disputes between the ryots and the canal company? This is not an imaginary case. We had a canal company a few years ago. It was provided that the company should work under the guarantee of Government. It was only a few years ago under certain terms of their contract the ownership of that company was taken away. Suppose that canal existed and this law was passed, putting the Agent or Manager of the canal company in the position of Government, I ask would this Council consent to make that Agent of the company the supreme umpire of disputes between the people and the company? I should consider that the position of Government is more invidious than that. In one capacity it is the State paramount and lays down rules for the guidance of the people and in another capacity—that is in connection with water-cess—it is a merchant. It cannot take the benefit of the rules which it lays down as a Government in its capacity as a merchant and bar investigation of its dealings with the people by an independent body like a court of justice. I have already pointed out to you, with reference to the Revenue Recovery Act II of 1864, that that Act also is entirely different in its nature. As I said, that regulates the levying of a certain rent or tax on land and the giving of a fair margin of profit for the sustenance of the ryots. The question is not between land and water, but between different kinds of lands—dry and wet lands. In both the cases the Government adjusts the share that should go to the ryot and takes the rest of it. In the case of dry lands where water is taxed separately, according to the principle I read, the water will be charged at its full market value; and the necessary allowance which, in its capacity as State paramount, the Government makes to the ryot goes out of the produce of the land considered as dry. Even the Revenue Recovery Act has no analogy with the Bill we are now considering. Therefore I submit that in cases where the one party is the predominant party, the more powerful than the other, if there should be any difference in their commercial and contractual relations, a third person ought to intervene and render justice. Who could that be except the Civil Courts of Her Majesty? I say it is not right to compare one Act with another and try to draft the provisions of the one into the other. I put an extreme case. There is a legislative enactment called the Indian Articles of War, which provides a particular kind of court called the Court-martial. Compare this with that. Would you say that all the water-cess cases should go before a Court-martial? If not why should they go before a Collector only on the ground that the Collector is a deciding authority in some other kind of Act. If one leads to absurdity, the other also leads to absurdity though in a more veiled form, if not in so patent a form. Again I would refer to the provisions of the Northern India Canal and Drainage Act, which by section 67 expressly reserves the jurisdiction of Civil Courts: "Except where herein otherwise provided all claims against Government in respect of anything done under this Act may be tried by the Civil Courts; but no such court shall in any case pass an order as to the supply of canal water to any crop sown or growing at the time of such order." Barring that single exception the jurisdiction of Civil

Courts is kept intact in all other cases. Then there is another matter which goes to the very root of the thing and which could not possibly be left to the discretion of Government. A ryot may deny that he had any water by percolation at all. Then comes the very question of his liability, and not the rate as to which the experience of the Collector may be of some use. In such cases would this Council leave the decision of this matter to the simple decision of the karnam and the karkun? Practically it comes to that. We cannot expect that the Collector with the enormous responsibility of a whole district would look to petty little disputes like this, as to whether water percolated or not. He must look to karnams and others. These officers have an unlimited scope for perquisites, and we shall certainly add another item to their resources. I wish to make only one observation with reference to what is contained in the letter from the Collector of Kistna. In criticising the judgment of the High Court, he bases his argument on the ground that the option to take or refuse water was not a legal right, but granted as a matter of grace and therefore the interpretation of "supply" and "use" was not correct and therefore involuntary flow should also be charged. I read the orders on the subject but in a different light. I would just draw the attention of the Council on that point, as there seems to be a misapprehension on that matter. I find that the concession was assented to by an executive order of the Secretary of State long before this Act was passed. I find on reference to it that there is free option for the use of water by the ryots, and it seems to me that it is a right, a legal right attached to the Act itself. I do not concern myself about that question, because we are not disputing whether there should be or should not be an option. The Honourable mover of the Bill at the close of his speech very kindly intimated that the "Bill concedes too much to the ryot as it allows the ryot not to cultivate if he chooses." Of course this does not obtain in the case of consolidated wet lands. To say that it is a concession in the case where water is not asked for, where water flows without the ryots' option and water percolates — to say that he is allowed to cultivate or not seems to me rather paradoxical. The ryot may at this juncture exclaim "save me from my friends." There are lands which are not fit to take water. For instance, lands under the Cuddapah-Kurnool Canal. This canal has cost the Government a crore of rupees and yields very little. The lands under the canal yield as dry lands and not as wet lands. The ryot would not take water. Why? because land would be covered with chowdu; the ryots believe that the lands would be permanently damaged both for dry and wet cultivation. Suppose the water percolates and flows by direct or indirect means over such lands which produce valuable cotton, cholum, &c. The result will be that the ryot will disappear leaving the land fallow, because it is unfit either for dry or wet cultivation. Then the Government says it is a matter of concession to you; you may or may not cultivate as you choose. If the ryot should happen to raise even a useless paddy, he will have to pay the water-cess. The passing of this enactment, in the form it is, whatever necessity may be shown hereafter, is fraught with danger and serious evil to ryots, especially to those cultivating lands under the Cuddapah-Kurnool Canal. I would explain to the Council the position of this canal. There is a Deputy Collector working very hard from one end to the other end of the year. He goes from village to village inducing people to take as much water as possible and pay more taxes. But he cannot get them to take it. When you have a special officer who has to show good work and to get good remarks from Government by getting more water-rate, why, if this Act is placed in his hands, the easiest thing, to make the whole land under the Cuddapah-Kurnool Canal pay water-cess, is to open the sluices to their full capacity and to allow the water to flood the land and say that water

percolates and charge the men water-rate. Then the longstanding difficulty and the anxiety about the Cuddapah-Kurnool Canal would at once be solved and the Special Deputy Collector will at once be marked for promotion for capital work. I submit, your Excellency, this Bill in all the phases that I have been touching upon, portends serious difficulty and serious danger, specially to ryots under the Cuddapah-Kurnool Canal, who have been up to the end of this generation growing nothing but cotton and cholum and who believe that the water of the canal will destroy the land and make it useless either for wet or dry cultivation.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR AVargal:—Your Excellency, I have a very few remarks to offer, as I am almost the last speaker on this side of the table. The subject has been very well threshed out both on Saturday evening and this morning. The proposed measure seems to me to be intended to modify an existing state of the law, which is Act VII of 1865, in two ways. If we have regard to the wording of this Act and also to the history of the Act, it means that on principles of contract, principles which govern man and man in the British Empire, the Government shall construct irrigation works and supply water to its people. There can be no manner of doubt that that is the meaning, not only from the wording of the Act, but from the whole correspondence between the Provincial and Indian Governments and the correspondence between the British Government and the controlling authorities in England. That being so, we are told that somehow or other an immemorial usage—the beginning of the immemorial usage the Honourable Member in charge of the Bill has not told us—has crept in, an usage repugnant to the law of the land, repugnant also to the history of the Act and the correspondence, and repugnant also to the express wishes of those whose sanction was necessary to give force to that law. What are the circumstances which gave rise to this legislation? When the question came before the Judicial Courts, these courts, unlike the executive officers who construe the law in the light of the wishes of their superiors, construed the law in the way it ought to be construed, with the result that dissatisfaction has sprung up, and here we are. I respectfully submit that this measure does not come under auspicious circumstances. No doubt I cannot but feel admiration for the Government for the sort of way in which it finds work for this Honourable Council which might otherwise be idle, but I am sorry to say that my feelings of admiration are not always mingled with feelings of gratitude for the way in which work is found for us. The measure before us is divided into two portions. The first portion is that, in future, whether you wish or do not wish to take water, provided water enters into your land, and the Collector thinks that it has benefited you, he shall tax you. That is the first portion of the Bill. The next portion is that no court shall question the propriety or justice of it. These two portions form the present Bill. As was pointed out by my Honourable friend, Mr. Jambulingam Mudaliyar, absolutely no reason has been shown for the latter part and little or no reason for the former part. As regards the former portion, we shall read the preamble of Madras Act VII of 1865. What does it say? It simply says that, in order to get a fit return, the Act was passed on principles of contract. It says: "Whereas, in several districts of the Madras Presidency, large expenditure out of Government funds has been and is still being incurred in the construction and improvement of works of irrigation and drainage to the great advantage of the country and of proprietors and tenants of land, and whereas it is right and proper that a fit return should, in all cases alike, be made to Government on account of the increased profits derivable from lands irrigated by such works." I have not got figures for all irrigation works. Let us take some of the most important irrigation works constructed by Government. Let us take the great irrigation works which

have now converted the deltas of the Gódvári and Kistna, which are now the granary of the Northern Circars, which yield an enormous profit to Government and which have brought enormous prosperity to the people and have also increased the commerce of those districts and this Presidency. I take my figures from the engineering work of Mr. G. T. Walch. Let us take the engineering works of the Kistna delta. The total capital outlay on these works from the year 1852 to the close of the official year 1897-98 is 131 lakhs. I omit the fractions. Total receipts during the same period amount to 452 lakhs. Assumed deduction on account of the ancient irrigation works is 33 lakhs. The balance is rupees 418 lakhs. Total expenditure on charges during the same period is 231 lakhs and net balance is 186 lakhs. That is, the capital outlay is 131 lakhs, while the net balance is 186 lakhs. It is nearly half as much again as the whole capital. It pays 4 per cent., the usual thing charged against these works and in addition 9.5 per cent. This is the return, so far as the irrigation under the Kistna delta is concerned. Going to the Gódvári delta, I take my figures again from the same source. Total capital from 1847-48 to 1893-94 is 128 lakhs. Total receipts amount to 620 lakhs. Again assumed deduction on account of ancient irrigation works is 39 lakhs. Expenditure is 295 lakhs. The surplus is 284 lakhs, more than double the capital outlay during the same period. On pointing out these figures, I ask Honourable Members to see whether, within the meaning of this Act, a fit return has not been made to Government by these large irrigation works. On former occasions I said that I did not understand the facts which underlay the figures of this Government. I beg permission to say so again. In both these tables it speaks of assumed deductions on account of ancient irrigation works. In the one it comes to 33 lakhs and in the other 39 lakhs. Who assumed it? On what materials was it assumed? What was the basis on which the calculation was made? It is indeed very hard to see. It is just possible that if these figures are examined by some experts, the returns made will be far greater than what is shown in these papers. I may here observe that, instead of keeping the figures in this form, if the capital outlay on these works is meant to be discharged on the principle of the sinking fund, after paying 4 per cent. out of the remaining profits, the whole debt would have been extinguished long ago, and yet by some peculiar method, which I do not understand, these debts are kept up. I have no figures here and I have not got papers to show the immense advantage which the Government and the country gain on account of the increased exports and imports. Be it remembered that this is connected with navigation also. Let us not also forget the immense number of men, both Europeans and Hindus, that find employments on these works. If we take all the advantages together, it is hardly fair to say that Act VII of 1865 has not been giving a fair return to Government. Simply to make a statement that some fields, in the midst of other fields, the owners of which have applied for water, have been fraudulently using water and therefore we want an amendment of the law is, in the first place, to go counter to the principles of contract. Next, if there is percolation, I respectfully submit that the Government is not entitled to any return; but if it is more than mere percolation and if the people steal water, that is another thing. They can be criminally prosecuted for it. The Government has various ways of protecting its revenue. It can punish people who carry water without applying for it. In case these people take water clandestinely, you have the remedy both of assessment and punishment criminally. I cannot understand then on what principle the Government ask us to modify the present law and pass a measure which cannot but be repugnant to the principles of equity and justice. Will the Government pass a law that if a person benefits by percolation from a neighbouring

tank he should pay an assessment to the owner of that tank. If my lands suffer, will the Government give me damages? Government says: we do not care what happens between man and man; notwithstanding that we began this work on principles of contract, notwithstanding that we were told so by higher authorities, somehow a practice has crept in, but the courts are wrong in not having recognized that practice and, in the teeth of the letter of the law and the letter of the correspondence, we mean to bring a law which would legalise that practice and give us more money. I submit there is no case made out. As regards non-official members, they have asked for information as to the extent of the land wherein people without applying for water have profited by percolation. As has been pointed out, no answer has been given, and the Government went further and said that it was not prepared to collect the information. If this information is collected, the Government will have the benefit of knowing whether there is really a case calling for investigation. The Government will have to show that the people not merely had the benefit of percolation but raised wet cultivation with such aid. If the people are obliged to raise wet cultivation, that would hardly justify the Government in asking for any assessment. There is a great deal of distinction between a man being obliged to raise wet cultivation and a man being himself willing to raise wet cultivation. The question is whether, if let alone, he would raise wet or dry cultivation. In the Ceded districts, where dry cultivation is generally carried on, wet cultivation would not only yield much less, having regard to the greater labour, the amount of capital required for purchasing cattle, but also occasionally the lands become unfit for cultivation owing to defective drainage and owing to a variety of other causes, and owing to efflorescent soil—what is called chowdoo—the lands become worthless and, in several cases, absolutely useless for any vegetables being grown. If the ryots show any unwillingness to take water, we must see what the causes are which make them *bona fide* believe that supply of water would not be beneficial to them. Without getting these figures that we ask for, it is in the highest degree unfair that the Government should ask, in the name of law, for provisions which would be condemned as altogether arbitrary and opposed to all principles of equity and justice if applied between man and man. I say that no case has been made out for the present legislation. It is extremely unfair that a man should be asked to pay for water which he does not want and which he could not keep away. There is one other thing mentioned. It is said that lands are situated one over the other and, for purposes of drainage, we are obliged to compel certain people—who might be unwilling—to convert their dry land into wet land, and therefore this option is inconvenient. I respectfully submit that this is not the way to do it. Honourable Members are doubtless aware how wet lands are cultivated in India from ancient times. There is such a beautiful system of petty channels which distribute water so that the owner of one land does not depend upon the owner of the adjacent land for water; and in the case of punja lands, these canals are unnecessary. But if the Government choose to construct large water-works, so that punja lands are turned into wet, what they should do is to introduce a net work of small canals which would take water from big works to small fields, so that one man would not depend upon another for water. The present arrangement where it exists is also in the highest degree inconvenient for purposes of drainage, and there could be hardly any option for choosing the time for sowing seeds, or to raise a particular quality of paddy. When punja lands are turned into nunja lands, all that is needed on behalf of Government is not only to construct bigger channels but also smaller channels. So much so that, in the Chinglepu district, when lands are divided, they are divided not latitudinally but longitudinally so that the owners do not depend upon the good-will of their neighbours for water

This would permit of a means of drainage which is better than the other system, whereby the lands are one over the other and the water, if given to the higher field, went to the lower also. This is in the highest degree inconvenient; one man will be dependent upon the good-will and convenience of his neighbour, and this would give rise to want of harmony and provoke quarrels. This is not the sort of remedy for the evil complained of. The greater evil is the latter part of the Bill, that is, the exclusion of the jurisdiction of the Civil Courts. A great deal has been said by my Honourable friends, and I can add very little to the cogent arguments placed before the Council. I respectfully submit that this Bill is brought forward under very unfortunate circumstances. What is the present state of things? The ryots, and Government not complying with the provision of the law, go to Courts, and almost invariably the Government gets the worst of it. What does the Government say? It says that the courts shall no longer interfere with them. Is that fair? Is that the way to educate the country? What can the poor helpless ryots do if they are dissatisfied with the judgment of the court? I respectfully submit that laws are also intended to reform and educate people along with other things. It will be in the highest degree mischievous and demoralising to say: we have had a series of judgments affecting us and we will therefore see that the courts shall have nothing to do with us. No law can be considered more demoralising than that which authorizes you to say because you got the worst when you go before civil courts you could get rid of the jurisdiction of the courts. All that can be said about the analogy of the Income-tax Act has been said, but as regards that Act, I need hardly say there is one curious thing about it. The principle of that Act is sound, but the administration of it is bad. Whether the Act is right or wrong nothing has made the administration more unpopular than the way in which people are assessed to income-tax by subordinates of Government. Year by year the income to Government is raised, especially by acting men, such as Tahsildars. By way of analogy the Government wants to add this legislation to the Statute Book. That is not the way to secure the contentment and peace of the people on the one hand, and let me add the popularity of its officers on the other. I take a higher ground. Apart from the time and manner of choosing it, it seems to me in the highest degree to be a cruel thing, considering that all along both Indians and Englishmen joined together have been asking you to take away more and more of the jurisdiction of the Revenue officers and give it more and more to courts. But when the time comes you say: we will take away more and more from the courts, take it to ourselves, and diminish the jurisdiction of courts. Is that the result of the everlasting prayer of Her Majesty's subjects in India? I would not call it an insult, but it is mocking at our prayer. One important prayer that that much abused and much misunderstood institution—the National Congress—places before the Government, year after year, is that the executive functions should be separated more and more and that the judicial functions should be kept purer and that the two should not be mixed up together. Here the Collector shall declare whether a land has profited or not; but yesterday the Government was pleased to say, in answer to one of the questions, that a Collector has plenty to do. If the Collector has plenty to do, unless you propose to add to the number of Collectors, how can our future Collectors decide the disputes that may arise under the enlargement of the Act? We all know and one of the papers placed at our disposal says as much that whenever a dispute arises between the ryot and the executive officers of Government, in connection with matters of irrigation it is referred to the Public Works Department. The officers of the Public Works Department, who sleep in their tents, miles away from the field, make a statement which is believed; whereas the ryot, who is

always in his fields, is not believed. That is the way in which justice has been administered. We are told that, in the opinion of Government, we will get purer and better justice if left to the discretion of Government than we get from courts! Let us examine how the law is elsewhere. Not only is this Act short but beautifully silent on very many matters. We have a number of Acts on the same subject elsewhere. Bengal Act III of 1876 contains 99 sections. Not only does it place the whole thing in a nutshell, but it makes provision for compensation to ryots whenever their lands have been injured by the flow of water. I asked whether the Government was aware of any instance in which a ryot, whose lands have been injured by flood from irrigation works, has been given compensation, but it is not aware that any has been asked for or paid. The Bengal law, I referred to, allows the interference of courts. There is no such thing as "involuntary flow of water." There is also provision for compensation, so far as any damage from irrigation works is concerned. Then we come to Act VIII of 1873, which is in use in several Provinces—the Punjab, the Central Provinces, and the North-West Provinces and Oudh. It contains no less than 75 sections, and it fully describes the powers and functions of officers and rights and liabilities of ryots. That again has no such thing as water-rate for involuntary flow or percolation. There is one Act in Bombay, Act VII of 1879, which contains 71 sections—the Bombay Irrigation Act. It also deals with the matter exactly like other Acts, except there is one little section which makes an approach to our present Bill. Section 48 of that Act says that if any land derives benefit from percolation or leakage within 200 yards of any canal equal to that which would be given by a direct supply, if asked for, it may be charged water rate. That is the only law which is the nearest approach to the former part of the Bill. That law gives a host of guarantees. It makes provision for remission and for compensation, and then it says that percolation or leakage should be within 200 yards of the canal and that the benefits derived should be equal to that obtained by direct supply—the responsibilities of Government are great—and then and not till then the water-rate can be imposed. But here the Government takes no responsibility. You say, if there is percolation, you will take tax. Suppose my land is injured; suppose I am unable to raise dry crops and raise only wet crops which yield much less than the dry crops, and my neighbour with better lands is able to raise wet crops. If my land is better suited for raising cumbu the Government comes and takes the fees. But when I suffer, who is to pay my compensation? Having regard to the analogy of the law which is in force in the other Provinces and also bearing in mind that the Government has brought no evidence whatever that it has suffered in revenue—in which case means not open to such serious objections can be found to provide against such loss in future—I cannot understand how any member can say "yes" to this law which is now placed before us. As regards the exclusion of the interference of judicial tribunals from such matters, I would only quote two observations and would not take much time. I only wish to show this: that the cry in India that the executive functions should be as far as possible controlled and the jurisdiction of courts should be enlarged and not diminished is not a cry peculiar to India alone and it is a cry existing all over the world. A few statements which I will read will show you that we err in very good company when we say that the jurisdiction of courts shall not be interfered with. One of the great writers on the powers and duties of executive officers writes as follows:—"It is impossible, having regard to the fallibility of human nature and the system of administration to suppose that these officers are invariably in the right, or even to credit them on all possible occasions with purity of motive." Here he is speaking of the administration in England; but if I say that, it is just possible, that

I may bring myself within the four corners of the expanded Indian Penal Code—"Over-zeal for the public service and individual interest will, in spite of all precautions from time to time, exhibit themselves * * * At present there would appear to be nothing like a direct exterior check upon the powers of these officers and the natural tendency therefore is—no matter how carefully any system may be administered—not only for these men to exalt their function as between themselves and the public, but also for them to become a danger of petty magnitude to the community." Then Sir Thomas Munro, speaking of the administration here and comparing it with the administration of Native States, says: "Comparing our internal administration with that of the Native Princes, it may be said that we have perhaps been more successful in our judicial than in our revenue institutions." Your revenue institutions, he admits, are not perfect. We all know the farewell speech of Washington, which ought to be written in letters of gold in the office of every Viceroy and every Governor: "The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of Government, a real despotism,"—it is admitted in this country, that the Government is a despotism, but only a benevolent despotism. "A just estimate of that love of power and proneness to abuse it which predominates in the human heart is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks"—which the Honourable Members mean to take away as against themselves—"in the exercise of political power by dividing and distributing it into different depositories and constituting each the guardian of public weal against invasions by others, has been evinced by experiments, ancient and modern." We all know the approval accorded to the resolution of the Congress on this subject by Sir Richard Garth, the late Chief Justice of Bengal. I place all these facts before you to show that if you pass this law you will neither please the masses nor the educated Indians. Of course you have strength and you can carry it, but I would only remind you of the words that it is sweet to possess a giant's strength but it is not sweet to use it like a giant. In this connection I would once more remind you, from the facts I have placed before you, that you possess enormous wealth obtained from these irrigation works. You propose to raise more money, like the old miser fond of more and more money with the glitter of gold before him, irrespective of his own happiness and of the happiness of those dear and near to him. The more and more that you accumulate, there is the Indian Finance Minister to devour more and more the next day. If you pass this Bill, it may be to the immediate and transient interests of Government but not to the interests of the agricultural classes; if you pass it, it will be in the teeth of opposition, the unanimous opposition here of the non-official members—we may be an infinitesimal minority—who reflect the feelings of the people; if you pass this Bill, you will pass a law that is repugnant to the traditions of the country and the traditions of Government; if you pass this Bill, you will possibly put more and more money into the coffers of Government, but you will set ryots against murnams and village officers and these latter against the ryots, and so great will be the discontent and the cry for justice that the Government will be possibly obliged to reverse this law and pass a new one. In these circumstances I do hope that, once at least, the Government will pay respect to the opinion of Non-official Members and throw out this Bill.

The Hon'ble Mr. H. M. WINTERBOTHAM:—Your Excellency, the drift of the remarks which I made on Saturday, the moral which I intended to convey, was that the boon of irrigation was so precious that every one, who has the good of the Madras ryot at heart, should not seek to defend and maintain factitious, artificial obstacles calculated to thwart and hinder the carrying out of irrigation projects, but should

rather endeavour to facilitate their execution by smoothing the path of Government where artificial and removable difficulties exist. One of those artificial difficulties is the defective state of the law which I have endeavoured to explain, and which enables a ryot to grow a wet crop and to evade payment of water-rate by pleading that the water, with which it was irrigated, was neither supplied nor used. Several of the Non-official Members have, however, evinced their disagreement with my remarks by making a fierce attack on the Bill all along the line, and I have now to repel that attack with such small force as is at my command. I have not much stomach for the fight, for we are all pretty well tired of it; but so strong is my vantage ground, so clear is the necessity of the proposed legislation, that I feel I ought to be able to overcome the opposition. If I do not succeed my failure must certainly be due not to the badness of my cause, but to my want of practice in the field of debate. I will now drop metaphor, and, like the patent American pill, proceed direct to business. The first objection taken by the Hon'ble Mr. Ratnasabhupati Pillai—who I am sorry is not here—and the Hon'ble the Raja of Bobbili is that I have not explained why the Bill is required, now that Government has ordered the introduction of a consolidated wet-rate in the Godavari and Kistna deltas. I am happy to be able to explain this frankly. In these two deltas there is a very extensive area of scattered inam and zamindari land which is irrigated from the anicuts; from which the Government water cannot be excluded; and on which water-cess can only be charged under the provisions of our Bill. I have not got the exact figures, but I shall sufficiently indicate the great importance of the revenue involved if I say that the area of inam and zamindari land irrigated and brought to account in recent years in the two deltas exceeds 300,000 acres. Government desires to place such part of this land as cannot exclude the Government water on the same footing as the adjoining Government land which is in the same predicament. It proposes that the soil should be classified and that the charge for water should be the difference between the dry and wet-rates as determined by the Settlement department. Instead of making the good and bad soils all pay the same, uniform water-rate of Rs. 5 an acre, the new arrangement will introduce a graduated charge under which the poor soils will pay less and the rich soils will pay more. As the law at present stands the inam and zamindari cultivators of the large area from which the Government water cannot be excluded cannot be compelled to pay any water-cess if they choose to contest their liability, and of course the reform which Government contemplates, viz., a graduated rate proportioned to the fitness of the soil for wet cultivation, cannot be introduced. There are also large areas of inam and zamindari land under the other great irrigation systems where our revenue from irrigation is in similar jeopardy, and for the protection of which an immediate amendment of the law is required. The Raja of Bobbili expressed the hope that a very low charge would be imposed on irrigation by involuntary flow. I don't like that term involuntary flow. It has no definite meaning and every one gives it a meaning of his own; but if the Honourable Member means that lands which do not much benefit by the water which they cannot exclude should be charged a low rate, I fully agree, and can assure him that the rules provide for a low charge now and will do so hereafter. The next objection is that raised by the Hon'ble Mr. Ratnasabhupati Pillai, who urges that the time for the introduction of the measure is inopportune, because, as he says, famine stares us in the face. Granting the approach of famine, is not this the very time when Government should look to its resources, and when those cultivators, who do not suffer from the drought, but have been given a beneficial and sufficient supply of water for their crops, should be made to contribute their fair share to the public revenue? Because Government will probably be obliged to remit a great part of its demand in

areas which are famine-stricken, is that a good reason why Government, merely because the law is defective and requires amendment, should also forego its revenue in tracts blessed with abundant irrigation? The fact that Government may be called upon to feed starving thousands affords a strong additional reason, if any were wanted, for pushing on with this Bill at once. The next objection raised is that it is inequitable to levy water-cess in respect of percolation and leakage. I must confess that I cannot understand the opposition of Honourable Members to charging water-cess on percolation where the supply of irrigation thus obtained is beneficial and sufficient. What is percolation? It is the straining, said draining, of water through small interstices. What difference in principle is there if the water passes from one field to the next through a small cut in the bund, or through the porous soil of the bund, provided that in both cases the supply is beneficial and sufficient? If any Honourable Member wants to see an example of irrigation by percolation, I would direct him to the Sholavaram tank, just beyond the Red Hills, which, like the Red Hills tank, is one of the great reservoirs on which Madras town depends for its drinking-water supply. Along the foot of the bund for about half a mile you will see a swamp covered with bull-rushes, caused by the leakage of water through the embankment, and from the swamp flows a considerable stream of water irrigating a large area of wet-land assessed with a consolidated wet-rate. There was a question a year or two ago, whether the supply by percolation was not so excellent as to warrant a general enhancement of the wet-rates. The decision rested on me and, being a soft gentleman, I, of course, let the ryots off. But in many places the supply by percolation is ample for the cultivation of bumper wet crops, and there is no good reason in such cases why water-cess should not be charged. Besides this, there is a very strong and satisfactory reason why irrigation by percolation cannot be exempted. Where the successful cultivation of a large expanse of wet land depends on the water being passed from one field to another through small passages in the field bunds, we should have the cultivators stopping-up these passages in order to prove that the water reached their fields by percolation only, and no end of fighting, quarrelling and trouble would be the result. Perhaps I should here notice what my Honourable friend Mr. C. Vijayaraghavachariar urges—that the Government ought to supply every ryot with a separate water-pipe and a tap so that each ryot may have a separate supply and not depend upon the goodwill of his neighbour. I can only reply to it that it is an absolutely impracticable suggestion and would cost us more lakhs of rupees than the anicuts and all the subsidiary works which we have constructed hitherto. There is no possible way in which water can be so distributed. Then there is another ingenious little stratagem for evading water-cess which has to be circumvented. Water is applied for for a block of land at some distance from a main distributary. Water is then led to the block by a small channel, and thereupon the ryots on both sides of the channel let water out from it on to their fields, and plead that the water reaches their land by percolation, and without their having asked for it. That is not a fanciful case, but is one which has often occurred under the Cuddapah-Kurnool canal and the Rushikulya project. I hope that Honourable Members who have no personal knowledge of the subject will attach weight to my opinion when I urge, as the result of a wide and long practical acquaintance with it, that the power to charge water-rate on crops grown by percolation is essentially necessary. It does not follow that because Government has the power to impose a charge that therefore the power will be always exercised. For instance, under the Kurnool-Cuddapah canal the Government has had for years the right to put on a consolidated wet-rate on all land for which a supply of water is available, but the option which the ryots have long

enjoyed of declining to use the water is still accorded to them. We don't require amendment of the law to give us power to impose a consolidated wet-rate on land under the Cuddapah-Kurnool canal. The Government has full power and it can misuse that power in the way suggested by the Hon'ble Mr. Jambulingam Mudaliyar if it is inclined to do so. In like manner under the Rushikulya project in Ganjam and under the Muniyeru project in the Kistna uplands Government has abstained from exercising its right of charging for the water-supply unless the ryots choose to avail themselves of it. In the present season of drought every drop of water which the Kurnool-Cuddapah canal can supply will be eagerly demanded, and if Government chose to take advantage of the necessities of the ryots, it would be quite fair to raise the price of the water in proportion to the demand, and thus to make up to Government the loss which Government sustains by the slack demand for water in seasons of favourable rainfall. But Government does not bleed the ryots in this way. As a matter of fact the Bill if passed will not enhance the charge for water anywhere except in Godavari and Kistna which are now under re-settlement, and in these two districts, as I have already explained, the only effect of the Bill will be that certain inam and zamindari areas from which Government water cannot be excluded will have to pay the same water-rates as are charged on the Government ryots of the adjoining lands. Perhaps I ought to refer to a statement that the Hon'ble Mr. G. Venkataratnam Pantulu made which was that throughout the whole of the Godavari and Kistna deltas dry or wet crops can be grown at the option of the ryot, and he quoted that from Mr. Clerk. I cannot understand how Mr. Clerk was ever led to make that statement which is absolutely incorrect as the Honourable Member is perfectly aware. If, however, the ryot has the option of growing wet or dry crops, he must be able to exclude the water and if he is able to exclude the water, he is not in the slightest degree affected by the Bill. If he excludes water, then he is exempt from paying water-cess. The Hon'ble Mr. Jambulingam Mudaliyar urged that there was no necessity for amending the Bill which has been in existence for the last 35 years. I have already pointed out that for five and twenty years the law was construed in a way in which the meaning of the words "supply and use" were understood by the Revenue officers and not in the way which was laid down by the High Court in recent judgments. It is not a fact that the law has been in existence unchanged for 35 years. It is only quite recently that the construction put upon the law has forced the Government to undertake the amendment of the Act. If the Honourable Member would refer to the papers in his hands he would see that this very course was suggested by the High Court themselves. He said that if their interpretation of the law was inconvenient to Government, it rested with us to amend the Act, which we are now trying to do. The Honourable Member read an extract from the letter of the Collector of Kistna in which that officer said that 99 out of 100 cultivators had the power to evade the water-cess, if they chose to do so by growing wet crops and saying that water was forced upon them. He immediately went on to say that as very few used that power there was no necessity for the Government to undertake the amendment of the Act. But the Honourable Member knows the proverb that prevention is better than cure. We should meet the disease before it extends and prevent it. He said that the term "percolation" might mean surface percolation or percolation into wells, and he pointed out that water-cess might be charged on irrigation from wells, although the Government have thought fit to exempt irrigation from wells from any special tax. Even where a well receives a supply by percolation straight from a Government reservoir, the Government says: use that water if you like and we will not charge you for it. There is not the slightest intention to alter that rule when the Bill is passed. There is another thing which

perplexed the Honourable Member. Along some of the railway lines there are large pits filled with water which belong to Government. The Honourable Member wants to know whether under this Bill when water is baled from these pits, we are going to charge water-cess. I should like to know how the new law changes our present position. The water from the pits does not inundate the adjoining land spontaneously or as you call it by involuntary flow. If a man bales that water, it is perfectly legitimate for Government to charge water-rate. The passing of this new Bill would not alter the position in the slightest degree. Lastly, I have to deal with the objection that it ought to be left open to the civil courts to decide whether the supply of Government water is beneficial and sufficient. The Hon'ble Mr. Ratnasabhapatil Pillai would seek to draw a distinction between a tax and a cess. He admits that policy may require that the levy of a tax should not be contested by civil suit, but (says he) a cess differs from a tax, because a cess is levied in return for some benefit or service rendered. May I be permitted to draw the inference that in his opinion taxes are levied without any service being rendered in return? Taxation under this view is the process whereby (as is so often told us) the vital fluid is drained from the veins of the long-suffering ryot to enable a host of vampires to fatten in ease and idleness. Well, I deny the alleged distinction between a cess and a tax. Both are imposed in return for services rendered, and there is nothing in the fitness of things which renders it essential that a cess should be paid voluntarily or as the result of a contract. The very object of our Bill is to remove this misapprehension. I have already explained to the Council that throughout the Presidency the general and immemorial rule is that all Government land for which a supply of water for irrigation is available is assessed at a consolidated wet-rate. Can the ryot contest the levy of a wet rate in a civil court by declaring that he does not want the water, or that the supply is not beneficial and sufficient? No; he can't. Such a suit would be barred by section 58 of Act II of 1864. And why should the cultivators of inam and zamindari land be placed in a more favourable position to contest assessments of water-rate than the cultivators of Government land? All that the Bill in effect proposes is that the cultivators of inam and zamindari land and the cultivators of Government land should be placed in this respect on the same footing. If our Bill followed the general practice of the Presidency and declared that a water-cess should be leviable on all land for which a supply of water for irrigation was made available, there would then be no necessity to bar the jurisdiction of the civil courts. The availability of the water would be the single issue, the finding on which would be certain. But we are proposing to make a most material concession in favour of the cultivator whose land is so situated that he cannot exclude the water. We propose that he should not be charged unless, in the opinion of the Collector, the water is beneficial to, and sufficient for, the crop. But, in making this concession, the Government intends that the Collector should be constituted the authority to decide the question whether the water-supply is beneficial and sufficient, subject, of course, to the usual right of appeal to the Board of Revenue. Observe that the question as to whether the water-supply is sufficient and beneficial is not a question of law but a question of fact. As a question of fact, it is not one which could go up to the High Court in second appeal, but the decision would practically rest with the District Munsif, whose knowledge of law would not assist him in investigating how irrigation had affected a crop which would have been harvested long before the filing of the suit. The love of litigation in this Presidency is so strong that many landholders would doubtless find a pleasurable excitement in endeavouring by one plea or another to contest the charge of water-rate; but Government deems it inexpedient that the time of its courts (most of them already overburdened) should be wasted; that its

Revenue officers should be worried; and the public funds spent, in investigating the question whether the Government water with which a crop has been irrigated was beneficial and sufficient. The opinion of the Collector on the point, subject to revision by the Board of Revenue, and in the last resort by Government, is an ample protection to the ryot. If a precedent be wanted for thus barring the jurisdiction of the civil courts, it will be found in the Income Tax Act. No assessee under that Act is allowed to bring a suit to show that the Collector has wrongly estimated his profits, or the sources and amount of his income. The question in both cases is whether the assessee is liable to pay a certain tax, and in both cases it is equally justifiable that the Government should not allow the assessments of its officers to be the subject of a civil suit. I have already touched upon the stale argument that we are insulting the High Court by this legislation, and that we are teaching the people to distrust the judgments of the High Court. As I have already pointed out, the High Court itself has suggested that this amendment of the law is the proper course for us to take. If the interpretation which they have put upon the Act is not that which was intended by Government—it is perfectly clear that the interpretation of the High Court is not what was intended by Government at the time the Act was passed—we must take steps to amend the law. The Hon'ble Mr. Jambulingam Mudaliyar pointed out a Board's Standing Order which forbids charge on percolation. The mischief of the thing is that we cannot keep our published Standing Orders up to date. The Standing Orders from which the Honourable Member quotes are out of date. Ten years ago the Government ordered that where percolation afforded a constant and full supply the land should be assessed at the consolidated wet-rate. If there is any other point which I have omitted I should be glad to speak on it. I think I have touched upon almost all the main objections to our Bill. The Hon'ble Mr. Venkataratnam Pantulu said that if a certain minority of ryots in any irrigated tract refuse to pay water-cess on the ground that water was forced upon them, the Government had in its power to compel them to pay by cutting off the supply of the whole tract, and that this pressure should be brought to bear upon them.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—I said nothing of the kind.

The Hon'ble Mr. H. M. WINTERBOTHAM :—In one of the questions to Government you suggested that the Government might treat a whole tract as a unit, and if they should find a certain number of ryots recalcitrant, they should cut off the water from the whole tract. If you adopt such a procedure, first of all we shall be sacrificing a tremendous lot of revenue, and in the second place it would be unfair to the majority who gladly pay for the water which they use.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—I beg your pardon, I never said that.

The Hon'ble Mr. H. M. WINTERBOTHAM :—I cannot think of any other forcible objection in answer to which I ought to say anything, and I will now therefore ask His Excellency to put to the vote my motion that the Bill be read in Council.

The motion was put to the Council and agreed to.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal demanded a poll, which was taken with the following result :—

Pros—

The Hon'ble Mr. A. T. Arundel.
 The Hon'ble Mr. H. M. Winterbotham.
 The Hon'ble the Raja of Bobbili.
 The Hon'ble Mr. G. Stokes.
 The Hon'ble Mr. G. S. Forbes.
 The Hon'ble Lieutenant-Colonel Sir George Moore.
 The Hon'ble Mr. J. Thomson.
 The Hon'ble Mr. F. A. Nicholson.
 The Hon'ble Mr. G. H. Stuart.
 The Hon'ble Mr. F. J. E. Spring.
 The Hon'ble the Rev. Dr. W. Miller.

Cons—

The Hon'ble M.R.Ry. C. Vijayaraghavachariar.
 The Hon'ble M.R.Ry. C. Jambulingam Mudaliyar.
 The Hon'ble M.R.Ry. G. Venkataratnam Pantulu.
 The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.

The SECRETARY then read the title of the Bill.

The Hon'ble Mr. H. M. WINTERBOTHAM:—I now beg to move that the Bill be referred for consideration and report to a Select Committee composed of the following Members:—The Hon'ble Mr. A. T. Arundel, the Hon'ble Mr. G. Stokes, the Hon'ble Mr. G. Venkataratnam Pantulu, the Hon'ble Mr. C. Jambulingam Mudaliyar, the Hon'ble Mr. G. S. Forbes, the Hon'ble the Advocate-General the Hon'ble Mr. F. A. Nicholson, and the Mover.

The Hon'ble Mr. J. THOMSON seconded the motion.

The motion was put to the Council and agreed to.

His Excellency the PRESIDENT:—Before dissolving the meeting at the completion of the business, I should like to give as much as possible a rough idea as to when we will sit again and the business that we shall then take up. I propose, roughly speaking, to hold a meeting of the Council on Friday the 23rd February, and the business that we hope will then be ready will be the presentation to the Council of the Report of the Select Committee on the Madras Local Boards Act Amendment Bill, the Report of the Select Committee on the Bill to amend the definition of the word "Proprietor" in Madras Act II of 1894, &c., and possibly the Report of the Select Committee on the Bill which has just been read in Council. The business before the Council being now completed, I dissolve the meeting.

H. TREMENHEERE,
Secretary to Government.

Proceedings of a Meeting of the Council of the Governor of Fort St. George assembled for the purpose of making Laws and Regulations under the provisions of the Acts of Parliament, 24 and 25 Victoria, Cap. 67, and 55 and 56 Victoria, Cap. 14.

The Council met at the Council Chamber in Fort St. George at 11-30 A.M. on Friday the 30th day of March 1900.

PRESENT:

His Excellency the GOVERNOR OF MADRAS, G.C.M.G., G.C.I.E.—*Presiding.*
 The Hon'ble Mr. A. T. ARUNDEL, C.S.I.
 The Hon'ble Mr. H. M. WINTERBOTHAM.
 The Hon'ble the RAJA OF BOBBILI, K.C.I.E.
 The Hon'ble Mr. G. STOKES.
 The Hon'ble Mr. G. S. FORBES.
 The Hon'ble Lieut.-Colonel Sir GEORGE MOORE, Kt., C.I.E.
 The Hon'ble Mr. J. THOMSON.
 The Hon'ble Mr. F. A. NICHOLSON, C.I.E.
 The Hon'ble Mr. EARDLEY NORTON.
 The Hon'ble M.R.Ry. P. RAJARATNA MUDALIYAR AVARGAL, Diwan Bahadur.
 The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR AVARGAL, B.A.
 The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR AVARGAL, B.A., M.L., Rao Bahadur.
 The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI AVARGAL, B.A.
 The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU GARU.
 The Hon'ble Mr. G. H. STUART, M.A.
 The Hon'ble Mr. F. J. E. SPRING, C.I.E.
 The Hon'ble Mr. G. G. ARBUTHNOT.
 The Hon'ble the Reverend W. MILLER, M.A., LL.D., D.D., C.I.E.
 The Hon'ble NAWAB SAIYID MUHAMMAD SAHIB Bahadur.
 The Hon'ble Mr. G. L. ACWORTH.
 The Hon'ble Mr. J. E. P. WALLIS.
 The Hon'ble Sir V. BHASHYAM AIYANGAR, Kt., C.I.E., Diwan Bahadur.
 The Hon'ble Mr. W. J. H. LEFANU.

ADDITIONAL MEMBERS.

The Secretary reported that the following gentlemen had taken their seats as Additional Members of Council:—

The Hon'ble Mr. G. L. ACWORTH.
 The Hon'ble Mr. J. E. P. WALLIS, Advocate-General.
 The Hon'ble Mr. W. J. H. LEFANU, Member of the Board of Revenue.
 The Hon'ble Sir V. BHASHYAM AIYANGAR, Kt., C.I.E., Diwan Bahadur.

His Excellency the PRESIDENT:—Honourable Members will now put the questions that stand in their names on the notice paper:—

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal asks the following questions:—

I. (a) Have the Local Boards in the district of Tanjore submitted to Government proposals to abolish the "Board Hindu Primary schools" under their management with effect from 1st April 1900 and replace them by schools on the "fixed grant system"?

(b) If so, what are the reasons assigned for taking this step?

(c) Before they resolved to transfer the "Board Primary schools" to the "fixed grant system," was it ascertained that private agencies would be forthcoming to take over the institutions and work them under the "fixed grant system"?

(d) Has Government received any representation complaining of the abolition of these schools, and pointing out the impracticability of the same being maintained as private institutions under the grant-in-aid system?

(e) Whether Government will be pleased to invite the Boards concerned to re-consider their proposals before sanctioning the same?

The Hon'ble Mr. Stokes:—

I. (a) Yes.

(b) The proposals are stated to have been made in accordance with the recommendation of the officers of the Educational Department.

(c) The Government has no information on the subject.

(d) Yes.

(e) This has been done.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—

II. (a) With reference to my question No. X asked at the Council meeting of the 19th December 1899 regarding the non-roofing of the wooden over-bridges at the junction stations at Tiruválur and Májavaram on the South Indian Railway, and the reply of Government to the effect that there are numerous similar structures all over India without roofs, is Government aware that the wooden over-bridges at Arkónam and Erode have been provided with roofs?

(b) Will Government be pleased to state what other wooden over-bridges on the railways in this Presidency have not been roofed?

(c) Whether there are wooden over-bridges on railways in the other Provinces of India which have not been roofed, and if so, will Government be pleased to name them?

(d) Whether in view of the intense suffering caused by the heat of the roofless wooden over-bridges at Tiruválur and Májavaram junction stations (South Indian Railway) to native females in particular who do not wear shoes, Government will be pleased to re-consider its answer made on the 19th December 1899?

The Hon'ble Mr. Spring:—

II. The matter is not considered to be of such importance to the travelling public as to necessitate the interference of Government.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—

III. (a) Whether income-tax is levied on pensions paid in Native States such as Cochin, &c., to the authorized agents of the pensioners of those States residing in British territories, when such pensioners are unable to proceed to the Native States to receive their pensions in person?

(b) Will Government be pleased to lay on the table the latest orders of your Excellency's Government, and that of the Government of India?

The Hon'ble Mr. Forbes:—

III. (a) The answer to this clause of the question is in the affirmative.

(b) A copy of G.O., No. 718, dated the 25th November 1898, will be laid on the table. No further orders from the Government of India on the subject have been received.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—

IV. (a) Whether the Muhammadan Board schools in the villages of Erradi, Vettalai Mandapam, Puthuvalasai and Sundarapandiyan under the control of the Taluk Board of Ramnad (Madura) were abolished in 1898, in spite of the objections of the Director of Public Instruction?

(b) Whether in the same year thirteen Hindu Primary Board schools were also abolished by the same Taluk Board, and whether this step also was taken by it in spite of the objections raised by the Director of Public Instruction?

(c) Whether in the place of the schools abolished other schools had been started, and if so, whether the new schools are found to be efficient?

The Hon'ble Mr. Stokes:—

IV. The Government has no information on the subject. A report will be called for from the President of the District Board.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—

V. (a) Whether the attention of Government has been drawn to the letters which have appeared in the *South Indian Mail*, of Madura, dated the 27th March 1899 and 22nd January 1900, under the headings of a "Disastrous pastime" and "Jallikattu again"?

(b) Whether it is a fact that, as stated in the first of the above letters, the Sessions Judge of Madura and the High Court of Madras remarked in their judgments in the *Kannivalasupatti* murder case that the practice of *jallikattu* should be stopped?

(c) Whether in view of the serious risks caused to human life, which are enumerated in the above letters, any steps have been taken by the district authorities of Madura to put a stop to this practice?

(d) Will Government be pleased to state what steps it proposes to take in the matter?

The Hon'ble Mr. Stokes:—

V. (a) The Government has now perused the letters referred to.

(b) So far as Government can ascertain, the statement referred to is not correct.

- (c) No, but enquiries are being made by the District Magistrate as to the accidents which are stated to have occurred on the recent occasions referred to in the letters in question.
- (d) The Government does not consider that any action on its part is called for.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

VI. (a) With reference to my question No. XXVI asked at the meeting of the Council dated the 26th January current and the answer of Government thereto, I beg to invite attention to the marginally-quoted observations of the Board of Revenue made in its report on the administration of Abkari revenue for 1898-99 and ask whether the revised rules on the subject of tapping for sweet toddy, published at page 1211 of the *Fort St. George Gazette*, dated the 26th September 1899, have not failed to redress the grievances complained of by jaggery manufacturers and tappers of sweet toddy?

(b) With reference to revised rule 2 of the rules applicable to Gódvári and Tinnevelly, viz., "In these districts licenses will, on application, be issued for drawing sweet toddy from trees in selected topes, such topes not being ordinarily recognized sources of supply to any toddy shop or likely to be required by any fermented toddy-drawer," will Government be pleased to take into its consideration whether the effect of such a rule is not to restrict the scope for the manufacture of jaggery within narrow limits and if so, modify it so as to place the jaggery industry at least on a footing of equality with toddy-making?

(c) Is it a fact that in the district of Tinnevelly a large number of sweet-toddy tappers have within the last few years given up their profession and left for Ceylon, Rangoon and other places, in consequence of criminal prosecutions to which they had been subjected under the Abkari law, and has any representation been made to Government on this matter?

(d) Is it a fact that in Tinnevelly the palmyra trees tapped for sweet toddy are assessed separately, while the lands on which they stand are also assessed, and if so, whether Government sees any reason to revise the assessment?

(e) With reference to clause (b) of this question, is it a fact that the District officers of the Abkari department in Gódvári have made their own subsidiary rules that separate blocks should be set apart for the tapping of sweet or jaggery toddy, and that villages which tap for jaggery ought to go in for at least 500 trees each?

(f) With reference to the fact that, whereas 15,683 tons of jaggery were exported by sea from Gódvári in 1897-98, only 5,446 tons were exported from the same district in the following year (paragraph 76 of the Board's Abkari administration report for 1898-99), will Government be pleased to cause an enquiry to be made into the causes of this remarkable decrease?

(g) Will Government be pleased to consider the desirability of revising the rules referred to in clause (a) of this question in view to removing all restrictions in the matter of tapping for sweet or jaggery toddy, and placing the industry on a more prosperous footing?

The Hon'ble Mr. Forbes :—

VI. (a) The revised rules referred to by the Honourable Member have been in force only since October last in the Madras Town Circle and in the South Canara and Malabar districts, and since January 1900 in the Gódvári and Tinnevelly districts. They have been working smoothly in the former tracts; in the latter some initial difficulty has been experienced in introducing them. Considering the short period during which they have been under trial, it is not possible to say as yet whether they have, or have not, failed to redress the grievances complained of by jaggery manufacturers and tappers of sweet toddy.

(b) The rule referred to is in force in Gódvári and Tinnevelly. The object of framing such a rule was not to limit the scope for the manufacture of jaggery but to concentrate jaggery-tapping, so that the interference of the preventive force with such operations might be minimized as far as possible consistently with due regard to revenue interests. In carrying out the system it will not be practicable to consult the interests of every individual, but it is believed that, on the whole, the system will be beneficial both to the jaggery and fermented toddy trades.

(c) The Government has no information as to the alleged emigration of sweet-toddy tappers, nor has any representation been made to it on the subject. In some petitions complaining of the sweet toddy rules, which were introduced in January last, general allegations to this effect have been put forward, but nothing in the shape of evidence or statistics has been supplied. There has been a steady decrease, of late years, in the number of reported offences against the toddy revenue in Tinnevelly, the number of offences under illicit manufacture of toddy having fallen from 1,358 in 1896 to 782 in 1898; and it is therefore, *prima facie*, improbable that the enforcement of the law has compelled the tappers to resort to emigration in order to avoid it. The tapping community doubtless partake in the emigration to Ceylon, which is characteristic of the district. The Government has no reason to think that the production of jaggery in Tinnevelly has been limited by the Abkari Act; the delay in starting it this year is chiefly due to late spathing of the palmyras owing to drought, and to an agitation founded on ignorance of the new rules.

(d) In respect of palmyras which stand on a ryot's holding and are his property the tree-tax has been consolidated with the land assessment and the trees are not separately assessed. A separate tree-tax is leviable on palmyras which do not belong to the pattadar of the land on which they stand and on palmyras growing on Government waste or poramboke lands.

The Government has no proposals before it for an alteration of the existing system.

(e) It is the fact that rules have been made to the effect stated. The formation of separate blocks for sweet toddy and fermented toddy tapping is an essential part of the system now being introduced and the

restriction referred to in the question has been found necessary in order to ensure that the applications for trees are genuine and not merely intended to annoy and crowd out those interested in fermented toddy tapping and responsible for its revenue to Government.

(f) The Government does not consider that any special enquiry into the matter is necessary. The Honourable Member will see, from the statement on page 28 of the Board's Administration Report for 1898-99, that the number of trees licensed to be tapped for sweet toddy in Gódvári rose from 182,381 in 1897-98 to 229,815 in the next year. In the face of these figures the Government is unable to offer any other explanation than that given in paragraph 76 of the same report that the fall in the export of jaggery by sea must be attributed to the fact that a large part of the jaggery manufactured went inland or was locally consumed. The erection of a distillery at Samalkota in the district has largely enhanced the local demand for jaggery and may stop export entirely.

(g) It is the desire of the Government to afford all reasonable facilities for jaggery tapping and for the development of the jaggery industry, and to do away with all restrictions that time and experience may show to be unnecessary, prejudicial or irksome. The rules referred to by the Honourable Member have been framed with this object, and will be revised, if necessary, after they have been given a fair trial. In providing for the free tapping of sweet toddy it is necessary to prevent the illicit production of fermented toddy and to secure the revenue which is derived from the latter.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

VII. (a) Have there been unpaid honorary village munsifs exercising judicial functions, civil and criminal, in the zamindari tracts, entire inam villages and shrotriems, etc., in this Presidency, and will Government be pleased to state their number districtwar?

(b) If so, how long has this system been in force, and with what results?

(c) Has Government decided to abolish the system of honorary village munsifs, and have any orders accordingly been issued recently, and whether such honorary village munsifs have been directed to hand over charge of their offices to the salaried village munsifs of the adjoining *ayan* villages?

(d) If so, will Government be pleased to state the reasons which influenced it in taking this step?

The Hon'ble Mr. Stokes :—

VII. (a) & (b) In zamindari tracts and inam villages, village munsifs exercising civil functions under Madras Act I of 1889 are ordinarily but not invariably heads of villages who are generally in receipt of emoluments in land or fees allowed either by Government or by the proprietors. This system has been in force from 1816, when Regulation IV of 1816 was passed. The number of unpaid munsifs in each district cannot be stated without calling for a special report which Government is not prepared to do.

(c) & (d) Government has passed no orders modifying the system described in the answer just given. In Tanjore, several whole inam villages have been grouped with adjoining ryotwari villages for purposes of village administration under section 7 of Madras Act IV of 1893, and this entails reduction of the separate establishments of the inam villages. Steps are being taken to introduce chapters III and IV of Madras Act II of 1894 into proprietary estates when heads of villages who are *ex-officio* village munsifs will receive fixed salaries.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

VIII. With reference to the marginally-quoted circular of the East Bengal Railway, will Government be pleased to take into consideration the desirability of similar rules being introduced on the railways within its jurisdiction?

"Travelling ticket-checkers are advised that they have no concern with passengers in female carriages. Ticket-checkers are forbidden either to check the tickets of passengers in these carriages or to pass along the foot-boards of these carriages when the train is in motion."

The Hon'ble Mr. Spring :—

VIII. Government is informed that rules similar to that quoted are about to be adopted on the Southern Mahratta and East Coast Railways.

On the Madras and South Indian Railways, ticket-checkers are never required to travel along the foot-boards of trains in motion, nor are they permitted to enter carriages reserved for females.

No action therefore, on the part of Government, seems necessary.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

IX. (a) Is it a fact that the Calicut-Cannanore Railway work has been suspended, and, if so, under what circumstances?

(b) Has Government received any representation on the subject from the people of Malabar, and is it in a position to state when the work is likely to be resumed?

The Hon'ble Mr. Spring :—

IX. Ample funds have now become available for expenditure upon the Calicut-Cannanore Railway.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

X. (a) Is it a fact that, since the introduction into the district of Tinnevely of the revised rules on the subject of tapping for sweet toddy, the drawers throughout the district have declined to take out the licenses prescribed in the rules and have struck work generally?

(b) Are the owners of the palmyra trees suffering in consequence and has Government received any representations on the subject?

(c) Whether the loss to the district during the present season, as a result of the strike, is between 80 and 100 lakhs of rupees worth of jaggery, which is the average annual output?

(d) What is the approximate number of sweet-toddy drawers in the district of Tinnerelly, and how are these people earning their livelihood after the strike?

The Hon'ble Mr. Forbes :—

- X. (a) There has been no general strike. The toddy drawers in the south of the district objected at first to take out licenses and to set about work and several tapped without license. But their attitude has, it is believed, generally changed when the rules were explained and understood, and, according to the latest reports, licenses have been applied for for 736,278 trees. The number of trees usually tapped for sweet toddy is not known.
- (b) Representations have been made to Government on the subject, but the Government sees no reason at the present moment why either the tapper or the owner should be suffering in consequence of the operation of the rules.
- (c) As sweet-toddy tapping is in progress, the average annual output is not likely to be affected. The value thereof is not known.
- (d) The approximate number of sweet-toddy drawers is not known. There is no existing strike and it is not understood that the drawers have abandoned their profession.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

XI. (a) With reference to clauses (c) and (d) of my question No. XXIX asked at the meeting of the Council of the 26th January last and the reply of Government thereto, will it be pleased to furnish information now, regarding the failure of crops in Tanjore, total and partial, and the probable amount of remissions of kist estimated?

(b) With reference to clause (g) of the same question and the answer to it, is Government now in a position to state what instructions have been issued regarding the suspension of kist in the affected parts of the district?

(c) With reference to clause (h) of the same question asking whether Government will be pleased to issue instructions for the granting of remissions not only in cases where there has been a total loss of crops, but also in cases of partial failure, in which there is only an eight-anna crop and less and the answer of Government to it that as then advised it saw no sufficient reason for the relaxation of the ordinary rules, will Government be pleased to state if any instructions in the matter in the lines of the question have been since issued?

The Hon'ble Mr. Forbes :—

XI. (a) Since the date of the last reply in this Council, the Government has received no further information on the subject.

(b) Neither the Government nor the Board of Revenue have issued any instructions regarding the suspension of land revenue in Tanjore, but it is understood that the Collector has, pending jamabandi, under the general authority vested in him, suspended the collection of wet assessment in cases in which it is practically certain to be remitted.

(c) The answer to the question is in the negative.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

XII. With reference to my question No. XVIII asked at the meeting of the Council held on the 19th December 1899 regarding the location of the head-quarters of the Pattukkottai (Tanjore) division at Pattukkottai instead of at Tanjore, and the reply of Government that the Collector's opinion would be obtained, will Government be pleased to state what decision, if any, has been arrived at?

The Hon'ble Mr. Forbes :—

XII. The Government concurs with the Collector and the Board that it is not expedient under existing arrangements to locate the Divisional Officer of Pattukkottai at Pattukkottai Town.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—

XIII. Considering the comparative smallness of Chatrapur, with only a population of about 3,000, and its distance of about 10 or 12 miles from Berhampur, the head-quarters of the district of Ganjam, where a District Medical and Sanitary Officer and a Civil Assistant Surgeon are posted, will Government be pleased to take into consideration the desirability of transferring the Civil Surgeoncy of Chatrapur to Tuticorin or any other town of equal importance?

The Hon'ble Mr. Stokes :—

XIII. The Government does not consider it desirable to make the change suggested by the Honourable Member.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—

XIV. (a) Will Government be pleased to call for information on the following points in connection with the village of Losarigutlapadu in the Gódavari Western delta, and to lay the same on the table when received :—

- (1) the entire ayacut of the village;
- (2) the extent of forest reserve;
- (3) the extent of grazing ground allotted to the village;
- (4) the extent of land covered by the salt creek and other channels;
- (5) the extent of assessed waste;
- (6) the extent of unassessed waste;
- (7) the extent under ryot's occupation;
- (8) the extent of land paying water-cess;
- (9) name of the source of irrigation;
- (10) distance of the irrigation source to the village;
- (11) description of the crops raised on the area on which water-cess is levied;
- (12) population.

(b) Did the cultivators voluntarily apply for water or were they charged penal water-rates before they made such applications? If so, in what year or years were such penal rates levied and from what year did they commence to apply for water?

(c) Is the whole or any portion of the area charged with water-cess capable of irrigation by direct flow or by lift? At what rate or rates is the water-cess levied on the said area?

(d) Is Government aware that the drainage water around the village is saline and unsuited for purposes of irrigation?

(e) Have the villagers petitioned the Revenue and Public Works Department authorities that the lands on which the water-cess is levied are not liable for the cess, and if so, with what result?

The Hon'ble Mr. Forbes :—

XIV. The Government has no information in regard to the various matters referred to in the question; nor does it see sufficient reason to call upon the Collector to supply the voluminous statistics required or to report on the other points specified without some assurance that a substantial grievance exists in respect of which the ryots of the village have addressed the constituted authorities and failed to obtain the redress to which they deem they are entitled.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—

XV. (a) What is the extent of the land referred to in paragraphs 1 and 3 of the letter of the Collector of Kistna to the Secretary to the Commissioners of Land Revenue, dated 26th February 1897, embodied in Board's Proceedings, No. 143, dated 5th May 1897, as being charged "for what is ordinarily called 'involuntary flow'" in the Kistna delta, and what portion thereof is to be assessed to a consolidated wet rate in the re-settlement to be introduced during the current fasli? Is Government aware that, in several cases referred to by the Collector, applications made for water for irrigation by the cultivators were rejected on the ground of precarious supply?

(b) Have any cases of such "involuntary flow" arisen in the Gódvári delta or under any other irrigation system?

(c) What is the total extent of such land, if any, in this Presidency and the amount of revenue involved?

The Hon'ble Mr. Forbes :—

XV. The Government has not the information asked for in this question. The Honourable Member is referred to paragraph 2 of the Collector's letter from which he quotes and to the answer given to clause (a) of question No. XV asked by the Honourable Member at the last meeting of this Council.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—

XVI. With reference to the answer to the question No. XIV asked by me at the meeting of this Council held on the 26th January 1900, will Government be pleased to state the number of suits that have come from Gódvári, in which "the plaintiffs have generally asserted that the supply of water was not beneficial or had not been used"? When did those suits arise and how did they terminate?

The Hon'ble Mr. Forbes :—

XVI. The subject is under further enquiry, and the Government hopes to be able to answer the question if the Honourable Member will be good enough to repeat it at the next meeting of this Council.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—

XVII. (a) In view of the remarks noted in the margin, made by the Collectors of

- (1) It may perhaps be said that the Kistna water used for purposes of irrigation also enriches the soil—a statement which is not altogether supported by facts. In the sister district of Gódvári, Mr. Brodie says: "Broadly speaking, the best soils have deteriorated and the worst improved, &c."—(paragraph 7 of his letter embodied in Board's Proceedings, No. 43, dated the 12th March 1896). In paragraph 18 of its Proceedings, No. 5022, dated the 25th July 1870, the Board has thus described the condition of the soils in this district that had been for some years under canal irrigation: "The extent to which 'soudu' prevails has already been noticed (*i.e.*, 26-8). The efflorescence is caused by the water liquifying salts in the soil. It renders land barren for years and the suddenness with which fertile *punja* has thus become sterile on being irrigated has alarmed the people. It can be remedied in time by manuring and flooding". The cases in which Government water has been supplied to remove "soudu" are very rare. In paragraph 31 of his report embodied in Board's Proceedings, No. 43, dated the 12th March 1896, Mr. Clerk says: "At the same time some of the rich soils (in the Gódvári district) have deteriorated owing to defective drainage"; and Mr. Meyer says: "I agree with the Tahsildar of Ramachendrapuram that, taking the soil *per se*, the irrigation of the land for thirty years has caused much more loss than gain. In the old days the river in flood seasons deposited fresh silt over an immense tract of country. Now the net work of canals and channels causes deposit of the silt therein and prevents benefit to outlying fields. The remarks of the Ramachendrapuram Tahsildar, who is an honest, able and experienced officer, show that the settlement classifiers have not taken this sufficiently into account, but have classed as 'alluvial' lands that are not really such. Note, too, what this Tahsildar says about the appearance of saline efflorescence, the curse which accompanies irrigation in No. 13th India in some of the lands in his taluk. Also his remark—a just one I think—that the improvement that has taken place in lands formerly swampy is, in some cases at any rate, due to the expenditure of capital by their owners in bunding them. The above sketch applies equally to the Kistna Eastern delta." (Paragraph 8 of the letter of the Collector of Kistna, embodied in Board's Proceedings, No. 40, dated 25th January 1898.)
- (2) I am not aware that the Tanjore ryot has to contend with "soudu" which is the bane of so much of the Gódvári delta." (Paragraph 24 of the letter of the Collector of Gódvári embodied in Board's Proceedings, No. 43, dated 12th March 1896.)

Kistna and Gódvári in connection with the re-settlement of the said districts, and in view of the statement made by the Hon'ble Mr. Grose at the meeting of this Council held on the 18th December 1895 that "it is also found that some areas of rich soils have deteriorated owing to defective drainage, will Government be pleased to state the extent of such areas and whether any and what relief has been afforded in the re-settlement in respect thereof?

(b) Whether Government contemplates taking any measures for preventing the deterioration of the soils in the said deltas? Will Government be pleased to state the extent of "soudu" land in respect of which water has been supplied free of charge during the last five years in the said deltas and to issue the necessary instructions to give effect to the orders of the Secretary of State conveyed in his despatch, dated 7th January 1873, No. 1, in the matter?

The Hon'ble Mr. Forbes :—

XVII. Deterioration of soil may be due to other causes besides defective drainage, notably to bad husbandry.

Putting aside mere assertion, probably the only proof of deterioration which could be offered would be the fact that certain land at the original settlement was put in a higher class than its condition is now found to warrant. It is impracticable to eliminate other possible causes of deterioration, and to locate the exact areas where deterioration is due to defective drainage alone. Where deterioration has occurred relief has been provided for in the re-settlement by a re-inspection and re-classification of the soils, and by dividing the irrigation sources into four classes with rates of assessment diminishing from class I to class IV in proportion to the defects of the source.

Government does not admit any general deterioration of soils, but on the contrary is of opinion that there has been during the last thirty years on the whole an immense improvement due to immunity from the devastation caused by floods, and to constant improvement in the regulation of the water supply. Unremitting attention is devoted by the Public Works Department to curing defects in drainage and to the general improvement of the irrigation system in the deltas; but it

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manuring, rotation of crops and good methods of agriculture are neglected, no Government measures can prevent an impoverishment of the soils. The remedy is in the hands of the ryots and if they do their part there need be no occasion for any fear of deterioration.

In the quotation which the Honourable Member gives it is stated that the cases in which Government water has been supplied to remove "sodu" are very rare. The Government believes this to be the case and that it is ascribable to the fact that, in the area of land reclaimed and brought under cultivation, the extent rendered barren by "sodu" is inconsiderable and only to be found in very small patches.

The Honourable Member's assumption that effect has not been given to the orders of the Secretary of State is unwarranted.

The water-rate rules provide for the free supply of water, if available, for flooding "soudu" land. The Government is not prepared to call for statistics of the area so flooded during the last five years, as it is not apparent that the information would serve any useful purpose.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—

XVIII. (a) Has Government passed any and what orders on the proposals—(1) to transfer the responsibility of distribution of water under certain anicut systems in this Presidency to the Revenue Department, and (2) to reform the agency charged with the distribution of water in the Godáviri and Kistna deltas?

(b) Has the attention of Government been drawn to the remedies proposed by the Gódávári District Association in paragraph 7 of the Memorandum submitted by its President to the Collector, Gódávári, on the 31st October 1898, in view to minimise the existing difficulties in the distribution of water for irrigation?

If so, will Government be pleased to enquire how far the said suggestions are practicable and to take the necessary action in the matter?

The Hon'ble Mr. Forbes :—

XVIII. (a) (1) The Government has decided that the Public Works Department should retain charge of the distribution of water under the large works where that duty now devolves upon that department.

(2) The question of improving the position of delta superintendents is now under consideration.

(b) Yes, the memorandum received the attention of Government when the decision just stated was arrived at. A Special Engineer officer and staff have been appointed for the Kistna district to devise measures for improving the irrigation system.

The Hon'ble M.R.Rv. G. VENKATARATNAM PANTULU Garu :—

XIX. Whether Government has called for the opinions of the District Officers and the Board of Revenue on the Madras Water-cess Act Amendment Bill No. 6 of 1899? If not, will Government be pleased to take steps to obtain their opinions and to lay the same on the table, when received?

The Hon'ble Mr. Forbes :—

XIX. The printed papers with which the Honourable Member has been furnished contain the reports of certain District Officers and of the Board of Revenue indicating the necessity for the proposed legislation and their opinion as to the lines on which it should proceed. The Bill, as drafted, was also forwarded to the Board of Revenue for remarks, and met with its full approval.

In many of the districts where there are no zamindari and inam lands under large irrigation systems, the proposed amendments of Act VII of 1865 will have little or no operation. The suggestion that all District Officers should be consulted regarding the Bill is one which does not commend itself to Government.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—

XX. Will Government be pleased to lay on the table (1) a copy of G.O., No. 583, Revenue, dated 30th October 1896, regarding the "owner's rate" referred to in paragraph 67 of the scheme report, dated 6th July 1897, No. 428, on the re-settlement of the Kistna district, and all connected papers; and (2) a copy of the report of the Deputy Director, Mr. Wynch [Appendix B to Board's Proceedings (R. S., &c.), dated 13th August 1894, No. 333] referred to in paragraph 7 of the remarks of the Collector of Gó dá vá ri on the scheme report on the re-settlement of the Gó dá vá ri district?

The Hon'ble Mr. Forbes:—

XX. The Government is of opinion that no useful purpose would be served by the publication of the papers referred to.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—

XXI. Will Government be pleased to call for the information noted in the annexed statement and to lay the same on the table:—

STATEMENT showing the irrigated area in the Gódávári-Kistna delta according to the latest available village irrigation account No. 8.

[illegible][illegible]

The Hon'ble Mr. Forbes :—

XXI. A statement will be laid upon the table giving the statistics required so far as they are available from the records maintained by the Board of Revenue.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—

XXII. Will Government be pleased to state whether any account was taken of the lands in the Gódvári and Kistna deltas, which had been benefited, by percolation from the sources of irrigation that existed previous to the construction of the anicuts, or by floods, when, in 1865, it was decided to supply the owners of "mamul wet" inam and zamin lands with anicut water, free of separate charge, and whether any and what compensation was paid either then or subsequently for damage caused by the stoppage or diminution of such percolation and by the cessation of floods due to the construction of embankments or other works?

The Hon'ble Mr. Forbes :—

XXII. The Honourable Member's question is a series of assumptions. The Government is not aware whether the construction of the anicuts was attended by any damage to lands by stoppage or diminution of percolation.

Primâ facie, there appears no reason why works designed to protect the irrigable area from floods should cause damage. On the contrary the presumption is that these protective works have conferred enormous benefits. If any damage was caused without compensation being duly paid, the courts have always been open. So far as Government is aware no record has been maintained from which the information asked for can be gleaned.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—

XXIII. (a) Were any and what instructions issued for the localisation of the "mamul wet" inam and zamin lands entitled to free irrigation in the Gódvári delta?

(b) Is it a fact that a Special Deputy Collector was appointed to carry out the said work and that he submitted his report?

(c) If so, have any final orders been passed, and will Government be pleased to lay the papers on the table?

The Hon'ble Mr. Forbes :—

XXIII. (a) Instructions have been issued with a view to the localisation of the "mamul wet" inam and zamindari lands in the Gódvári Delta. The Government is not at present prepared to publish these instructions.

(b) The answer to (b) is in the affirmative.

(c) The work done was found to require revision, and final orders have not yet been passed.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—

XXIV. Will Government be pleased to state whether the principle enunciated by the Secretary of State in his Despatch No. 43, dated 6th July 1860, regarding the assessment of water-rates, is in force in this Presidency, and if so, whether the consolidated wet rates sanctioned by Government in connection with the

"However much the benefits derived by the purchasers of the water may vary, according to the nature of the soils to which they may apply it, its value to the seller, whether the Government or a private association like the Madras Irrigation and Canal Company, remains the same, whatever the purposes may be for which it is used."

re-settlement of the Gódvári and Kistna on since 1893? that principle?

The Hon'ble Mr. Forbes :—

XXIV. The answer to both clauses is in the affirmative. The quotation given by the Honourable Member is a controvertible proposition. The Superintendent is expected to spend eight lakhs of rupees on the means of doing any work, (ii) and is not

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—
XXV. (a) Is Government aware that the Superintendent is paid annually for staff and breeding operations? What is his pay?

*Resolution of the Government of India, Public Works Department, No. 264 I., dated 28th March 1899, published in the *Gazette of India*, dated 1st April 1899.

†Resolution of the Government of India, Public Works Department, No. 247 C.W.J., dated 21st March 1899, published in same. The Superintendent's qualifications of the Stock Inspectors will be determined by the Government. The value of the annual Revenue establishment levied in Bengal † was Rs. 1.88 per acre or 1/100 of the value of the land.

(b) Will Government be pleased to state what proportion of the value of the land is partly engaged in making enquiries and (c) Will Government be pleased to take steps to facilitate a bacteriological survey in the future annual reports on the irrigation works.

The Hon'ble Mr. Forbes :—

XXV. The Honourable Member is requested to state whether any valuable results have been obtained from the examination of the Revenue.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—

XXVI. With reference to the recommendations made in paragraph 247 of their report by the Madras Provincial Committee of 1893 regarding the restoration of the Provincial grants that had been made towards the maintenance of the Imperial roads transferred to the care of the Local Boards, and also with reference to the remarks made on the subject by the Hon'ble Mr. Webster during the debates in this Council in connection with the Bill which became Act V of 1884, will Government be pleased to lay on the table a statement showing the contributions made to the several District Boards for the said purpose, since the Act V of 1884 was passed?

The Hon'ble Mr. Stokes :—

XXVI. The Honourable Member is referred to the General Local Fund Reviews, which have been placed on the Editors' Table.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—

XXVII. With reference to the answer to the question No. XII (a) asked by me at the meeting of this Council, held on the 26th January 1900, will Government be pleased to consider the propriety of extending to those who raise plantain gardens in the Gódvári and Kistna Deltas the concession allowed to those who raise cocoanut plantations of applying for water for every six months in a year—from 1st January to 30th June or from 1st July to 31st December—and of paying a single water-rate for every period of six months for which water is so taken?

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The Hon'ble Mr. Forbes:—

XXVII. The suggestion will be referred to the Board of Revenue.

The Hon'ble Mr. EARDLEY NORTON:—

XXVIII. (a) How many men, women, and children (if any) are there among the Native British subjects who were expelled from the Transvaal and who are now living in Madras?

(b) Where are they lodged?

(c) Are they supported at Government cost?

(d) If so, does the Government allow them any and what fixed allowance per head?

The Hon'ble Mr. Stokes:—

XXVIII. (a) 28 men, 13 women and 19 children under 15 years of age.

(b) In the plague camp near the old Lunatic Asylum.

(c) Yes.

(d) The amount is regulated by the Commissioner of Police. According to the latest report the allowance was 2 annas per diem for each adult, and 1 anna for each child.

The Hon'ble Mr. EARDLEY NORTON:—

presumably that the Government furnish a list showing the names, ages, creeds, benefits. If any does? paid, the courts have no record has been

XXIX. The Government has no information as to the "creeds" of the remaining. A list showing their names, ages and occupations will be laid on the table.

The Hon'ble Mr. EARDLEY NORTON:—

XXX. Is it the fact that in 1896-97 the results of the breeding operations of the Civil Veterinary Department only in the birth of 20 per cent. of mares covered, showed that only 93 foals were procured from 470 mares covered, and in 1897-98 only 83 foals from 547 mares?

The Hon'ble Mr. Forbes:—

XXX. The Honourable Member is referred to the annual reports of the Civil Veterinary Department for the years mentioned. The reports are contained in G.O.s., Nos. 428, Revenue, dated 2nd August 1898, and 497, Revenue, dated 31st July 1899, copies of which were placed on the Editors' Table and may be obtained from the Superintendent of the Government Press.

The Hon'ble Mr. EARDLEY NORTON:—

XXXI. (a) Of the five Stock Inspectors is it the fact that only two have received any training?

(b) Is the work of these Inspectors bacteriological?

(c) Is that work of any practical value in breeding operations?

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(d) Has this work been going on since 1893?

(e) Have its results, if any, been collected and published?

(f) And if so, will the Government make these results accessible to the public?

(g) Does the Government make any and what provision in the Civil Veterinary Department for the treatment or prevention of contagious diseases?

(h) Is it the fact that though the Superintendent is expected to spend eight or ten months in camp (i) he has not the means of doing any work, (ii) and is not permitted to make any alterations?

(i) What is the amount allotted annually for staff and breeding operations?

(j) Of what does the staff consist and what is its pay?

The Hon'ble Mr. Forbes:—

XXXI. (a) The examination qualifications of the Stock Inspectors will be found set out on pages 23 and 24 of the annual Revenue establishment list for 1900, copies of which can be obtained from the Superintendent of the Government Press.

(b) The Stock Inspectors have been partly engaged in making enquiries and accumulating data with a view to facilitating a bacteriological survey.

(c) Not directly.

(d) The answer is in the affirmative.

(e) & (f) The Government cannot say that any valuable results have yet been obtained. The present Superintendent is examining the reports of the Stock Inspectors, and if the Board of Revenue finds itself in a position to publish any useful information it will do so.

(g) Various pamphlets and notices describing the chief diseases and the most approved methods of treatment have been published and circulated from time to time; the necessity of segregation is constantly preached; and the Superintendent and Stock Inspectors generally visit the locality where any severe outbreak of epizootic disease occurs and give the ryots the benefit of their advice. Sick animals are treated or prescribed for when the ryots desire it, but no compulsion is used. It is under consideration to institute a series of experiments in prophylactic inoculation.

(h) The Honourable Member's questions are not understood.

(i) & (j) The Honourable Member is referred to the Civil Budget Estimates.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—

XXXII. Is it a fact that Colonel A. W. Smart, R.E., on special duty in the district of Tanjore, has, in view to prevent and utilize for agricultural purposes the wastage of the Cauvery water in that district, made certain definite proposals? If so will the Government be pleased to place on the table the papers connected with the proposed scheme, together with the orders, if any, passed thereon by the Government?

If final orders have not yet been passed thereon, will the Government be pleased to consider the desirability of giving an opportunity to the public to express their views on the scheme before the Government finally disposes of the question?

The Hon'ble Mr. Stokes :—

XXXII. Colonel Smart has proposed the construction of a reservoir on the Cauvery, but has not drawn up any detailed scheme. The only scheme fully investigated is the Bhayani project which has been recently examined by the Inspector-General of Irrigation, and he will shortly communicate his views when orders on the project will be passed by Government.

The Government cannot comply with the request to publish the papers before orders are passed.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—

XXXIII. (a) In reference to Rule No. 19 of the "General conditions applicable to all abkari and opium licenses," published in the notification of the Board of Revenue, No. 15, dated 31st July 1899, viz., "no liquor, opium or intoxicated drugs shall be sold either below or above such minimum or maximum prices as may be fixed for sale of the same in accordance with the law for the time being in force," will the Government be pleased to state the policy involved in that portion of the rule which imposes on licensees a restriction as to the maximum price?

(b) In framing this part of the rule, did the Government consider the provisions of the Madras Abkari Act I of 1886 contained in section 29, clause (f), under which the Governor in Council is given power to frame a rule to fix the minimum price and the fact that no similar provisions of the Act exist as to the maximum price?

(c) Will the Government be pleased to state what is "the law for the time being in force" referred to in the rule under which the Governor in Council has power to prescribe the maximum price above which licensees are forbidden to sell liquor, opium and intoxicated drugs?

The Hon'ble Mr. Forbes :—

XXXIII. (a) The policy involved in the rule is to prevent the vendor from enhancing the price to the consumer so as to tempt the latter to resort to illicit practices.

(b) & (c) Section 29, clause (f) of the Abkari Act, which the Honourable Member quotes, confers the power to fix a minimum price with reference to a "local area". The authority to impose upon persons licensed to sell, a condition limiting the selling price will be found in section 16 of the Act under which the Government may attach any such conditions as it may deem fit to the grant of the privilege of sale.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—

XXXIV. Will the Government be pleased to state how many shops have been opened and are now in existence in the mufassal in the vicinity of the shops of the licensees, by virtue of Rule No. 12 of the said "General Condition" of sale?

The Hon'ble Mr. Forbes :—

XXXIV. The Government is not in possession of this information and its compilation for all the districts of the Presidency would involve much labour.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—

XXXV. Has the Government received a petition from one P. Sriramulu, lately employed as Salt Sub-Inspector, praying for the revision of the order passed on him departmentally? Is it a fact that in this petitioner's case one and the same officer took part in the original investigation and decision as well as in the appeal?

The Hon'ble Mr. Forbes :—

XXXV. The Government has received a petition from P. Sriramulu, late a Sub-Inspector in the Salt, Abkari and Separate Revenue Department, containing a second appeal against his dismissal from Government Service. The Government finds that the case was first reported on by Mr. Leggatt as Assistant Commissioner to Mr. Merriman, the Deputy Commissioner. Mr. Merriman decided to dismiss the Sub-Inspector and left a note to this effect on record but was unable to issue a formal proceedings before he handed over charge of his office to Mr. Leggatt. The formal proceedings dismissing the Sub-Inspector therefore issued in the name of Mr. Leggatt.

The Sub-Inspector's first appeal lay and was made to the Board of Revenue who rejected it.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—

XXXVI. Has the Government received a memorial from the inhabitants of Tiruppattur, in the Salem district, alleging that those of them, who, in obedience to the orders issued by the authorities when the plague appeared in that town had left their houses, have been exposed to several troubles and loss and oppression? Will the Government be pleased to direct an investigation into the grievances alleged by the memorialists?

The Hon'ble Mr. Stokes :—

XXXVI. A memorial from the people of Tiruppattur has been received and already disposed of. A copy of the order issued thereon will be furnished to the Honourable Member.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—

XXXVII. Is it a fact that the Committee of the Pariah Mahajana Sabah of Madras sent to the Government a petition, dated the 21st October 1898, in which they complained that the orders of the Government as to the admission in schools of Panchama pupils on favourable rates of school-fees have not loyally been given effect to in several institutions in Madras? If so, has the Government directed an investigation into the truth of the allegations made in that petition? Will it be pleased to state what orders it has passed in the matter and place the papers on the table?

The Hon'ble Mr. Stokes :—

XXXVII. The first part of the question is answered in the affirmative. The allegations made in the petition were considered by the Director of Public Instruction to be unfounded and his report on the subject was communicated to the petitioners. The cover containing the communication, however, was returned by the Post office as unclaimed. The order of Government on the petition referred to will be communicated to the Honourable Member and placed on the Editors' Table.

ACT ASSENTED TO BY HIS EXCELLENCY
THE GOVERNOR.

The Hon'ble M.R.Ry. G. VENKATARAMAN PANTULU Garu :—

XXXVIII. (a) Will Government be pleased to lay on the table the information noted in the following statement?—

Name of the delta.	Extent of land on which consolidated wet rate has been imposed in the revision settlement (1900).			Extent of occupied land respecting which option to take or refuse water is still allowed.								
	Extent under wet cultivation for five consecutive years.	Extent from which in the opinion of the Settlement Officer, Government water cannot be excluded.	Total.	Irrigable.				Not irrigable.				Total of columns 8 and 12.
				Ryotwari.	Inam.	Zamin.	Total.	Ryotwari.	Inam.	Zamin.	Total.	
1	2	3	4	5	6	7	8	9	10	11	12	13
Gódavari delta..	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.
Kistna delta ..												

(b) With reference to the extra charge of one rupee per acre sanctioned to be levied from the owners of the lands in the Gódavari and Kistna deltas, to whom the option is still allowed, "in consideration of the administrative inconvenience caused thereby" (paragraph 13, G.O., No. 436, Revenue, dated 7th July 1899), will Government be pleased to state if any reports have been received from local officers complaining of such inconvenience since the option was originally granted; if so, will Government be pleased to lay the said reports on the table?

(c) In view of the free option granted to the cultivators by the despatches of the Secretary of State for India, No. 81, dated 24th November 1863; No. 4, Public Works, dated 11th January 1870; and No. 1, dated 7th January 1873; and, in view of the fact, that under existing rules there is little of inspection work and that the Public Works Department have had constantly to refuse water on the ground that they cannot guarantee the necessary supply (paragraphs 51 and 52 of the remarks of the Collector of Gódavari embodied in Board's Proceedings, No. 43, dated 12th March 1896), will Government be pleased to reconsider its orders and to cancel the said extra charge?

The Hon'ble Mr. Forbes :—

XXXVIII. (a) The information is not at present available.

(b) & (c) The answer is in the negative.

ACT ASSENTED TO BY HIS EXCELLENCY THE GOVERNOR.

The Secretary reported that the Bill to amend the Madras Coffee-stealing Prevention Act, 1878, which had been passed by the Council at the meeting held on the 27th January last, had received the assent of His Excellency the Governor on the 16th instant.

BILL TO AMEND MADRAS ACT VII OF 1865
(IRRIGATION CESS).

PETITIONS, &c.

The Secretary reported the communication to the Select Committees concerned of the following papers :—

G.O., No. 7, Legislative, dated 31st January 1900.

" " 9, " " 9th February "

" " 11, " " 12th " "

" " 12, " " 13th " "

" " 13, " " 15th " "

" " 15, " " 14th " "

" " 16, " " 21st " "

" " 17, " " 23rd " "

and to the Honourable Members of the Legislative Council of the following :—

G.O., No. 19, Legislative, dated 28th February 1900.

" " 20, " " 2nd March "

" " 21, " " 5th " "

" " 22, " " 7th " "

" " 24, " " 16th " "

" " 28, " " 24th " "

" " 31, " " 27th " "

" " 32, " " 28th " "

" " 33, " " 28th " "

The Secretary also reported the receipt from landholders, &c., of Tanjore, Kistna, Gódavari, Chingleput and Madura districts, of a number of communications, about 230 in all, on the subject of the Irrigation Cess Bill, all of which were either copies or translations of the petitions read in G.O., No. 11, Legislative, dated 12th February 1900, or G.O., No. 12, Legislative, dated 13th February 1900, or were in the form of the papers (printed and laid on the table) requesting His Excellency the President to restrain the Council from proceeding with the Bill.

He also said that a telegram from Salem had since been received praying that the passing of the Bill might be deferred, as also two more petitions from the landholders of Mudikondan and Konerirajapuram, Tanjore district, requesting that the Bill as amended by the Select Committee might not be passed into law.

The Secretary also laid on the table copies of the following Government Orders with reference to the answer given to question No. VII asked at the meeting of the Council held on the 26th January last :—

G.O., No. 840, Revenue, dated 11th December 1899.

" " 4, " " 3rd January 1900.

" " 102, " " 6th February "

and the statement referred to in the answer to question XXI above.

BILL TO AMEND MADRAS ACT VII OF 1865 (IRRIGATION CESS).

The Hon'ble Mr. H. M. WINTERBOTHAM in presenting the report of the Select Committee on this Bill and moving that the Bill as amended and the report be taken into consideration at once, said: Your Excellency, I have the honour to present to the Council the report of the Select Committee on the Bill to amend

Madras Act VII of 1865. The report of the Committee is brief, and speaks for itself. The chief additions which we have made to the Bill are (1) that it shall not operate retrospectively to sanction any new assessment for any period earlier than the current fasli, (2) an explicit declaration that no water-rate shall be charged on ryotwari land classed and assessed as wet, in respect of its irrigation from its regular authorised source, and (3) that any rules made under the Act shall be published before coming into operation. The most important omission is that of the section by which it was proposed to bar the jurisdiction of the civil courts. The proposal was no doubt a stumbling block and rock of offence to those who consider that it is to the interest of the republic that there should be no end of suits, and I have been converted to the opinion that the retention of the section is not indispensable. Honourable Members have no doubt perused the minutes of dissent which have been appended to the Select Committee's report by my Honourable friends Mr. Venkataratnam Pantulu and Mr. Jambulingam Mudaliyar. That they would both oppose the Bill tooth and nail was of course a foregone conclusion in the face of the speeches which they made at our last meeting, when the Bill was introduced. But I hope that all Honourable Members have noticed that neither gentleman has attempted to controvert the statements of fact which demonstrate the necessity for this legislation, as set forth in the Statement of Objects and Reasons and recapitulated by me when introducing the Bill. Both gentlemen have indeed been good enough to allow that the grounds put forward for legislation are more or less plausible, and neither gentleman has suggested how our revenue from water-rate is to be protected unless the Act be amended in the manner proposed. They will doubtless have a good deal to say on the subject of the amendments of which they have given notice, and the only point on which I think I need now touch is the apprehension expressed by the Hon'ble Mr. Jambulingam Mudaliyar that our Bill (even if it be not designed for that purpose) may operate to bar the right of a proprietor to sue Government, if Government injures his land by inundating it without his consent. How the Honourable gentleman can profess this apprehension I do not know. He is a Master of Laws, and must understand the construction of statutes better than I do, but I must nevertheless declare to him that his apprehensions are perfectly groundless. If land is in truth injured by being supplied with the means of irrigation no one wishes to deprive the owner of his right to compensation. The remedy open to Government for the check of vexatious suits lies in its power to acquire the land under the Land Acquisition Act. But how does our Bill interfere with the owner's right of action under the general law? It interferes with it in no way. All that the Bill provides is that if the land-owner, instead of suing Government, prefers to grow a crop and irrigate it with the Government water, and if the supply is in the Collector's opinion beneficial and sufficient, then the circumstances justify the water being charged for at such general rates as Government may from time to time prescribe. And what can be fairer or more reasonable? Is it not a legitimate inference that the land-owner makes no claim for compensation because he knows that enquiry will disclose benefit and not injury, and when he grows a crop by means of Government water wherein lies the hardship of making him pay the prescribed water rate? I think that I ought to say a few words regarding the numerous memorials against the Bill which have been pouring in from various parts of the Presidency. In one or other of the memorials the proposed legislation is denounced as short-sighted, unjust, iniquitous, oppressive, unnecessary, impolitic, revolutionary, a flagrant departure from established traditions and contrary to all principles of fairness and equity. Never, I should think, was a Bill more

liberally abused by persons who are for the most part obviously under a complete misapprehension as to its scope and operation. The memorialists would, I suppose, urge that it is too late to cry out after you are hurt; but as a matter of fact most of them are crying out when there is not the least prospect, or possibility, of one of them being hurt. The Bill will not apply to ryotwari land assessed and classified as wet, yet we have a crowd of Government ryots addressing us from Tanjore, Trichinopoly, Chingleput and elsewhere with entreaties that we will not crush them by enhancing the heavy assessments under which they already groan. One memorial from Tanjore expresses the apprehension that if the proposed measure is passed "not even an inch of land in the Tanjore delta will escape the water cess." It would be nearer the truth to say that not one inch of ryotwari land throughout the Tanjore delta will be affected by the Bill, and so far as I know no zamindari or inam land will be affected either. Is it not pitiful that the fears of ignorant ryots should be worked upon, and that an agitation based on a complete misconception of the scope of the Bill should be got up, in this way? Some of the memorials are of course drawn up with great skill and ingenuity by very able hands. Some memorialists urge that if the Bill is passed into law water for irrigation will no longer be an article sold on commercial principle. Water never has in this Presidency been sold by Government on commercial principles. If it were so sold its price would rise in times of scarcity, and in a year of drought, like the present, Government could easily obtain for its water four or five times the ordinary acreage rate. Others object that the law will no longer leave the cultivator an option as to whether he will take or refuse water. The answer is that full option to take or refuse water is left in every case where that option can be exercised. In numberless cases, owing to the situation of the land in the midst of a plain of wet cultivation, the cultivator cannot exclude the water. In such case the Bill provides that the cultivator shall not be exempt from water-rate if he irrigates a crop with the water and if in the opinion of the Collector the irrigation is beneficial and sufficient. Others urge that percolation often does more harm than good. The answer is that in such case our Bill does not sanction the charge of water-rate. Others urge that it is unfair to charge for beneficial percolation without providing for payment of compensation when it is injurious. The answer is that our Bill is merely a fiscal measure and does not interfere with the ordinary law under which every man has a right of action for injury done to his property. If we had provided that claims to compensation should be settled by the Collector instead of by the civil courts, what a fine outcry would have been raised at such an interference with the jurisdiction of the ordinary tribunals! Others urge that the Gódvári and Kistna water-works already yield a handsome return, and that Government ought not to hanker after more. The answer is that the amendment of the law is required to protect the existing revenue. As the law now stands any cultivator, whose land is so situated that he cannot keep out the water, can use the water to irrigate his crop and can at the same time evade payment of water-rate by pleading that the water is forced upon him. I fear I have already tried the patience of the Council by what may be regarded as vain repetitions, and I shall unavailingly have yet to speak several times with reference to the numerous amendments of which notice has been given. I will therefore conclude my remarks by moving that the Bill as amended by the Select Committee be taken into consideration at once.

I may say I have myself one amendment to make, of which I have not given six days' notice, but which I have been permitted by His Excellency to propose. I have

had it printed and circulated it to all the members, and they will see what it is that I actually propose. I will propose it at the proper time.

The Hon'ble Mr. W. J. H. LEFANU seconded the motion.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—Your Excellency, under rule 4 of the Council rules, I rise to move that the consideration of this Bill and the Select Committee's report be adjourned. I hope I am not inconveniencing the Government in any way, and my only excuse in interposing with this motion is the importance and far-reaching consequences of the measure before the Council. I do not think that any measure in the annals of this Honourable Council has evoked so much alarm and so much opposition as the one we are assembled here this morning to discuss. There is not a hamlet, there is not a cottage, there is not a hut, and there is not a farm, throughout the length and breadth of this vast Presidency, which will not be immediately affected in some shape or other by the proposed law. In the case of consolidated wet assessments the measure will not affect, but the measure will certainly affect the dry lands. The Bill was introduced barely two months back, and the Secretary has reported that no less than 230 representations have been received by Government from various districts requesting your Excellency to drop the measure. Out of fourteen papers announced in the agenda to have been communicated to the Select Committee, only papers 1 to 8 were so communicated before the Select Committee drew up its report on the 24th of the last month. The other six papers are all dated from and after the 28th February, and therefore could not have been considered by the Select Committee. Among the papers not communicated at all to the Select Committee are no less than 230 communications from the landholders of Tanjore, Kistna, Gódvári, Chingleput and Madura districts. Six of fourteen papers communicated to the Select Committee, and the whole batch of these 230 communications have not been communicated to the Honourable Members of the Council. Among the papers communicated neither to the Select Committee nor to the Council is one document which is an exceedingly valuable one, drawn up with great ability and cogency of reasoning. It is a document which deserves to be read carefully by every member of this Honourable Council. It cannot be said, in the language of the Secretary to the Council used in the agenda, to be a copy or translation of the petitions read in G.Os. of the 12th and 13th February. I refer to the memorial submitted to your Excellency in Council on the 22nd of this month by the Madras Landholders' Association, of which the Raja of Venkatarigiri is President, and most of the leading zamindars and landholders in the Presidency are members. In this connection I may also refer to certain important official documents bearing upon the matter which ought to have been placed in the hands of the Council, but which have not been. I refer to the despatches of the Secretary of State of 1863, 1870, and 1873, and that of the Government of India of 1865, among others. I may also observe that the opinions of the District authorities have not been obtained and communicated to the Council. The Bill was introduced on the 26th January, and, in less than a month, the Select Committee closed its sittings and submitted its report on the 24th February. In a matter like this, I venture to think that the Select Committee ought to have allowed sufficient time to the public to send in their representations, and as a matter of fact the bulk of the representations, and the most important of them have been received by Government since the Select Committee closed their report. There has been no urgency in the matter, and I believe that no Honourable Member will dispute the position that legislation in haste

should be deprecated as a rule. In this particular instance there has been absolutely no justification for legislation, much less for any urgency. It was only the other day, the day on which this Bill was introduced, the Honourable the Revenue Secretary to Government, in answer to an interpellation by my Honourable colleague, Mr. Jambulingam, said that there has been little or no loss of revenue by the absence of a law of the kind now proposed. Before concluding I may observe that till I saw the printed agenda within the last two days, I was under the impression that the Select Committee's report alone would be presented this day, as it was so notified to us in the Secretary's demi-official to us of the 9th instant. In these circumstances, I feel it my duty to move the postponement of the consideration of this Bill till the next Madras session of the Council.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—Your Excellency, in seconding the proposition so ably moved by my Hon'ble friend Mr. Ratnasabhapat Pillai, I am fully aware of the objections that may be raised to such a course being followed. I venture at the same time to think that I am justified in acting as I do. There is one point which cannot be lost sight of. It is this. The Statement of Objects and Reasons of the Bill, paragraph 6, says, "It is therefore necessary to amend Madras Act VII of 1865. First, it is necessary to provide for the levy of water-cess in cases where Government water reaches a cultivated field with beneficial effect otherwise than after application by the cultivator. Clause I, sub-clause (1) of the Bill is intended to effect this object." In his speech introducing the Bill, the Hon'ble Mr. Winterbotham said, "The principle of the Bill may be summed up in a sentence as follows. Where a crop is grown with the aid of Government water and where in the opinion of the Collector the irrigation is beneficial and sufficient, it shall be open to Government to charge such water-rate as it thinks proper, and no assessment of water-rate shall be liable to be contested by civil suit. I am not at all sure that the Bill does not concede too much in favour of the ryot. The Council will observe that it is proposed not to charge water-rate if the landholder chooses to leave his land uncultivated." In the crucible of the Select Committee, the Bill has undergone a great transformation. The report of that body, paragraph 2, states "under some of our irrigation systems, private rain-fed tanks are, without the application of the owner, replenished by direct or indirect flow of water from a Government source of irrigation, and the improved supply thus made available is utilised for extending the mamúl wet ayacut under the tank. To make it clear that water-cess is chargeable for such extension of wet cultivation, even though the Government water and the tank water may be mixed so as not to be distinguishable each from each, we have added after the word 'irrigates' the words 'or is utilised for the purpose of irrigating', and after the words 'so irrigated,' the words 'or benefited'." The effect of the introduction of the additional words would be that under the Bill as it originally stood, cess was leviable when water from a Government source of irrigation "reaches a cultivated field." Now if, in the opinion of the Collector, any private tank, well or pond is replenished by a direct or indirect flow of water from such source, cess can be imposed. This seems an unwarranted and unjustifiable enlargement of the scope of the Bill.

The Hon'ble Mr. H. M. WINTERBOTHAM:—May I ask whether the Honourable Member is speaking on the motion for adjournment?

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—Yes.

The Hon'ble Mr. H. M. WINTERBOTHAM:—But you are speaking on the amendments.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—I am showing that the Bill now presented to the Council is altogether different from the one referred to the Select Committee and this point I wish to bring to the notice of the Council, so that we may have more time to consider the effect of the changes made.

His Excellency the PRESIDENT:—I understand you to mean that these are the arguments in support of the motion for adjournment.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—Yes, Sir.

The Hon'ble Mr. H. M. WINTERBOTHAM:—I must really correct you. The paper that I see in your hand is not a Bill, but was merely circulated to show the nature of an amendment that I propose hereafter to move in substitution of the one you are moving.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—I say, if you compare the Bill introduced into this Council and referred to the Select Committee with the one submitted by the Select Committee to this Council, you will find that the latter is altogether different from the former. The Select Committee has enlarged its scope a great deal and Honourable Members and the public should have sufficient time to understand the effect of the changes made.

The Hon'ble Mr. W. J. H. LEFANU:—I only rise to urge that the question raised by the Honourable Member may be put to the vote at once and disposed of. I cannot conceive how legislation could progress in this Council if such arguments as those that have been put forward should be allowed to be laid before the Council as reasons for postponement. You are told that the Bill now before us is not like the one referred to the Select Committee. I presume the object of appointing a Select Committee is to make amendments, and it would be an extraordinary thing if the Bill before us should be exactly the same as that submitted to the Select Committee. I also observe that Honourable Members are called upon to pause and give consideration to the 230 papers which have been received from the landholders of the Tanjore, Kistna, Gódvári, Chingleput and Madura districts. I venture to say, Your Excellency, that it would be within the recollection of many members of this Council how petitions of this kind are brought forth in legions. The Government is charged to a certain extent with being hasty in its legislation and its administration. The settlement of the Gódvári district, in which the Honourable Member who last spoke is specially interested, has been obstructed and delayed by tortuous recommendations of all descriptions for four years. If we are to delay now and take into consideration these 230 petitions, I have not the slightest doubt that the ingenuity of gentlemen who engineer these agitations would produce 230 more petitions of different kinds when we meet next. I draw the attention of Your Excellency and the Council to the fact that these petitions emanated only from the five districts of Tanjore, Kistna, Gódvári, Chingleput and Madura. Tanjore, Kistna and Gódvári are delta districts, Madura is the Periyár district, while the district of Chingleput, though different from the other four, is, for special reasons, a district in which the "gains of learning" are invested. Wherever the gains of learning are invested, the brains that produce that learning will always be forthcoming, to throw difficulties in the way of the Government to prevent it from arranging its fiscal matters in the speediest and the most just manner, having regard to the interests of the public. These interests are

not those of merely the ryots of these districts, but the interests of the whole of India, which has a right to get what it fairly can. I hope I am in order in saying that I cannot help regarding the agitation that has been going on for the last five years as a studied and engineered obstruction. If that sort of obstruction is allowed to go on, and brought forward as a reason for postponing the Bill, I doubt whether Your Excellency's residence in Madras will see this Bill disposed of. It is from the most wealthy and prosperous part of the country that the main opposition comes. If the gentlemen who worked up these representations were to confine themselves to the case of dry lands I am not quite certain whether I might not support them. But this opposition proceeds from the favoured delta tracts. I can only say that I consider them to be very much under-taxed. I believe the tax which the Government is now levying in the Kistna and Gódvári deltas could be doubled, and that, if the demand in those tracts were raised by 50 per cent., it could be paid without inconvenience.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—I rise to a point of order. I do not think this is a speech on the motion for adjournment.

The Hon'ble Mr. W. J. H. LEFANU:—I venture to say that this question may now be put to the Council at once and we may proceed to the business on the agenda.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Your Excellency, I think the motion is a very reasonable one. I am sorry to differ from my valuable friend, the Honourable the First Member of the Board of Revenue. One great virtue, as we grow old, is that we brook no contradiction, we hate it. Curiously enough even very able and good men are scarcely exceptions to this rule. It is on some such grounds that I can understand the position taken up by the Hon'ble Mr. LeFanu in calling us obstructionists. Leaving his criticism alone, the attitude of Honourable Members on this side of the table has not been really understood by him. The Bill submitted by the Select Committee is an advance in regard to its principle on the original Bill committed to them and when the time comes, whether it be this day or some other day, I shall show that it is altogether *ultra vires* of the Select Committee to make the amendments or whatever you may call them, which they may have made. They have introduced private tanks and wells and other things. I respectfully submit that the Select Committee being a creature of this Council, the delegates of this Council have absolutely no power to introduce what they have introduced. This new principle has not been before the public and the public have not had the opportunity of criticising this principle. A statement has been made by the Honourable Mover of the Bill that under a misapprehension they have been roundly abused. That is just the reason why the motion before us should be acceded to, so as to enable the people to have time to understand the real scope and effect of the Bill and instead of abusing them they may praise them if they deserve it. On these grounds it seems to me that the motion is an extremely reasonable one. Any contrary course would only stifle criticism. I very respectfully submit that the motion ought to be acceded to.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—I wish to make one or two remarks with reference to the statement that fell from the Hon'ble Mr. LeFanu. It is said that this motion ought not to be acceded to because the ground put forward in support of this motion, namely, that a large number of petitions have been received and that they require consideration is not worth consideration, and that all these petitions emanated from the five districts of Gódvári, Kistna, Madura, Trichinopoly and Chingleput, the districts where the "gains of learning" are invested in

lands. It is surely persons with brains that can manufacture these arguments and I will put that as the reason for asking this Council for an adjournment in order that these petitions might be considered. It is not from illiterate persons and aborigines that you have got these petitions, but it is from men with brains who are well qualified to deal with this extremely complicated and technical matter. The fact that the men of these five districts possessing brains, the gains of whose learning have been invested in land, should move in the matter, examine the scope of the Bill, and make representations is one that requires very careful consideration. Then another statement that was made is that this is an agitation and an obstruction engineered by persons, not satisfactory perhaps. I submit all that we are now concerned with are the reasons given in the petition; we are to see whether these reasons are sound and satisfactory or are such as ought to be rejected. We have absolutely no evidence to make any insinuation that these agitations are engineered by scheming persons or anything of the kind. We have received certain petitions and in them are given certain reasons which we have to consider. It is quite possible as the Honourable Mover has said that all these petitions have emanated from a misapprehension. If it is true—assuming for the sake of argument—that these petitions have emanated from a misapprehension, and if the people of the whole of these five districts possessing the brain power should go wrong, then I think there is something wrong about it that they should fall into a misapprehension. That furnishes the strongest reason why these petitions should be considered so that these persons possessing brains could be informed that they are under a misapprehension and that the fears they apprehended are simply imaginary. It is necessary that time should be given so that the opinion of these people might be set right—so that those persons who have gone wrong or who under a gross misapprehension sent memorials numbering about 230, which must include as many thousands of people, should be set right. It is very necessary that the interests of the people of these five districts should be set right and their misapprehensions corrected.

The Hon'ble Mr. G. STOKES:—I think we may all admit that if it were really a fact that there was any great and important principle involved and that that principle was being rushed through, it would not be proper on the part of Government to push this legislation with any great violence or great hurry. But the fact is that this Bill has practically introduced nothing new. The history of the matter is this:—the old Bill under which we have lived since 1865 imposed a water-rate and it was always understood that the water-rate was payable if the water was used, because it was known that it would be of benefit. But the High Court intervened and ruled that it was necessary to prove the benefit. That is really what it came to. That gave an opening to evade the law as it stands. We do not introduce for the first time a water-rate. We do not introduce any new principle in its application except perhaps it may be said that percolation is a new principle. If it is a new principle, it is an unimportant principle, one which can produce no effect. It has not been applied and it will never be applied. In other respects this Bill introduces nothing new in our revenue system. I cannot see in the least why there should be so much outcry in regard to the passing of this Bill. Any question which really arises from this matter ought to have been debated in 1865. Anybody who knows the history of the revenue system in this Presidency knows full well that this Bill introduces practically nothing new. In so far as there is anything new in it, it is of the smallest application and of very little importance. It seems to me therefore there is really no reason why we should postpone the consideration of this Bill.

The Hon'ble Mr. H. M. WINTERBOTHAM:—I think I must read to the Council one memorial which is typical of the 230 memorials. It has evidently been largely circulated through Chingleput and elsewhere and comes apparently from Kistna and it is to this effect:—

“We, the undersigned, most respectfully pray that Your Excellency will not permit the Members of the Legislative Council to proceed further with the Irrigation Water-cess Bill now under consideration—

The Bill is—

- (1) *illegal*, because it contravenes all past orders of the Madras Government, Government of India and the Secretary of State;
- (2) *unjust*, because it adds to the already heavy land assessment in the Province; and
- (3) *oppressive*, because it gives power to the executive instead of judicial authorities.”

I suppose that out of 230 memorials a great majority of them repeat this memorial and we are now asked to adjourn the consideration of this Bill in order that the Council may consider the grounds herein set forth. I may say that there is one memorial that does not fall within this category. That is the memorial received from the Landholders' Association, dated the 23rd March 1900. It has been communicated to every Member of this Council. I myself read it very carefully, and I do not think that it will justify our postponing the consideration of this Bill.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I did not intend to make any remarks in reply, but I am obliged to make a few owing to the reference made by the Hon'ble Mr. Winterbotham to the typical memorial.

His Excellency the PRESIDENT.—You have already addressed the Council, and I suppose you are speaking in explanation of what you said.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—Yes. The Honourable Member referred to a memorial from the Landholders' Association, an association which represents the whole of this Presidency. The Honourable Member in charge of the Bill did not place that memorial from that influential body in the category of typical petitions. The memorial itself has not been communicated to the Honourable Members.

The Hon'ble Mr. H. M. WINTERBOTHAM:—It has been communicated.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—I got it only this morning.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—It has not reached me even this morning. The fact that it has been communicated only this morning is sufficient reason why time should be allowed to Honourable Members to enable them to go over the grounds set forth in that memorial. The whole thing is properly threshed out there. The Landholders' Association say in the last paragraphs of the memorial:—

“The memorialists have, for want of statistics which would require months for collection, only touched upon a few of the obvious objections to the Bill and the difficulties in the way of enacting a law on its lines; and a very elaborate inquiry seems to the memorialists indispensable before the Government can arrive at a sound conclusion as to the balance of convenience which should decide the question of enacting or abandoning the Bill.

"The memorialists pray that Your Excellency's Government, in view of the extensive hostile criticism which the Bill has given rise to, and which, in their humble opinion, seems convincing, may desist from further proceeding with it in the Legislative Council, or, at any rate, may stay its hand for a period, say of one year, in order that detailed and fully worked-out representations may reach it from all classes of the population which the Bill in its far-reaching consequences must affect, for being duly, graciously and sympathetically considered."

This is a most respectful and humble representation made by the whole Presidency through the person of the Madras Landholders' Association, and I would ask the Council to consider whether this reasonable request of the whole Presidency should not be acceded to. I consider that there is no urgency in regard to this matter. The revenue belonging to Government is not in danger, and the measure can very well afford to wait for another six months. In the meantime the various arguments in the memorial can be carefully considered by the Select Committee as well as by this Honourable Council.

The motion for adjournment was then put to the Council and lost.

The Hon'ble M.R.Ry. P. Ratnasabhapati Pillai Avargal demanded a division. The following was the poll:—

Ayes.

The Hon'ble the Rajah of Bobbili.

" Mr. Eardley Norton.
" M.R.Ry. C. Vijayaraghavachariar.
" " C. Jambulingam Mudaliyar.
" " P. Ratnasabhapati Pillai.
" " G. Venkataratnam Pantulu.
" Nawab Saiyid Muhammad Sahib Bahadur.
" Sir V. Bhashyam Aiyangar.

Noes.

The Hon'ble Mr. A. T. Arundel.

" Mr. H. M. Winterbotham.
" Mr. G. Stokes.
" Mr. G. S. Forbes
" Lieut.-Col. Sir George Moore.
" Mr. J. Thomson.
" Mr. F. A. Nicholson.
" M.R.Ry. P. Rajaratna Mudaliyar.
" Mr. G. H. Stuart.
" Mr. F. J. E. Spring.
" Mr. G. G. Arbuthnot.
" The Rev. Dr. W. Miller.
" Mr. G. L. Acworth.
" The Advocate-General.
" Mr. W. J. H. LeFanu.

The original motion was put to the Council and agreed to.

SECTION 1.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The first amendment which stands in my name is that in lieu of the words "shall be read and construed as if at the time of the passing of the said Act there were and had been inserted in lieu of the said sections the following, viz.," be substituted the following words:—"are hereby repealed."

The object of this amendment is that retrospective effect may not be given to this Bill in the way proposed by the Select Committee. The object of the Bill, as represented by the Select Committee, is that the present law should be read as if it were made 35 years ago in the place of the old law. I submit that neither in the Statement of Objects and Reasons, nor in the speeches made on the last occasion, nor in the Select Committee's report, is any reason given why that should be done. Probably the Select Committee thought that the original intention of the original Bill was this and that it was intended to substitute a more careful language. Whatever it was, reading the Statement of Objects and Reasons and also the Select Committee's report and the speeches made when the Bill was introduced I fail to see why retrospective effect should be given to this Bill as if it were in existence 35 years ago, when, as put by the Hon'ble Mr. Stokes, nothing new is introduced by this Bill. It is not competent for me—I bow to the decision of the Select Committee—to express a doubt on this matter; perhaps we have power to give such a retrospective effect, but I am not aware of any precedent where any one Act, such as the one we are now trying to amend, should be deemed to be as if it never existed and that the present Bill which we are now substituting has all along been in existence from 1865. Let us take, for instance, what is given in the Indian Councils Act of 1892, section 3. I take it as an authority because the Hon'ble Sir V. Bhashyam Aiyangar is looking at it just now. It says:—

"It is hereby declared that in the twenty-second section of the Indian Councils Act, 1861, it was and is intended that the words 'Indian territories now under the dominion of Her Majesty' should be read and construed as if the words 'or hereafter' were and had at the time of the passing of the said Act been inserted next after the word 'now'; and further, that the Acts 3 and 4 William IV, cap. 85, and 16 and 17 Vic., cap. 95, respectively, shall be read and construed as if at the date of the enactment thereof respectively it was intended and had been enacted that the said Act respectively should extend to and include the territories acquired after the dates thereof respectively by the East India Company, and should not be confined to the territories at the dates of the said enactments respectively in the possession and under the Government of the said Company."

India was then being acquired, and Her Majesty's territories in the east were being extended, and in that statute by oversight they forgot to mention that it included not only the territories then under the dominion of Her Majesty, but also the territories which were being added subsequent to those dates. That is a totally different state of things from what we have now. What the Act says is that it was the original intention of Parliament to include not only the territories then under the dominion of Her Majesty but also the territories that were being added thereto. One can clearly understand that. But in the present case I respectfully submit that it was not the intention of the Council, when it passed Act VII of 1865, to exclude option and include what we are now trying to include—that people whether they

apply for water or not and whether water flows into the fields or not, whether it flows through a well, tank or a channel, should pay water-cess. Certainly that was not the intention of the Council, or the Government of India, or the Secretary of State in 1865, when the original Act was passed. Whether it is competent for us or not I submit that it is not desirable that the present Bill which we are now considering should be deemed as if it existed from 1865. I therefore hope that the amendment will be accepted by the Honourable Council.

The Hon'ble Sir V. BHASHYAM AIYANGAR :—As the Hon'ble Mr. Vijayaraghavachariar, who proposed the amendment, referred to me, I may explain on what principle retrospective effect is given to section 1 and what the consequence may be if retrospective effect is not given. That retrospective effect, however, I may mention is restricted by section 2 so as to preclude Government from levying any cess which according to the retrospective section would be in arrears prior to the commencement of the current fasli. I understand that the intention of Government, as expressed in the present section, was the intention of Government when it passed Act VII of 1865 and the practice in working that Act has for many years been in accordance with that intention; and that until the High Court ruled that the word "use" in section 1 of the existing Act—whenever the water is supplied or used for the purpose of irrigation from any river—meant that a ryot ought to have the option of not using the water, the practice has all along been to levy a water-rate, as now declared by section 1, and in many cases water-cess has been levied because the Government water was in fact used without ascertaining whether he had the option to refuse to use Government water or not. But the High Court having declared—I should say correctly according to the rules of judicial interpretation—that the words "supplied or used" really referred to cases in which the party has the option to use water or not, the result has been the necessity for the present legislation in view to give legal effect to the intention of Government as it existed in 1865 or at any rate as it has been worked in practice since 1865. If retrospective effect is not given to section 1 the result will be that a lot of ryots may now bring suits claiming a refund of revenue and water-rate which has been levied from them on the ground that water was forced upon them and they were not given the option either to use or not to use the water; and the immediate result of this amendment of the law if you do not give retrospective effect will be that there will be a flood of suits claiming a refund of water-rate levied at any rate within the last six years. I say six years because in most cases the law of limitation might debar any suit being brought for a refund of water-rate levied and collected more than six years ago. This retrospective effect has been given exactly in conformity with the principle correctly enunciated by my Hon'ble friend Mr. Vijayaraghavachariar. He did correctly say what that principle was. The general rule is that you should not give retrospective effect save in exceptional cases to which I need not refer, because it is not on any such exceptional ground retrospective effect is given in the present instance. Generally retrospective effect is given to an amending Act in view to effectuate the real intention of the legislature when it passed the Act which is amended. Sometimes retrospective effect is also given in view to placing beyond all reasonable doubt any practice which has been obtaining for a long period though that practice has been in operation not strictly in conformity with the law. While giving retrospective effect to this section it was considered not right that Government should by reason of its retrospective effect collect arrears of water-cess which accrued before the current fasli. It was thought desirable that section 2 should

be enacted so as to restrict the retrospective operation of section 1. This restriction will have the effect that no water-rate will be levied which would not have been leviable if this Act had not been passed and which would not have been leviable according to the interpretation of the existing Act by the High Court a few years ago, which interpretation, as I have already stated, is, in my humble opinion, judicially correct. Whether it really did give effect to the intended intention of Government of 1865 or not, you may take it that the intended intention was what is now stated because the enactment has been worked and enforced in conformity with that intended intention without any question until the High Court recently decided that the word "use" implied option to refuse. Section 2 says: "no water-cess which would not have been leviable if this Act had not been passed shall be hereafter levied for any period prior to the 1st July 1899." In the Bill as it was committed to the Select Committee the date fixed was 1st July 1898. But the Select Committee has substituted the commencement of the current fasli in the place of the commencement of the last preceding fasli as in the case of the original Bill.

The Hon'ble Mr. EARDLEY NORTON :—I should like to ask one question of the draftsman of the Bill, and I hope he will solve my doubt. The last two lines of the first section say "in lieu of the said section, the following, namely." Does it mean the following three sections that are printed?

The Hon'ble Sir V. BHASHYAM AIYANGAR :—Not all the three sections.

The Hon'ble Mr. EARDLEY NORTON :—There is nothing to limit it.

The Hon'ble Sir V. BHASHYAM AIYANGAR :—Except that sections 2 and 3 are distinct from section 1.

The Hon'ble Mr. EARDLEY NORTON :—It does not say so.

The Hon'ble Sir V. BHASHYAM AIYANGAR :—It need not.

The Hon'ble Mr. EARDLEY NORTON :—As I read this Bill, the wording of section 1 means that it includes the three sections which have been printed on this piece of paper. I do not know whether that is the intention of the learned officer who drafted this Bill?

The Hon'ble Sir V. BHASHYAM AIYANGAR :—That is not the intention. It applies only to what follows in section 1 and not to sections 2 and 3.

The Hon'ble Mr. EARDLEY NORTON :—I understand the draftsman to suggest that it refers to the first three paragraphs of section 1.

The Hon'ble Mr. H. M. WINTERBOTHAM :—The Hon'ble Sir V. Bhashyam Aiyangar has so clearly explained why the amended section is given retrospective effect that it is needless for me to say much on the matter. We give the amendments retrospective effect because we do not intend to leave a door open to all sorts of claims for refunds, and at the same time we insert a special clause in the Bill which likewise prevents the Government from making any new charge under cover of the Bill in respect of water supplied and used in past faslis. I think the Honourable Council will remember how at our last meeting the Hon'ble Mr. Vijayaraghavachariar good-naturedly twitted the Government by expressing his admiration of the manner in which the Government makes work for this Honourable Council. I hope he will not feel injured if I now with like good humour return the compliment by congratulating the Honourable Member on the undaunted courage with which he is ever ready to launch an amendment that we may have no want of texts on which to discourse. The proposed amendment is out of place and must be rejected.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—Your Excellency, the answer to the opposition may be divided into parts. The object of giving retrospective effect to a law is a totally different thing. The first question is, as has been said by the Hon'ble Sir V. Bhashyam Aiyangar, it must be proved to the satisfaction of this Council that we are carrying out the intention of the Government of 1865. If that fails—it does not matter what object you may have in view—the law becomes *ultra vires*. From this point of view I would only ask the Government to consider the following passage. The Secretary of State in his despatch, dated 24th November 1863, says: "With reference to your question, 'whether the ryot should be allowed the security against an excessive charge which the option of deciding by a stated period of each year whether he will have water or not will give him,' I am clearly of opinion that such option should be permitted. There is little ground for apprehension that the option would be exercised by the cultivator in the way of declining to use the means of irrigation when they are supplied to him at a moderate price, and the possession of it would in no respect limit the right which your Government acting on your own behalf or on that of the irrigation company must retain of declining to supply any particular tract of country with water unless the cultivators should be prepared to enter into engagements to take the water at the stipulated rate in such numbers and for such terms of years as might warrant the required outlay. Although few would probably reject the opportunity, yet no compulsion to take the water must be exercised towards the dissentients, and they must in no way be disturbed in the possession of their lands so long as they desire to hold them, and continue to pay the ordinary rate of assessment. I desire that these instructions may be considered as generally applicable and not as confined only to the district of Kurnool." I wish to know whether there is any single document placed before us to show that the Government of Madras recorded any dissenting view on this despatch or not. That is why I asked a few days ago for a copy of an important letter from this Government to the Secretary of State in the hope to find whether this aspect and state of things was placed before the Secretary of State; but the Government refused to give me that letter. Let us read the Government of India's sanction to this law :—

"Letter from A. P. HOWELL, Esq., Under Secretary to the Government of India, to T. M. BUSTEED, Esq., Acting Assistant Secretary to Government, Fort St. George, dated Simla, 7th September 1865, No. 1757-A, Home Department.

"I have the honour to return, with the assent of the Governor-General signified thereon, the authentic copy of the law received with your letter No. 291, dated 31st of July.

"To enable the Government to levy a separate cess for the use of water supplied for irrigation purposes in certain cases."

"2. In forwarding the Act, however, thus assented by the Governor-General I am directed to observe that His Excellency has accorded his assent to it on the understanding that the initial words of the first section are not intended to be compulsory, and that no water-rates will be levied under the Act for water which has not been used."

We have the testimony afforded by documents that the Government of India accorded sanction to the law in 1865 on the understanding that the initial words of the first section are not intended to be compulsory. That is, that free option should be given and no compulsion of any kind should be exercised upon the ryots. That being so, is there anything to show on the part of the Madras Government that this was

not their intention? If there has been a contrary practice in the teeth of this law, in the teeth of the Secretary of State's despatch and in the teeth of this order of the Government of India, that practice, I respectfully submit, ought to be ignored by us. It is unreasonable that we should be asked to recognise an illegal practice. This practice is not the intention of the Government of India, but it is a violation of the pledges and promises. This could not be considered to be the intention or the "intended intention" of the Government of Madras, and even if it was the "intended intention" of the Madras Government, I respectfully submit that in the face of these documents this intention must have been abandoned. That being clear, I submit it would be *ultra vires* to give retrospective effect to an intention which did not exist and which is illegal. That being so, it is unnecessary for me to go into the object to be achieved by giving retrospective effect to this Bill. There may be plenty of objects. Two objects are declared. One is that the water-rate should be levied independent of option from July last. The other is to provide against suits for refund of the water-rate being brought. Let us examine this. Is the present law more calculated to stimulate litigation on the part of the ryot than the old laws? Not one Honourable Member has vouchsafed to the meeting that greater facilities exist under the proposed law for bringing such suits than under the old law. It has been admitted that under the old law litigation existed and that suits were brought in consequence of the interpretation put upon it by the High Court. What is it that makes the Government and the advisers of Government suspect that ryots would be more stimulated to bring such suits in future? Not an iota of evidence has been advanced by the opposers of my amendment. Any such suits that may be brought will be subject to the law of limitation. The law of limitation might extend to three years or six years and no suit can be brought with regard to anything which took place beyond that period. May I ask what about men who have been obtaining decrees? I don't suppose the Government will bring suits to recover the refund of the moneys they paid. If a man has executed the decree against you and you have paid the money it is all right. But if a man has delayed it relying on the law of limitation you will tell him "look at the law, you are too late." Is this equitable? It is fair and equitable that when it has been declared that you have taken money from the ryots illegally you should give it back to them and also you should give it universally to all people who were similarly situated and they should have the same benefit. If you do not do it, it would place the Government in a position in which I would not like to see it placed. Therefore press my amendment.

The amendment was put to the meeting and lost.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—I beg to move that after section 1 of the Bill the following figure and words be inserted: "2. The following section shall be inserted as section 1 of the said Act." This amendment is, I believe, more a verbal one than anything else, and I move it leaving it to be accepted or not by the Honourable Member in charge of the Bill.

The Hon'ble Mr. EARDLEY NORTON :—I beg to second it. This amendment is necessary on account of the question I put. As the Bill stands it is open to objection of vagueness in the first paragraph so far as the words "the following" are concerned. I believe what is intended is that the first three paragraphs should be held to apply to the old Act. I cannot help thinking that those words "the following" are certainly ambiguous and my learned friend the Hon'ble Sir Bhashyam Aiyangar, who is full of subtleties, might contend before the High Court that what was intended

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to be substituted was not merely paragraph 1, but the whole of it. If the object of the legislation is to clear doubts, certainly there is no objection to accept the amendment of my Honourable friend. As I understand, the old Act has four sections. Certain sections are substituted after the words "the following." All that we ask is: Make the intention of the present Bill quite clear. Only the first section of the first Bill shall be read in lieu of sections 1 to 4, that is, sections 1 to 4 are repealed". All that we suggest is: "If it is the intention of all of us to make only the first section of the new Bill take the place of sections 1 to 4 of the old Act, let us say so." We have not said so in the present Bill.

The Hon'ble Mr. H. M. WINTERBOTHAM:—Our present Bill consists of three sections and the first section takes the place of sections 1 and 4 of the old Act.

The Hon'ble Mr. EARDLEY NORTON:—That is what it does not say. It says "the following" and we do not know what "the following" is.

The Hon'ble Mr. H. M. WINTERBOTHAM:—I am quite sure the Hon'ble Member's sole intention is to assist Government and in that view I attach great weight to his opinion. But the wording of the section has been very carefully considered and we are all of us satisfied that there is no ambiguity about it. Therefore I am not prepared to accept the Honourable Member's proposal.

The Hon'ble Sir BHASHYAM AIYANGAR AVARGAL:—You may omit figure 1.

The Hon'ble Mr. H. M. WINTERBOTHAM:—That is a printer's blunder. Figure 1 before the word "whenever" will have to go out.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU GARU:—I beg to move that the following words in sub-section 1 be omitted:—"and also whenever water by direct or indirect flow or by percolation or drainage from any such river, stream, channel, tank or work from or through adjoining lands irrigates or is utilized for the purpose of irrigating any land under cultivation and, in the opinion of the Collector, subject to the control of the Board of Revenue and of the Government, such irrigation is beneficial to, and sufficient for the requirements of, the crop on such land" between "Government" and "it". Your Excellency, the words to which I take exception are proposed to be introduced into an Act which has been working—and working well—for the last 35 years. It is to be remembered that they go directly against the policy underlying the old Act. In asking Honourable Members to adopt my amendment, I am doing no more than asking them not to throw the existing system overboard, unless they are thoroughly convinced that it has failed, that the cultivators in the irrigation districts have so grossly abused or are likely to abuse the option to take or relinquish water, allowed by law, as to diminish the fair returns of Government, and that the powers given to the Government by the Act to frame such rules and levy such water-rates as it thinks fit are inadequate to meet the cases in which such option has been or is likely to be abused. Now, Sir, what is the origin and nature of the right sought to be taken away by these words? The option to take water for irrigation in the case of lands classed as "dry" is not a right that was created for the first time by the Act of 1865. It is an incident of property which the cultivator possesses independently of the Act. It is not confined to the Madras ryot alone. All that the framers of the Act of 1865 did was that they framed the Act in such a way as not to do violence to that right of property. The right was acknowledged by the Government of Madras in 1859 soon after the construction of the Gódvári and Kistna

**BILL TO AMEND MADRAS ACT VII OF 1865
(IRRIGATION CESS).**

anicut works (Proceedings of the Madras Government, dated 7th December 1859, No. 1656, Minute of Sir Charles Trevelyan, dated 20th November 1859, minute of Sir Walter Elliot, dated 15th November 1859). It was confirmed by the Secretary of State on not less than four occasions, so far as I am aware—once in 1860, again in 1863, again in 1870, again in 1873 (Despatches of the Secretary of State, No. 43, dated 6th July 1860, No. 81, dated 24th November 1863, No. 4, Public Works, dated 11th January 1870, No. 1, dated 7th January 1873). It was further recognised in all the Irrigation Acts of this country—in the Act under revision in 1865, in the Northern India Canal and Drainage Act passed in 1873 and amended in 1899, in the Bengal Irrigation Act passed in 1876, and in the Bombay Irrigation Act passed in 1879. What is more, the option in question is admitted on all hands to be a right necessary for the beneficial enjoyment of property. In this country we have both tracts fitted for irrigation and not fitted for irrigation. Honourable Members are aware that all attempts to extend "wet" cultivation in the tract commanded by the Kurnool-Cuddapah canal have so far proved futile. Nobody would say that in the case of such soils the ryot should be denied this much-valued right. If you deny him that right, you will be practically levying a water-rate from the lands which are not really benefited by artificial irrigation. The object of irrigation works is not certainly to benefit the general tax-payer in this manner. Their primary object is to afford security from famine. The policy of the Government has therefore been not to exercise any compulsion in this matter, but to leave it to the ryot's free choice to take water or not according as it benefits him or not. Government has always assumed the position and rights of an irrigation company and regulated its relations with the cultivators on commercial principles. Apart from the injurious effects likely to be produced by canal irrigation on certain soils, there are also various other considerations which render it inexpedient for the Government to engage to supply water to all the lands really benefited by irrigation, such as uncertainty or inadequacy of supply, imperfect drainage, and above all the variety of tenures of the lands benefited. In the first place, there are lands held on ryotwari tenure on which the Government levies land-tax on the half net principle and revises the same once in every thirty years. Secondly, there are permanently-settled estates and inam lands in respect of which Government parted with its proportionate share of the produce for a fixed and lasting quit-rent or peishcush. Whatever may be the rights of Government with regard to ryotwari lands, the only right possessed by Government in the case of zamin and inam lands is that of charging for water supplied on the application of their owners or used by them voluntarily. They cannot be compelled to take water, unless they think that they can increase their profits by the use of such water. They cannot be compelled to pay for water which is not controlled and which they are not bound to take. This distinction between ryotwari and other lands has always been recognised in revenue practice too (Board's Proceedings, No. 2555, dated 3rd September 1885, embodied in G.O., No. 852, Revenue, dated 30th August 1887). Such being the nature and origin of the right and such being the motives and reasons which led to the recognition of that right, I am sure Honourable Members will not pass any legislation destructive of that right, unless very grave reasons exist for such a step. In examining the reasons adduced in support of this legislation, we have first of all to distinguish between the defects in policy and mistakes in administration. We cannot condemn the policy for the mistakes which the local authorities may have made in carrying out that policy. Having laid down the broad lines of policy, the legislature left it to the local Government to frame the rules under

which and to fix the rates at which water for irrigation is to be supplied. Till 1865, the water-rates were levied in the Gódvári and Kistna deltas under the rules made by Government in its executive capacity. The first water-rate rules were passed in 1861. The two important limitations imposed on the option under those rules were—firstly that applications for water for irrigation should be made before the 31st of March, secondly that lands for which Government water is once taken should not be reconverted to “dry,” unless the means of irrigation fail permanently. The water-rate fixed was Rs. 3 per acre on a single wet crop. After watching the effect of these rules for three years, Mr. R. E. Master brought to the notice of Government in April 1864 the severity of these rules in their practical working. Much land was thrown out of cultivation owing to the rigour of the rules. He urged therefore the necessity of giving the ryots the full option confirmed in the despatch of the Secretary of State of 1863. But before amending the rules, Government raised the water-rate in May 1865 from Rs. 3 to Rs. 4 per acre on the ground of a rise in prices. The rules were revised in 1865 since the passing of the Act. They were more liberal than those which they had superseded. They allowed the liberty of relinquishment of water to howsoever limited an extent. The modification made in the rules was that, if water was taken for three years consecutively for raising “wet” crops on “dry” lands, they should be classed as “wet” and liable to water-rate. It was not long before it was discovered that this limitation imposed on the power of relinquishment of water, coupled with the enhanced water-rate, operated injuriously on the interests of Government and the ryot alike. There was a fall in the prices which was not foreseen by Government at the time of enhancing the water-rate in May 1865. The results of artificial irrigation became also manifest in the case of several soils. Fine “punja” became saline and worthless under irrigation. Thousands of acres for which no water was utilised were obliged to pay water-rate under the rules. In the Gódvári Delta alone, about a lakh of acres of land was thrown out of cultivation and they include inams too. There was considerable loss of revenue under all heads in both the districts. Writing about the condition of the people of the Gódvári Delta about this period, Mr. A. J. Stuart, the Sub-Collector, recorded the following in 1872: “On the whole, by far the greatest part of the population was poor and had little beyond food, clothing and shelter. In no country in the world was the taxation so high in proportion to the income of the people it was raised from, and little or no advance was observable in the condition of the masses and certainly none in that of the labouring classes.” (Page xxxviii, Memorandum on the Progress of the Madras Presidency during the last Forty Years.) Pending the amendment of the rules, the Board directed in its orders of August 1868 and June 1869 that an opportunity of reconversion to “dry” be given to all ryots holding lands irrigated by anicut water. Mr. Master was appointed to submit a special report on the causes of the relinquishments and to propose remedial measures. His enquiry disclosed the fact that the rules then in force were responsible for the reluctance of the ryots to take water and that irrigation did, as a matter of fact, affect certain soils injuriously. Mr. Master, therefore, expressed himself in favour of free option. He further recommended that the date for application to convert land to “wet” should be changed from 31st March to 30th June or 30th July. The Board and Government approved of Mr. Master’s proposals (G.O., No. 1239, dated 21st August 1872). The Board remarked that the object of the rule in force was not to make people pay for water when they could not get it or when it would be absolutely injurious to the soil. Its object was to prevent ryots from giving up water capriciously.

The Board was convinced that there was no danger of this and the Government agreed with the Board. The rules were accordingly revised on the 16th June 1873. Under these rules, applications for irrigation to be supplied should be made before 30th June instead of 31st March. Applications for irrigation to be discontinued should be made before 31st March. Till such application has been made and admitted, a land for which water is once supplied remains liable for water-rate. Another important rule made — made for the first time — was, that the cultivators might use anicut water free of charge for lands impregnated with “soudoo.” But, it is to be remarked that the mere removal of the restrictions imposed on the right of option by the rules of 1865 and the concession accorded to the ryots in the case of “soudoo” land could not produce any appreciable results, so long as the prices were below the level of the prices anticipated in the order of Government (G.O., No. 1006, dated 12th May 1865) raising the water-rate to Rs. 4. Prices attained that level only since the famine of 1875–76. And it is from that period that we witness an altered state of things in these districts. There has been an enormous expansion of cultivation. More than the anticipated areas have been brought under wet cultivation in several cases. The Gódvári and Kistna irrigation works have paid themselves nearly twice over. In reviewing the results of the Gódvári works, the Government of India said in 1892 that they were “extraordinarily good.” The Secretary of State characterised them as “highly satisfactory.” The direct net return was then only 9·33 per cent. on the capital expenditure. This has since risen to 15 per cent. and is likely to rise still higher during the revision settlement. As to the indirect benefits, the Government of India remarked that they “cannot be similarly estimated in figures, but they are none the less substantial and enduring.” (Despatch from the Government of India, to the Secretary of State, dated 13th January 1892, No. 2, Public Works; despatch from the Secretary of State, to the Government of India, dated 3rd March 1892, No. 10, Public Works.) The Kistna works have proved no less remunerative. They are yielding a direct net return of 12 per cent. Can any one doubt, Sir, that this option is of the highest importance to the security of property? Is such a right to be destroyed on account of the theoretical defects—if defects they are—now urged by the framers of this Bill? This is not the first time that the alarm about possible loss of revenue has been raised. We have been accustomed to hear it almost since the construction of the anicuts. In 1860 the Board of Revenue, in 1869 and 1876 the Public Works Department, in 1889 the Collector of Kistna urged exactly the same reasons as are now urged with such force in support of this Bill. We have seen how this right has survived all those attacks. These attacks only served to accentuate the necessity for recognizing this right to the fullest possible extent in practice. The loss of revenue which was so confidently predicted has not come to pass. The ryots were, after all, not so bad as it was feared they would be. Experience has shown that the changes from “wet” to “dry” are not made under ordinary circumstances for the purpose of getting rid of water-tax. Why, Sir, is there a single privilege or concession which in this way I cannot prove to be an evil or a single evil which I cannot prove to be a good? But is that the way in which we should look at the question? No; the question is—is it likely, in the ordinary course of things, that a man will not go in for water of his own accord if the rules framed by Government are simple and workable, if the water-rates are fair and moderate, and if the administration is intelligent and sympathetic—if, in fact, the water provided by Government is for his benefit? It must be remembered that water for irrigation is, in the case of certain lands, an absolute necessity. It

would not be one of mere bargain between the Government and the cultivator. Though in theory this option is intended to serve as a safeguard against undue enhancements, it cannot and does not serve that purpose in several cases because of the situation of the soils. With equal reason, the ryot may complain of the power which the existing law gives to the Government of declining, without assigning any reason, to supply water applied for by the ryot. Has not the Government the power to distribute the supply in a manner which is most profitable to it? Is there not a rule that when water is not available to all applicants, an applicant for water for sugarcane or for two crops should have priority over all other applicants for a single crop for however long they may have been taking water and whatever injury they may sustain by the refusal of Government to supply their lands with water? What is the reason for this rule of priority? It is no other than that the water-rate in the one case is double the rate leviable in the other. Again, are there not cases in which the majority of the cultivators are made to suffer for the sake of the minority to whom the Government is at liberty to supply water without consulting the wishes of the majority? One out of a hundred ryots applies for water for second crop. The other 99 ryots have no voice in the matter. Every adjoining land to which the water taken by that single ryot passes by percolation, suffers in the majority of cases from the manner in which the Government exercises its power of giving water. Yet nobody will seriously contend that the Government should not have this power. If the Government is to have it, why should the ryot be denied his option? Sir, we must judge of this system, as of all other systems, by its practical results. These results are, to my mind, a conclusive justification of the existing system. A few relinquishments here and there are no evidence of the defective state of the law, nor do they justify the radical remedies now proposed for the first time. Allusion has been made to the relinquishments made by the ryots in the Gódvári and Kistna deltas in 1895. But the more we go into the history of these relinquishments, the stronger will be the conviction that the policy of the Act had nothing to do with them and that they were mainly, if not solely, due to the mistakes in administration. In the first place, an important change was made in the rules in July 1892. The time for applications for water was changed from the 30th June to 31st March. In other words, the old rule of 1865 was revived. Under the rules in force from 1873 to 1892, a ryot who relinquished water in March could apply for it before the end of June in the same year, when, either from the state of the monsoon or repairs done to irrigation sources or from any other cause, he changed his mind and desired to go in for "wet" in preference to "dry" cultivation. Under the altered rule, there is no interval between the time for application for water and the time for its relinquishment—the dates fixed in both cases being 31st March—and the ryot is unable to exercise his option of relinquishment in March and apply for water later on for the same field when he finds it to his advantage to do so. The ryots protested in vain against this change. Secondly the Government, while admitting the justice of the grievances of the ryots in the distribution of water, took no practical steps to remove them. Thirdly while the distribution arrangements were so unsatisfactory, Government raised the water-rate from Rs. 4 to Rs. 5 in August 1894. Let it be remembered that no enquiry preceded this enhancement. Not even the district officers were consulted about it. A little enquiry would have shown that the prices on which the four-rupee rate was based in 1865 nearly approximated the prices that prevailed in the period between 1875 and 1895. And if there was any difference, it was more than absorbed by the local and village cesses

that have been imposed since 1865. But Government could not be convinced that there would be a single acre in the delta which could not bear the five-rupee rate, until the relinquishments came in. It was subsequently conceded that there were some lands in the deltas which would be too heavily charged at the increased rate of Rs. 5 and that the holders of such lands would be unwilling to take water for irrigation at the said rate. (G.O., No. 870 Mis., dated 26th February 1895.) Government therefore exempted some lands from the increased rate. Matters soon adjusted themselves with the issue of this order. After all, what is the extent of land for which water was relinquished in the Gódvári delta in 1895? It was only 80,000 acres. It was less than the extent for which water was relinquished after the enhancement of the rate in 1865. It was also less than the extent which, in the opinion of the Collector of Gódvári, should not have been charged (the five-rupee rate. Now I ask whether there is anything peculiar in these relinquishments? As I said before, history simply repeated itself. Not one of these relinquishments can be characterised as capricious. The remedial measures adopted by the Government in 1873 and 1895 clearly indicate that the relinquishments were made in the proper exercise of the right which every cultivator possesses and which it is necessary that he should possess. Is the option to be retained only so long as it is not exercised in favour of relinquishing water? Suppose for the sake of argument that any cultivator will relinquish water with a view to escape the water-cess. That should not justify compulsory provisions of this character which affect all cultivators—honest as well as dishonest. The rules of 1861 and 1865 contemplated the possibility of such cases. And they made adequate provision for them. Rule 8 of the rules of 1861 laid down that the arrangements for the supply of water to lands to be newly irrigated should be regulated by tracts and not by detached fields. Rule 7 of the rules of 1865 empowered the Collector to require a ryot, in exceptional cases, to enter into an agreement for continuing to take water for such periods as he may deem necessary and equitable in the interests of Government or other individual ryots before arranging for the supply. He was further empowered to call upon ryots to execute agreements in the case of any new works undertaken for their benefit. Even during the revision of the rules in 1873, the Board actually suggested a rule denying the option "in the case of isolated fields which being surrounded by irrigation and not rendered unfit for wet crops by *soudoo* or otherwise are necessarily benefited by that surrounding irrigation." (B.P., No. 2012, dated 15th October 1872.) But it was not considered necessary to incorporate it in the rules finally passed by Government. Even the orders passed in August 1872 contemplate some such restrictions in the case of lands so situated. But they do not apply to the lands already under irrigation. All that they say is that if new works be constructed at the request of the cultivators, free option may be denied to the cultivators in the case of such lands. Not a word can be said against the Government insisting on its own terms in cases of that kind. In the case of the Rushikulya project, for instance, Government has enacted a rule to meet such cases. If Government apprehends relinquishments on the introduction of the proposed graduated water-rates in the case of inam and zamin lands in the Gódvári and Kistna Deltas, that is a different matter. If the ryots should relinquish water wantonly, a simple amendment of the rules will answer the purpose. Why the rule regarding penal rates was altered in July 1892, so as to safeguard the interests of Government. It will not do for us to presume gratuitously, in defiance of reason and history, that any ryot will relinquish water when it really benefits him. The attempt to interfere with this option on the eve of the introduction of the proposed rates—rates raising the four-rupee rate by 100 per cent. in some cases—i

liable to misconstruction. To interfere with the option of inamdars and zamindars will be practically compelling them to relinquish their lands for nothing—without any compensation. It is to be noted that the compulsory provisions of the Bill before us are not confined to the cases referred to in the Statement of Objects and Reasons. They embrace various other matters for which no emergency has arisen. They include dry crops. They authorize the levy of the rates even in cases where the Government is not in a position to give a full supply, where the applications made for such supply have been refused—as they have been refused in the Kistna delta in several instances of “involuntary flow.” It is immaterial whether the profits of the cultivator have increased or decreased by the use of water. Water-rate will be remitted, as a matter of grace, if it is shown that the injury caused by percolation has totally ruined the crop. Even if it has partially ruined the crop, the water-rate must be paid. Thus, Government will be enabled to take advantage of its own wrong in many cases. Hence there will result much fraud. The ryots will bribe the village and possibly other officers to represent that there has been total failure of crop by percolation in order to get out of this odious tax. What is remarkable about the whole thing is that no Civil Court can go behind the opinion of the revenue authorities on matters connected with the question of liability for this compulsory rate. If a land really injured by percolation is charged a water-rate, there is an end of the matter. The owner can relinquish the land, if he pleases. That is his only remedy. I ask what the framers of this Bill would have said if the Madras Canal and Irrigation Company had asked for such powers in the case of the lands commanded by the Kurnool-Cuddapah Canal. Is there to be such a revolution in the rights and liabilities of the cultivators by the mere accident of the transfer of the canal to the Government, which took place in 1832? Again, it is not fair that Government, while charging for benefit caused by percolation, should virtually disclaim its responsibility for compensation for injury caused thereby. Unless one could establish negligence on the part of Government—which it would be impossible to do—it will not be liable for any such injury. It is not fair that we should call the “benefit” an act of man and the “injury” an act of God. The cess may be levied even in cases where the ryot would in law and justice be entitled to damages for injury to his lands. I endorse the sentiments expressed in paragraphs 11, 12 and 13 of the very able memorial submitted by the Madras Land-holders’ Association regarding the one-sided character of these provisions, as applied to zamindaris, and the practical difficulties which the adjustment of a compulsory rate between the zamindar and his tenant will be attended with. “It is a common experience”, says the association, “that sources of water-supply maintained by and at the expense of such estates sometimes benefit by percolation and drainage Government villages at a lower level or situated contiguously to them. What recompense, they venture to ask, is granted by Government to the proprietors concerned, and where is the justice of one of two parties situated under exactly like conditions being under an obligation to pay and the other not? Again, surplus water flowing waste from a Government tank or water escaping by a calingula and flowing through a zamindari village, if diverted and converted into a zamindari tank without prejudice or detriment to any land or ryot, would render the zamindar liable for cess, although under the same circumstances, if the position of the parties be reversed, the Government would not be liable to allow any compensation to the zamindar. Looking again at the difficulties and complications that the levy of the proposed cess must involve in relation to zamindari estates and inams, they would appear almost to defy solution. The memorialists would instance, first, the difficulty of apportioning the cess in every

case between the landlord and his tenant. The inquiry for such apportionment involves many obvious elements of consideration which it is needless to enumerate and which cannot be done justice to. And it would be no enviable task to endeavour to avoid injustice to one or the other or both, the zamindar and the ryot.” It is said that Government has a customary right to charge for water used for irrigation without regard to the volition of the cultivator, and that the High Court has interfered with this customary right by the decisions passed since 1889. In my minute of dissent, I have examined the orders bearing on the subject and tried to show that no such right ever existed. The custom, if any, does not apply to settled districts. Much less does it apply to inam and zamin lands which are specially affected by this Bill and in whose case Government has no power to charge wet rates. There is no such custom in any other province. It is highly improbable that Messrs. Wilson and Grose would have used the words they did against this custom long before 1889, if such a custom ever existed. The attempt made in 1884 to introduce percolation rates in this Presidency by legislation (Bill No. 1 of 1884) was not countenanced even by the Select Committee then appointed. I submit, therefore, that the provisions to which I object are contrary to the policy of the Government uniformly followed hitherto. They are contrary to its proclaimed declarations on several occasions. They are contrary to the spirit of the Madras settlement. They are incompatible with the proprietary rights in the soil guaranteed to the zamindars and inamdars. They are contrary to the principles of fairness and equity. They are without a parallel in the legislation of any other province. No harm has resulted to public revenues from allowing the cultivator the full enjoyment of his right. No possible good can arise from passing this measure of coercion which is sure to lead to undesirable results in actual administration. Simplicity and certainty in the administrative arrangements in this country of ill-paid subordinate officers cannot be too strongly insisted upon. Already it is admitted on all hands that the arrangements for the distribution of water in the Godavari and Kistna deltas are in the hands of a low-paid and corrupt agency. There is no essential difference of circumstances since 1873 when the right of option received its full recognition in practice. The condition of the soils is the same, if not worse. The reasons which then dictated the necessity for unfettered option hold good at this day. There is not the slightest ground for saying that the High Court has promulgated any new doctrine opposed to the traditions of the revenue administration. Nothing has occurred since 1896 to lead the Government to change its opinion that there was no necessity for the amendment of the law. The powers given to the Government by the Act are more than adequate for the protection of the legitimate interests of Government. The proposed measure aims at favouring one party at the expense of another. Government never allowed itself in the past to be guided by mere considerations of revenue in the determination of this important question—a question affecting all descriptions of tenures in this Presidency and the well-being of thousands of agricultural population. I would respectfully submit that a policy of trust is the best—is the safest policy, morally, politically and economically. With these remarks, I commend my amendment to the favourable consideration of honourable members.

The Hon’ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—An identical amendment stands in my name, and I have therefore great pleasure in seconding the amendment moved by the Hon’ble M.R.Ry. Venkataratnam Pantulu. Never before, your Excellency, has the heart of the people been so much stirred by a legislative measure as in the present instance. The Bill before the Council is so comprehensive in

its application, that it touches every hut, every cottage and every farm throughout the length and breadth of this vast province. It therefore behoves your Excellency's Government to pause and deeply consider the economic consequences of the proposed measure. The Irrigation Cess Act of 1865 has been in operation for 35 years, and yet Government has not been able to say why and wherefore its amendment has now been undertaken. In answer to one of the interpellations at the Council meeting of the 26th January last, the Honourable the Revenue Secretary to Government very candidly admitted that "the loss of revenue up to date by the absence of a law of the kind proposed is believed to have been inconsiderable." The Bill before the Council proposes to introduce in the existing Act a principle of a most revolutionary kind—a principle which is at total variance with the one repeatedly laid down from 1863 both by the Secretary of State and the Government of India. In his despatch, dated the 24th November 1863 to the Government of Madras, the Secretary of State says that "no compulsion to take the water" must be exercised towards the ryots. In according his sanction to the existing Act His Excellency the Governor-General in Council wrote to the Government of Madras on the 7th September 1865 that his assent was given "on the understanding that the initial words of the first section are not intended to be compulsory, and that no water-rates will be levied under the Act for water which has not been used." Again the Secretary of State wrote to the Government of Madras on the 7th January 1873 that no good results will be expected from any attempt to force irrigation upon the ryots, and that self-interest was an infallible factor in such matters. And yet, in the face of this express stipulation on the part of the Supreme Government, cesses were levied on water which flowed to the lands of ryots who did not want it, and who in consequence could not raise crops which they desired, but were forced to cultivate an inferior kind of paddy which would not perish from the land being inundated with excess water in the months of October and November. On the question going before the Courts, their Lordships of the High Court of Madras held that if the ryot had no choice in the matter, he could not be held to have used the water within the meaning of the Act. In another phraseology of the learned Judges, the use contemplated by the Act is a voluntary use, and it presupposes a freedom either to take or refuse the water. The principles enunciated by their Lordships of the High Court of Madras in *Venkatappa v. the Collector of Kistna*, and in *Krishnayya v. the Secretary of State*, are not only in consonance with the law of natural justice and sound jurisprudence, but have been conceived in the spirit of the highest statesmanship. The judgments of the learned Judges are in perfect agreement with the wise and generous declarations contained in the despatches of the statesmen, to which I have just made a reference. The question of legislating upon the lines now proposed was considered both by the Board of Revenue and Government in 1889, and both agreed that the High Court was perfectly right, and that no legislation was called for. May I ask the Hon'ble the Junior Member of Council in charge of the measure to say what has transpired since 1889 to justify a change of principles and policy? The Hon'ble the Revenue Secretary to Government has already answered the question at the Council meeting of the 26th January last. There is absolutely no justification. There has been no loss of revenue in the past and there can be none in the future. The land revenue system of the Government of Madras is already eating into the very vitals of the country, and whatever may be the opinion of Government, we, who are in close touch with the mass of the people, know and know only too well the ryots who are living from hand to mouth. Or else, what is the explanation of the distressing phenomena presented by the oft-recurring famines, which have become an endemic disease of the country? I would just ask your

Excellency to look a little closely into this terrible monster of a famine. There is failure of crops and famine is said to ensue. But is famine bound to ensue at every failure of crops? Certainly not, if Government will only leave with the people enough means to fall back upon and not extract the last pie. It is not that there is not enough food in the country in times of scarcity, but the people have not the wherewithal to purchase the food. We do not say that Government ought to control the seasons, but we do say that Government ought to so shape their land policy as to leave at least enough in the hands of the ryots to maintain themselves when the seasons fail. As Sir James Westland observed in the Supreme Council on the occasion of the last year's budget debate, the first failure of the seasonal rains throws the country upon public charity. To quote the eloquent words of the late Finance Minister of the Supreme Government, who says: "I cannot, however, pass from the subject without deriving from it one lesson which it seems to me to afford, namely, that the margin between prosperity and adversity in India must be a very narrow one, for if we have learned that one bountiful harvest suffices to restore the country after a widespread and severe famine, we have learned also that the failure of the seasonal rains in a single month of the year is sufficient to set back a full tide of prosperity; and that this is a possibility which in the administration of India and in its financial administration especially we dare not leave out of account." Such are the views deliberately expressed by a responsible minister of Government. In these circumstances, in the present distressful condition of the ryots, is it too much to ask your Excellency's Government to stay its hand and desist from a measure whose only result will be not only to further impoverish the already-impoorished ryots, but which will become a powerful weapon of oppression and blackmailing against them in the hands of the village officials. Percolation and kindred waters are like crumbs of bread falling from a rich man's table, which are clutched at with avidity by hungry starvelings. But Government can afford to treat these crumbs as beneath its notice. It is rich enough, and it can be generous enough, to leave these crumbs to the starving ryots. In this connection, I cannot but refer to the philanthropic labours of that ex-Chief Secretary to the Government of Bombay who, from his place in Parliament, has been asking for a village enquiry in India. I trust that the enquiry which he demands into the condition of a few typical villages will be granted, and then I have no doubt that Government will obtain a true insight into the grave economic problem which will, at no distant date, insist upon a practical solution. Sir William Wedderburn has within the last few days given notice of a motion "to call attention to the condition of the people of India, and to move that, in view of the grievous sufferings which are again affecting the people of India, a detailed and searching village enquiry should be instituted in order to ascertain the causes which impair the cultivators' powers to resist the attacks of famine." I am glad that the Hon'ble Baronet has secured so early a day for his motion as the 3rd of April. I hope against hope that your Excellency will not permit your name to be associated with one of the most obnoxious and pernicious pieces of legislation, which, if it becomes law, is sure to be attended with mischievous and disastrous consequences.

The Hon'ble the Rev. Dr. MILLER:—I think I ought to apologise to the Hon'ble Council for venturing to address it at this early stage of the debate on a question which is intricate and complicated, and which, I freely confess, I do not fully understand. But Sir, it is just because I do not understand it, that I want to bring a few plain questions to the notice of those on both sides of the debate. I have

tried to read the various papers that have come before us and have tried to master this question and I cannot say that very much light has come to me upon its essentials from all these voluminous documents, and I fear that not much more light has come to me from the two treatises that the honourable members have just delivered and which it might have been perhaps better to have taken as read so that we might have proceeded to the plain matters of fact at issue. I venture to lay before opponents of this Bill what seem to be the essential conditions of their securing the vote on their side of the question, of one who like myself cannot pretend to be better at the best than a mere common sense intelligent juryman who wishes to be enlightened by experts. The whole question took its rise from the statements made first by Mr. Arundel and others following him. I want the opponents of the Bill to tell me whether they adopt or traverse the strong statements which lie at the root of the proposals which the Government are making. I find that the Hon'ble Mr. Arundel stated many years ago that, in consequence of the decision of the High Court, the ryots had merely to make a statement that they declined to take any more water. He said: "The uppermost field is supplied direct from the irrigation sluice, and after inundation the water flows to the next field, and then to the next, until the last is supplied. In such cases no ryot, except the first, who receives his supply from the sluice, has the power to refuse the water. It must inevitably flow from terrace to terrace till it reaches the lowest, and no ryot can keep it from flowing on to his field from the field above. In many places one or more fields at a time are irrigated from field channels, and the inflow could be prevented, but even so these one or two fields may be sub-divided among different owners, each of whom under the new ruling should be free to exclude water from his own plot, or, failing this, be exempt from payment of water-rate." Again Mr. Atkinson, as Collector of Kistna, expressed himself thus: "The High Court has now laid down boldly that if the ryot has no option in the matter, he is not liable to pay water-rate. The Board is aware that not for one wet field in a hundred is there any option, and I can see no reason why nine-tenths or even ninety-nine hundredths of the ryots in the district should not at once relinquish irrigation, and hereafter, while continuing to cultivate wet crops, claim exemption from water-rate on the ground that they had no option but to let the water flow over their fields." If statements like these represent substantially the actual facts of the case, it seems manifest to an outsider like me that something must be done. After all you must remember the necessities of the country require that the Government should draw an adequate revenue. In all the papers that have come before us and so far as I can follow them in the speeches and written addresses to which we have been just listening, there seems to be far too great a tendency to take for granted that the Government is an inimical authority and that it wants for its own wicked ends to squeeze the last possible pie out of the poor ryot.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—No, Sir, no, no.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—Not at all.

The Hon'ble the Rev. Dr. MILLER:—That is the impression left upon me.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—That is a very wrong impression.

The Hon'ble the Rev. Dr. MILLER:—Whether that impression is correct or not I simply stated it as an impression. We ought to remember on the other hand that diminished revenue means defective administration, means starvation of sanitation, starvation of education, and starvation of many other things in which we and the

country at large are most deeply interested. Well, if it be true that these statements are false or so grossly exaggerated that they may be left out of account, then most assuredly I shall gladly vote with those who wish to put an end to the present Bill. But I want to be informed as to this point and I have not yet been informed by any of the documents which I have endeavoured to study. These documents contain general statements and vague declamations. But I do not find in them any disproof of the original statements, nor do I find anything like a very distinct or convincing denial that these statements are true. I wish to know—I do not know as yet—whether these statements are accurate or not. If the opponents of the Bill will prove to my satisfaction that these statements are so grossly exaggerated that they may be thrown out of account, then they shall have my vote. If, on the other hand, the supporters of the Bill prove to my satisfaction that these statements are correct, making allowance for the natural exaggeration which I suppose taints all things human and all accounts of things in which people are interested, then I am perfectly certain that it is absolutely necessary to do something. Then the further question arises: Is what is now proposed the best thing that can be done? There again, I am willing to support the opponents of the Bill if they will bring forward some better means of attaining the end in view than that which the Government have proposed. I do not find that, as yet at any rate, they have endeavoured to do so. All the amendments that have been put on the paper seem to me to be simply various ways of attaining the same end, namely, to put an end to the present Bill. If the opponents of the Bill admit substantially and upon the whole, the particular statements made long ago by Mr. Arundel and Mr. Atkinson, then I think they are bound, while asking us to reject the present Bill, to propose some better way of attaining the end in view. I am perfectly independent in this matter. I am as willing to vote against Government as I am willing to vote for it. If the Bill had not been modified by the Select Committee in one particular respect, I could not have possibly supported it. The provision in regard to the shutting out of the civil courts altogether, which was in the Bill as it last came before us, is, I think, entirely objectionable and it gives me great pleasure to see that it has now been withdrawn. I thought that by introducing such a provision the Government was most unnecessarily raising ill-will against itself and attempting to do a thing which in the very nature of the case is impossible. For, I do not think that any way has yet been discovered of shutting out lawyers from intervening in the interpretation of any law. But had that provision remained, I should have voted strongly against the Bill. At present I am left in doubt. I am willing to take the side of the opponents of the Bill, provided they will do one or other of these two things—either show that the statements to which I have referred are entirely exaggerated and should therefore be practically set aside, or if they grant that they are substantially true, show some better way of protecting the interests of Government revenue which are the interests of the whole of India. If the opponents of the Bill will do the one or the other of these two things, they shall have my vote. But an ignorant outsider like me will feel bound to vote for the present proposal, if the substantial facts remain unquestioned and no better way to meet the difficulty be suggested.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—I had no intention whatever of interceding in the debate on the motion now before the Council. My Hon'ble friends Mr. Venkataratnam Pantulu and Mr. Ratnasabhapati Pillai have so thoroughly exhausted the subject in their written speeches that I thought that it

would be utterly superfluous for me to say anything about it; and but for the remarks made by the Hon'ble the Rev. Dr. Miller I should have absolutely no reason to stand up on this occasion. One remark that he made—he gave it as an impression that seems to have been formed upon his mind—is that members on this side of the table or anybody outside the Council think or imagine that the Government is inimical to the best interests of the ryots; and that such an impression should have been formed in his mind, I confess, is extremely sad. But when a statement like that is made most groundlessly and gratuitously, I feel I should enter my most emphatic protest against it. It is because we believe, because the people outside the Council believe, that they have their best friends and benefactors in Government, they approach you with all these petitions and memorials in the most entreating manner, pointing out, according to their best lights and information, the difficulties they are likely to suffer, and the grievances under which they groan. If, on the other hand, they entertained for a moment the least suspicion that Government was inimical to them all the petitions and memorials would have been utterly out of place. It is not by petitions and memorials that anything could be got from an inimical Government. I therefore enter my most emphatic protest against any such impression that might have been formed by any one. I also enter my protest against any such statement being made in this Council or anywhere else by responsible people. Then the Ven'ble Doctor, considering the strong position he has taken, rightly asks us whether the statements made in 1889 for the first time by the then Collector of Kistna and subsequently by another Collector of Kistna in 1896 are denied; and if they are denied, as an intelligent jurymen he says he would certainly vote against the Bill. If no satisfactory answer is given, he is perfectly right in voting for the Bill. If I have made any efforts at the introduction of the Bill in the remarks I made, my whole efforts and all my attention were directed to show chronologically and by reference to documents that the statements made by the two Collectors of Kistna were nothing more than apprehensions, perhaps well-founded apprehensions under the then circumstances, but merely apprehensions not justified by subsequent events and never substantiated by actual results. It is to that end I directed all my remarks on that occasion; they were not vague remarks, but remarks based upon actual events. The apprehensions felt in 1889 were expressed in terms which were read by Dr. Miller. It is stated: "But under the new ruling of the High Court, 'the use (of water) contemplated by the Act is a voluntary use . . . and . . . pre-supposes a freedom either to take or refuse the water.' The Judges also hold that the growing of a wet crop on land involuntarily irrigated is not a 'use' of the water. Under this ruling, therefore, the present system cannot hold together, and the revenue of the Kistna and Gódvári districts from their enormous irrigation works is placed in jeopardy." That is not a statement of fact but an apprehension of a possible danger which might arise from the decision of the High Court. To the question whether that apprehension was realised or whether those facts that occurred subsequently substantiated that apprehension, I give an emphatic "no" as the answer; I am strengthened in it by the answer given by Government on a former occasion. We most earnestly pressed for information as to the effect of the judgment and the answer was 'insignificant' 'not worth mentioning.' I then asked Government to obtain statistics and information as to whether there have been any injurious effects in the direction of loss of revenue or of fraudulent taking of water. But the Government said that the enquiry was not worth making. Thus beyond the statement of apprehension in the first letter of 1889, we have absolutely no fact given showing that these apprehensions were realised. We waited till 1897 by which

time two further judgments were delivered by the High Court. Then we had a letter from Mr. Atkinson, the Collector of Kistna, who also repeated the apprehensions and not the facts. He says, after three judgments with an interval of eight years "The High Court has now laid down boldly that if the ryot has no option in the matter, he is not liable to pay water-rate. The Board is aware that not for one wet field in a hundred is there any option, and I can see no reason why nine-tenths or even ninety-nine hundredths of the ryots in the district should not at once relinquish irrigation, and hereafter, while continuing to cultivate wet crops, claim exemption from water-rate on the ground that they had no option but to let the water flow over their fields." This paragraph which I have just now read is a mere reiteration of the apprehension which eight years ago was felt by another Collector. I ask whether in the letter of 1889 any facts are mentioned which would justify the apprehension therein expressed? They might have been perfectly sound considering the circumstances under which those people were then placed. But the question I now ask you to answer is whether you are prepared to say that there are any circumstances which would justify the apprehension? I say most emphatically "no." The apprehensions expressed "I can see no reason why nine-tenths or even ninety-nine hundredths of the ryots in the districts should not at once relinquish irrigation." I should like to know if there was one case which happened and which goes to substantiate and prove that apprehension. I asked if there was one case and I asked for it more than once, but I was not given it. The Collector of Kistna then gives a complete refutation of his own first paragraph. This letter was written after the first judgment of the High Court which was considered erroneous and obnoxious. In paragraph 3, the Collector of Kistna remarks in 1897: "Had the matter been taken in time, I doubt if it would ever have proceeded so far. Charge for irrigation by involuntary flow has been practically confined to a few villages in Tenali, and one or two in Bandur taluk." Here is a whole district and the Collector remarks that the charge for irrigation by involuntary flow has been practically confined to a few villages in Tenali and one or two in Bandur taluk. This is eight years after the apprehension was first felt, and after three judgments were pronounced by the High Court in favour of the view taken by members on this side of the table. We have passed three years again and I ask is there any single instance which can be pointed out as having caused loss of revenue to Government, is there any instance which can be shown that the Government has been defrauded of its revenue, and if so to what extent? My Honourable friend, the mover of the Bill, in his speech in presenting the report of the Select Committee, says that the dissentient members—that is unfortunately myself and my friend on the right (Mr. Venkataratnam Pantulu)—do not controvert the facts which have been urged in proving the necessity for this legislation. I asked whether any facts have been stated. We have not controverted any facts, it is true. But what are the facts which we are to controvert? You have stated merely apprehensions expressed at an interval of eight years. You have not stated a single fact to show that those apprehensions came to pass. That is the position taken up by the Honourable mover of the Bill. Over and over again it has been said that a great danger is likely to happen. I ask, while no danger has happened as yet, what reason is there to suppose that any danger will happen hereafter? We have had in these ten years three judgments which were pronounced at intervals of five and three years. Ryots did not adopt any method of cheating Government of its revenue. What reason have we got to suppose that things will happen hereafter, whereby danger will be caused to public revenue which has not been the case during the last 35 years? I submit that if an answer

is required by the Hon'ble the Rev. Dr. Miller in the terms he requires it, that is, a categorical denial of the statement made by the two Collectors of Kistna, I emphatically give a categorical "no," so long as I am supported in that position by the answer given by Government to the question asked at the last meeting, viz., that cases are not worth mentioning. The Government itself did not mention a single case. I do not wish to traverse any of the other points that have been touched upon by my Honourable friends, but from a common sense point of view the question put by the Hon'ble Rev. Dr. Miller has been answered and the answer has been in the way of an emphatic "no", and I give it with all the courage and with all the information that I possess.

The Hon'ble Mr. G. G. ARBUTHNOT :—I should like to ask with your permission one question in view to what fell from the Hon'ble the Rev. Dr. Miller. I agree with a great deal of what he said and I specially agree with him that section 2 was not on judicious lines, the section which barred the jurisdiction of the civil courts. I would ask the Honourable member in charge of the Bill whether that jurisdiction will or will not, as things now stand, be barred. As I understand the Select Committee's report, it appears that though they have omitted section 2, the jurisdiction of the civil courts will still be barred. The Select Committee's report says: "We have omitted section 2 which barred altogether the jurisdiction of the civil court. So far as the question of the land irrigated being really benefited by such irrigation is concerned, we are advised that, as the section stands, no civil court can go behind 'the opinion of the Collector subject to the control of the Board of Revenue and of the Government.'" They dropped the section because it is of no value. What I hoped to be the case was that it would be on the lines of the Hon'ble Mr. Jambulingam Mudaliyar's minute of dissent. He says: "It does not seem fair and equitable that the ryot should be denied the privilege of going before the ordinary tribunals in such cases. What is intended to be provided for seems to be that when there is no question as to a benefit having resulted, the Collector's decision as to the kind and quantum of that benefit, or the rate of assessment for such benefit should not be questioned before a civil court." If that is the extent to which the possibility of going before the civil courts is limited, I am quite in favour of it. But if the possibilities of going before a civil court are as to whether any damages have occurred or not, it seems to me not a desirable thing.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—When we come to that point I shall explain the position of the civil courts.

The Hon'ble Mr. H. M. WINTERBOTHAM :—We have already had one meeting at which it was free to every Honourable member present to discuss the general principles of this measure. We have now before us a motion to omit certain words from one of the sections of the Bill, and under the cover of that motion we have heard an exhaustive and interesting historical resumé, we have been addressed on the causes and treatment of famine, and we have had three speeches on the general principles of the Bill. I am very much tempted at this moment to try and answer several of the arguments which have been advanced, but I very much doubt whether I ought to do it at this stage of the debate. For instance, the point that the Hon'ble Mr. Arbuthnot has raised must come up for debate under a later amendment which has been proposed by some of the Honourable members and I would not therefore take up the time of the Council in trying to enlighten him on the subject in answer to the motion just now before the Council. This amendment goes to the root of the Bill, proposes to cut out its vital part and to leave the law as it stands. I feel that I ought not to discuss a

proposal the plain object of which is not to assist but to stultify the Government and to re-open at any improper time a discussion on the principle of a measure which the Government is satisfied is just and necessary for the protection of the public revenue. A great number of proposed amendments to the same clause will very properly come under debate later on. At the end, on the motion that the Bill, as amended by the Select Committee and the Council, be passed into law, there will be a further opportunity for Honourable members who oppose the Bill to discuss the general principles of the measure. But I think that it is a mere waste of time for me to attempt to answer the various assertions which have been made, for instance, as to whether the Governor-General has declared that the principle of this Bill is wrong. I can clearly satisfy the Hon'ble the Rev. Dr. Miller, when the proper time comes, that the allegations of the two Collectors of Kistna made ten years ago are perfectly right. I have travelled through the deltas and I have seen the districts and I say that it is impossible for the ryots whose lands are surrounded by wet cultivation to exclude the water. The position of the law at present is that any man who chooses to say that he does not want water can nevertheless go on using it and we are not in a position to charge him water-rate. But, it is urged, let us wait till payment is thus evaded. Suppose, according to the present position of law, that there were no punishment for the offence of murder, is it an answer to say that the crime of murder is so rare that there need be no provision made that a man who commits murder should be hanged? Or suppose there is a small hole in the embankment of a reservoir: is it a sound argument to say that because the water is going little by little we need not mend the hole? We must amend the law before the mischief happens. The fact is that the ryots whose lands are surrounded by wet cultivation have not the option of relinquishing the Government water and the apprehension is that they will use the water but will avoid the payment of the water-rate. We want simply to amend the law, to keep things as they are and to prevent the ryots from evading the payment of water-rate. I am getting into a discussion of the general principles of the Bill in which I ought not to engage at the present time. All I can say is that the proposal would emasculate the Bill and ought therefore to be rejected.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—I should just like to say one or two words. I contemplated the possibility of the cases that have been pointed out. If such cases should occur, then let the rules provide for them, as proposed by the Board of Revenue. Mr. Arundel, as Collector of Kistna, did not propose that the Bill should be extended to dry crops, but he expressed his apprehensions only with regard to wet crops. These apprehensions were not shared by the Collector of Gódvári. Now if the Bill were confined to wet crops and to the class of cases mentioned in Mr. Arundel's letter of 1889 and if the jurisdiction of civil courts were not excluded, I do not know if the Bill would have met with such an opposition as this. The Bill gives a blank card to charge in any case, whether it be dry crop or whether it be natural stream or artificial channel or whether the supply is full or not. That is why there is so much of opposition.

The amendment was put to the Council and lost.

His Excellency the PRESIDENT :—At this stage I think the Council will agree with me that it would be convenient to adjourn for a short time. The Council will accordingly adjourn till 3-10.

The Council re-assembled at 3-10 P.M.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to withdraw the next amendment which stands in my name as it is similar to the one that has been moved by the Hon'ble Mr. Venkataratnam Pantulu.

With the permission of His Excellency the President, the amendment was withdrawn.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Your Excellency, now that the Council has rejected the previous amendment, the principle of the new Bill, in so far as it extends to the irrigation of land whether the owner applies for it or not, by direct flow of water over the surface is accepted by the Council. My next amendment relates to other sources of irrigation which, I believe, do not clash with the principle of the new Bill and which, I believe, notwithstanding that the Council has rejected the previous amendment, may be accepted by the Council, because it is totally different from that. There are four methods of irrigation indicated in the proposed Bill, that is, by direct flow or indirect flow, or percolation or drainage. The previous amendment for the omission of the words "whenever water by direct or indirect flow or by percolation or drainage" has been rejected as a whole as it was considered, as observed by the Honourable Mover of the Bill, that it went to the root of the Bill. The previous amendment settles the question so far as the direct flow of water is concerned. But my amendment relates to the omission of the other three classes, namely, indirect flow, flow by percolation, or flow by drainage. I wish to omit these three clauses, and my first amendment, therefore, is to omit the words "or indirect" occurring in line 14 of page 1 of the Bill. By indirect flow I take it to be—it has not been explained anywhere—the same thing as what is meant by "involuntary flow" in the letter of the Collector of Kistna. It is an expression that is apt to be misunderstood. I take it also that it does not mean the flow of water underground. I do not exactly understand what indirect flow means, as opposed to direct flow. Possibly it means that water finds its way to the fields by a way which it has got for itself and not in a way intended by the manager of the water-works. That is perhaps, what we ought to understand by indirect flow. It has reference probably to the length of the course; direct flow means the shortest course and indirect flow means the longest course. It is extremely difficult to ascertain what is called the indirect flow of water from the papers placed at our disposal. Nothing is said in the papers about a man cultivating his fields by indirect flow, profiting thereby and cheating the Government of its revenue. I have not been able to see any instance cited in the papers placed at our disposal. There is also the question of justice. Weirs or calingulas are built in connection with water-works to carry off the surplus water for protecting the bund and the lands below the water-works. Suppose the water during flood times indirectly finds its way to certain particular places and is utilised, surely the Government should allow this water to be utilized. If it is proposed to tax the men for it, the chances are they would not make use of that water. I do not see the necessity, the policy and the wisdom of such a course. If the Government means to charge a man, because he uses surplus water coming out of the water-works, water that should necessarily go out for the protection of the water-works and the lands below, it is not fair and it is not wise. The people should be allowed to utilise that water instead of allowing it to go waste to swamps and make the locality more unhealthy than it otherwise is. With these remarks I beg to move the amendment.

The Hon'ble M.R.Ry. P. Ratnasabhapatil Pillai Avargal seconded the amendment.

The Hon'ble Mr. H. M. WINTERBOTHAM:—I am not prepared to affirm that the proposed omission would do any definite harm if the word "direct" were likewise omitted. All I can say is that the Government water is distributed over thousands of square miles of flat plain in hundreds of devious ways. We have no definition of what is meant by direct flow. Some people might argue that no water can be said to irrigate a field by direct flow unless there be a defined channel leading from the field to the irrigation source. Under this view the greater part of our irrigation is by indirect flow, inasmuch as the water finds its way from one field to another not through any watercourse provided by Government. The proposed omission is undesirable and I must strongly oppose it.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The question that I have raised is what is meant by "the indirect flow." But that has not been answered by the Honourable Member. I have also raised another question why the water that is allowed to run waste should not be utilised by people and that too has not been met by the Honourable Member in charge of the Bill. No doubt discretion might be exercised by the Collector subject to the control of the Board of Revenue. But discretion is one thing and law is a totally different thing. It is not fair to make money from water which flows indirectly. The instance that I put forward of surplus water being let out for the protection of the water-works and the lands below has not been met by the Honourable Member in charge of the Bill. I therefore press my amendment, especially as he says, that it would do no harm.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—My next amendment is that the words "or by percolation or drainage" occurring in line 15 of page 1 of the Bill be omitted. As regards this amendment, few words are necessary to show that it is in the highest degree undesirable to introduce this provision. This provision would be altogether unworkable. Honourable Members will remember that the Bill has been extended by the Select Committee to the flow of water by percolation. In order to ascertain that, we should ascertain not only the way in which the field is reached by the water but also the way in which the field gets its water by percolation—whether it is from the Government water works or from any other water source. I should like to divide the amendment into two.

The Hon'ble Mr. H. M. WINTERBOTHAM:—You must speak on "percolation or drainage", as percolation comes afterwards.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—It is here "percolation or drainage".

The Hon'ble Mr. H. M. WINTERBOTHAM:—You must address yourself to both.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Can it mean that there can be no percolation without drainage. Am I to understand that percolation and drainage are synonymous?

The Hon'ble Mr. H. M. WINTERBOTHAM:—You propose to omit the words "or by percolation or drainage".

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Will your Excellency let me take each?

His Excellency the PRESIDENT:—You must speak to your amendment as it stands.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Am I not at liberty to forego a portion of my amendment?

His Excellency the PRESIDENT:—Percolation by itself is dealt with in a subsequent amendment.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—That is not mine and I shall have to wait. There is no separate amendment for the omission of the words "or drainage."

His Excellency the PRESIDENT:—Your amendment is for the omission of the words "or by percolation or drainage", and you must speak to that.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Cannot my intention be taken?

His Excellency the PRESIDENT:—Your intention must be expressed by words.

The Hon'ble Mr. H. M. WINTERBOTHAM:—The Honourable Member may support the next amendment.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—But I want also to omit the words "or drainage." However I shall take the words "or by percolation or drainage", and I hope I shall be allowed to talk at first on the first portion of my amendment and then on the second portion. Taking "percolation," I respectfully submit that it would be in the highest degree unfair to charge any person who derives benefit by percolation into his field from any water works which may be a private one and which, in the opinion of the Select Committee, might be a reservoir or a well or anything of the kind. All that I say is that it is extremely difficult to find out how percolation finds its way into a man's field. If there is no other source of water than the Government works, if it is impossible to get water except from this Government water work, there might be some force in the provision that has been made. But there are practical difficulties in the way. There must be no rain at all, so that the poor Collector whose position might be very much pitied in being called upon to decide this question may have some sort of conscience to be obliged to say, "I decide against this poor ryot; he has had no rain and, as far as I can see, there are no other water works and therefore I decide that any moisture that he has had in his field comes from our water works, and I therefore put him under class 1, 2 or 3." Suppose there are a number of works, both Government and private, and suppose there have been showers of rain, how is the fact to be decided that a man has had percolation from the Government water works? I respectfully submit that the idea of percolation is in the highest degree unworkable and is calculated to produce the greatest amount of discontent. On the other hand how is the Government entitled to make money out of percolation? Is there any law in the civilised world which says that, if Government water finds its way by means of subterranean influence to the field of somebody, the Government can demand money for it. The ordinary idea of physical property is that it is capable of being given or withheld, accepted or declined. When you ask money for property you must also give the option to the people to say "we don't want the property." The idea of making silver and gold out of this water under the earth seems to me a very startling and new idea indeed. I should like to know if there is any precedent for it anywhere in the civilised world. I respectfully submit that laws which are applicable between man and man are applicable even to Government in India. Why should

the Government make money out of something out of which no private man can make money? Is it fair? Is it equitable? My Honourable friend the Rev. Dr. Miller has challenged me and put a question and if he is unable to answer my question his vote shall be mine. There is a very clever article written in the Madras Law Journal, some portions of which are very apt, and I take the liberty of quoting some of the words from that article. It is stated: "The law recognises no correlative rights in respect to underground waters percolating, oozing or filtrating through the earth, and this mainly from considerations of public policy—(1) Because the origin, existence, movement and course of such waters and the causes which govern and direct their movements are so secret, occult and concealed that an attempt to administer any set of legal rules in respect to them would be involved in hopeless uncertainty and would be therefore practically impossible. (2) Because any such recognition of correlative rights would interfere to the material detriment of the common wealth, with drainage and agricultural mining, the construction of highways and railroads, with sanitary regulations, buildings and general progress of improvement in works of embellishment and utility." It is impossible for me to add to the force of those eloquent words. Then an American Judge has stated as follows: "If a claim could be sustained under such circumstances, it would amount to a total abrogation of the right of property. Percolations spread in every direction through the earth and it is impossible to avoid disturbing them without relinquishing the necessary enjoyment of the land. Accordingly the law has never gone so far as to recognise in one man a right to convert another's farm to his own use for the purpose of a filter. No man could dig a cellar or a well or build a house on his own land because these operations necessarily interrupt the filtration through the earth. Nor could he cut down the forest and clear his land for the purpose of husbandry because the evaporation which would be caused by exposing the soil to the sun and air would inevitably diminish to some extent the supply of water which would otherwise filter through it. The reason is that water like air is of such a nature that no one can have an exclusive right in it." Would you still make money out of water? If so, why not make money out of atmosphere? "In the process of evaporation and condensation it is sent in refreshing showers all over the earth. In its descent to the ocean it necessarily passes from one to the other and is intended for the benefit of all." If there is any difference of opinion as to percolation, how are the rival claims to be decided? Who are to be the witnesses in the matter? I would respectfully submit that the idea of property in percolation is somewhat fanciful, and having enjoyed the discussion of it, we may easily give it up as pastime. One word about drainage which forms part of my amendment. As regards "drainage," I do not know whether the word "drainage" is correctly used. If the word "drainage" is applied to water-works, it means the flood water. Ordinarily the word "drainage" is used for carrying off the surplus water from the fields. In either sense drainage is absolutely necessary for the protection of either the lands which might otherwise be drowned or the water works whose surplus water must be allowed to go. In the papers placed before us, it is stated that imperfect drainage causes the deterioration of the soil by causing the underground efflorescence to be brought out to the surface, and the deterioration of the soil thus caused might make the soil unfit for the growth of vegetables. I submit that a man in whose interest the drainage is needed should be entitled to ask his neighbour who takes the dirty water to pay money for it seems to me very hard and in the highest degree inequitable. If a private man cannot do it, how is the Government entitled to make money out of it? Further I submit that there will be

complications arising. I will mention an instance. Suppose the owner of a land gets the drainage water and the crop is destroyed, suppose the Collector assisted by his subordinates finds that the man has had crops and that he has had the benefit of water and therefore charges him. The Honourable Mover of the Bill has admitted that this law does not prevent people whose lands are injured by percolation or drainage from filing suits. The Collector takes money, because the ryot has in his opinion, had the benefit of water. Suppose the ryot brings a suit saying "that my land has been destroyed, injured by the flow of the drainage water," what will be the fate? In the executive department, the Collector takes money, but as a defendant in the court has to answer the claim that drainage water has injuriously affected the ryot. Thus, under a special law, you take money departmentally without the ryot having any right of appeal, and under the general law you are the defendants of a suit, virtually in reference to the same subject-matter and in which the court, upon legal evidence, might upset the conclusion of the Collector. And yet the ryot whose money you had taken departmentally is not entitled to a refund of it! Is it wise to be in this position? You have already secured direct and indirect flow and let us wait for another period of 35 years and see how the Bill will work. Be content with surface flow of water, leaving the underground percolation and drainage alone.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—The present amendment is for the omission of the whole phrase "or percolation or drainage." I have got another amendment to move later on for the omission of the words "percolation or", if this falls through. If it becomes necessary to speak to that as, I believe, it will be, then I shall deal with the whole question of percolation. But for the present in seconding my Honourable friend, I will only add a few more words as to the difficulties and inconveniences caused by the presence of the word "drainage." "Drainage," as it is used, is hardly restricted to anything definite, so that we cannot say "this is what is intended by the Act." There is no definition of the word "drainage." It could not be said that "drainage" means only surplus or superfluous water that flows from field to field or superfluous water flowing from a Government work to a field or from one field to another. "Drainage" is used here without any limitation or qualification and would include, I believe, all rain water falling on hill-sides and flowing into lands, private or Government, all jungle streams which carry off the drainage water from the hills. So that there will be absolutely no water falling in rainy seasons into a private land or tank which will be taken out of the meaning of the word "drainage." If the word "drainage" is confined to some specific water such as I have been describing at first, namely, the surface water flowing from a Government work to a private land, my objection would not be of much weight.

The Hon'ble Mr. H. M. WINTERBOTHAM:—May I point out to the Honourable Member that the "drainage" must be from any river stream, channel, tank or work belonging to or constructed by Government.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—Who ever says that the hill-sides do not belong to Government? Everything that does not belong to a private person belongs to Government, so that my difficulty is not cleared. In the rainy seasons water falling over the country, provided it does not fall on private lands, but falls upon mountains, hills and dales and such water flowing into private tanks will be drainage water within the meaning of the section. My difficulty therefore is not cleared. If you restrict it to the surplus water from a

Government work which is distinct and different from streams and channels "belonging to Government", which include natural channels and streams, I would not be inclined to take any strong objection. Without any definition of the word whatever, it is all embracing and includes anything and everything. The whole of the rain water that is sent down from the Heavens is drainage water. It must fall on Government grounds and it must flow by the law of gravitation into lower levels which may be private lands. Thus taxes will be allowed to be levied on rain water falling down from the Heavens. The standing orders of the Board of Revenue say that jungle streams which receive a casual supply of water may be utilised without charge. If in the rainy weather water falling on hill-sides and jungle streams flow into private tanks by the use of which a ryot cultivates his field, that water is not to be charged. That is the existing order and that is not abrogated. There is another order No. 9 that has a bearing on the subject. It lays down the limit up to which a person can take the rain water into his tanks. So long as a man does not intercept a channel or a source that supplies a Government water work, and so long as he takes the water and fills his tank with it from jungle streams, he cannot be charged. The question is whether the existing orders will not be considered as abrogated by this Bill. As to percolation, my Honourable friend has, to a certain extent, stated the administrative difficulty that would arise from levying a tax for percolation. For the present I need not comment upon that part of the subject. If the present amendment is not carried, then it will become necessary for me to address the Council for a much longer time on percolation and the existing orders on the subject.

The Hon'ble Mr. H. M. WINTERBOTHAM:—There is another amendment on the notice paper which refers to percolation only. I will therefore reserve what I have to say regarding percolation until that amendment is brought up. As regards irrigation by drainage, it has been fully explained and no attempt has been made to contradict the fact that the whole system of irrigation in our deltas, and indeed under every irrigation work, depends upon the water being permitted to drain from field to field through passages in the field bunds which the cultivators themselves open and close as occasion requires. To enact that no water-rate should be chargeable in respect of water received by drainage would be to sweep away at a stroke the greater part of our irrigation revenue. All that we can undertake is (as this Bill does) that we will not charge for irrigation by drainage unless the cultivator asks for it, or unless we are satisfied that the irrigation is beneficial and sufficient. The assumption that irrigation by drainage is always necessarily inferior to other irrigation is of course entirely fallacious. Much—in fact I may say everything—depends upon the soil and culture of the fields from which the drainage takes place. To propose that all irrigation by drainage should be exempt from taxation even when beneficial and sufficient is unreasonable, and the exemption might, as I have said, be made to apply to the greater part of the irrigated area. I will say only one word more. Honourable Members keep on assuming that the object of this legislation is to increase our revenue and to twist something more out of the ryots. We have again and again said that that is not our primary wish and endeavour. Our primary wish and endeavour is secure our existing revenue, and our existing revenue depends on the drainage passing from field to field and therefore this provision in the Bill is absolutely necessary. The proposed amendment should be rejected.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—A field is first ploughed and then drained and the water that flows is called the drainage water. If that is

meaning of drainage water, that is included in the words "indirect flow" of water. The provision about the indirect flow is sufficient to protect the revenue of Government in the sense in which the expression drainage water is now remarked upon by the Hon'ble Mr. Winterbotham. I cannot at all understand why every amendment should be opposed and opposed so very vehemently. It is said that we misunderstand the Government, and even in saying that we misunderstand the Government, the Honourable Member takes very good care to use careful expressions. He says "our primary wish is so and so." Who is to prevent your successors from carrying out your secondary wishes? This law is proposed to be passed in the teeth of the Secretary of State's despatch, in the teeth of the order of the Government of India, and in the teeth of your own resolutions. You have told us that revenue practices in violation of all these have been in existence. If you say in your speeches that your primary wish is so and so, would that prevent the Collectors, who are the administrators of the law from carrying out the secondary, third and fourth wishes? It is no use, I submit, to state all that in speeches which will not be read and which, according to the interpretation of the Courts of Justice, will not be allowed to be introduced in construing an Act. It is our duty to see that the language of the Act, which alone will be the guide to executive officers and courts, is apt. It may very often be necessary for one field to get rid of its drainage water, and the idea of making any money out of it ought not at all to be entertained.

The amendment was put to the Council and lost.

The Hon'ble M.R. Ry. C. JAMBULINGAM MUDALIYAR Avargal:—The next amendment which stands in my name is for the omission of the words "percolation or". The effect of this amendment would be if, by indirect or direct flow or even by drainage, water should find its way on any man's land, that land will be brought within the scope of this section as being liable to pay rent, even though the owner of it has not asked for the water. My objection is confined chiefly to the percolation of water. One great distinction between percolation and other kinds of flow of water is that in the case of percolation you cannot see it; whereas in the other cases you can see the water flowing and there can be no mistake about it. In the case of percolation it is a mysterious underground thing. It is not a matter that could be seen or definitely ascertained. At best it is only a guess work and there must be a difference of opinion in matters of guess work. There is a radical distinction between the flow of water by the other methods mentioned in this section and the flow of water by percolation. When this Bill was introduced into this Council, I felt much doubt as to the scope of the word "percolation", as to whether it was intended to cover surface percolation only—cases where the land is moist by reason of the water in the surrounding locality and the ryot makes use of such moisture for raising crops—, or whether it applies also to percolation into wells. I had considerable doubt and laboured to find out the meaning. Subsequently, my doubts have been set at rest. The Honourable mover of the Bill in reply to my speech said that there was a desire to include within the scope of this Bill percolation into wells, that the Government wished to have that power, though, for himself, he stated that the Government did not intend to make use of that power. I fully take that assurance so far as the Honourable mover of the Bill is concerned. We are not concerned here with personal assurances and personal respects to each other, but we are concerned with provisions which are to be included in the Bill. I now take the statement that it is the desire of Government to charge for water that percolates into wells also. I wish to deal with this subject in both its

aspects—first as to surface percolation, whether that should be charged or not, and secondly whether percolation into wells, reservoirs, tanks and such like receptacles should be charged. In the first place, I would like to examine the existing orders on the subject and find out what is the present state of things with a view to find out whether a case has been made out to alter the existing state of things. The present order on the subject is Rule No. 8 of the Standing Order No. 4. It is based on Board's Proceedings, No. 1467, dated 7th June 1882. It is to this effect: "The Board are of opinion that supposing the water to be obtained *bona fide* by percolation, the landholder should be given the option of taking a full supply of water for his crop, and in the event of his accepting the offer, that he should be charged water-rate to be fixed at the discretion of the Collector under appendix to Standing Order No. 5. But should the ryot refuse to take a full supply, no charge should be made for water which reaches his holding by percolation." Let me confine my attention to surface percolation to which the Standing Order applies. I made a reference to this Standing Order on a former occasion. I was put down smartly by saying that I was reading from an antiquated edition of the Board's Standing Orders. Having committed an egregious blunder, I was anxious to find out what the order on the subject was. Through the courtesy of the Revenue Department I have got the orders up to date, and after a close and careful study of these orders I am fully convinced and confirmed in the view that the Board's Standing Order No. 4, Rule No. 8 is to this day still in force and it is the rule obtaining in the Presidency and observed by every Collector and Tahsildar and it has not been abrogated. This order which I now read was issued in 1882 on a reference made by the Collector of Tanjore. His reference was this: He asked "firstly, whether any water-rate should be charged for cultivation carried on by water percolated from Government works; secondly if it should be charged the rates at which it should be charged severally for the different wet, garden and dry crops raised thereby." In answer to that, the order I referred to was passed which is embodied in the Standing Order as Rule No. 8. The next reference on this subject was made in 1887 and there was a Board's Proceedings, No. 527, dated 21st December 1887. That reference was from the Collector of Tinnevely and was in regard to certain lands in his district. He states "The new rule is that no water shall be charged on dry lands irrigated solely from private wells situated on land which is private property or constructed prior to the issue of these rules within whatever distance the wells may be from a public irrigation source. There are certain lands close under the outer toe of the bund of the large Valliyur tank in the Nanguneri taluk which were classed as wet before settlement, but during the settlement from some cause or other, were brought under dry, at very low rates. The soil is there very porous and during the whole time that there is any considerable amount of water in the tank water percolates freely, and the land gets as much benefit during that time almost as if it were the subject of direct flow." In this case he asks the advice of the Board and this was a much stronger case than the Tanjore one. The Board then passed the following order: "The Collector is requested to report the extent of these lands and to state whether the water percolating from the tank flows freely over them or whether simply the moisture on the ground enables the ryots to grow wet crops." The final order of the Board was in these terms: "In Board's Proceedings, No. 1467, dated 7th June 1882, the Board held that the water-rate should not be charged for water derived *bona fide* by percolation. It is not owing to any action of the ryot that the water percolates to his field and it seems hardly fair to charge water-rate—much less a penal rate—merely because he

grows a paddy crop. Owing to the moisture on the ground which he cannot prevent, he cannot raise dry crops. If the extent of the land affected by percolation is such as to reduce the ayacut of the tank, there may be room for doubt. In such cases it should be considered whether arrangements cannot be made for giving a direct supply to the field. If this can be done the lands can be transferred to wet. In all other cases water-rate should not be charged." This was in 1887 and in confirmation of the order of 1882. The reason given by the Board of Revenue in the paragraph now read is most significant. This was the reason given in 1887 on which they rejected the claim for percolation. The High Court in their judgment passed in 1889 two years later which has caused so much dissatisfaction to Government and which is the primary cause of this legislation have used this very reason, that it is not owing to any action of the ryot that the water percolates to his field and it seems hardly fair to charge water-rate. The third case that came up was in the year 1889. This is the order which has been misapprehended as the one which goes to cancel the Board's Standing Order No. 8. I have made a close study of the G.O., No. 343, dated 3rd May 1889, and I consider that this Government Order far from abrogating Standing Order No. 8, confirms that Standing Order, keeps it in full force and effect and lays down the circumstances and conditions under which that Standing Order should not apply. This is a case also from the Collector of Tanjore. In 1889 the Collector of Tanjore made a reference whether the water-rate should be charged under certain circumstances. One important fact that is to be observed here is that in this also the Board of Revenue confirmed to the fullest extent the Standing Order of 1882, one Member of the Board dissenting. When it went up to Government—this is the case referred by Mr. Gibson, the then Collector of Tanjore—the Government said that the water-rate should be levied. But we must see the circumstances and the conditions under which the Government passed that order: "The Government concurs in the opinion expressed by the Acting Second Member of the Board of Revenue. The lands referred to which are stated by the Collector to be as well off as any wet land in the district are chargeable with wet rate as they derived their value not from any improvements effected by the ryots at their own expense but entirely from the natural advantage of their situation in proximity to the rivers." That is one of the conditions, that the lands reported by the Collector were as good as any wet lands. It is not on account of casual percolation or moisture or anything of that kind, but it is on account of the fact that these lands derived a full supply of water, he suggested the continuance of taxation. There was another condition which was more important. "There is nothing to preclude the classification of these lands being altered from dry to wet, the districts not having been settled for a term of years." Therefore the lands reported upon on that particular occasion were as good as wet lands and it was the mistake of the settlement officers through whose oversight they were classed as dry. The Government order goes on to say "this being so the present practice of levying water-rate on the lands should continue and the lands should be classified as wet in the new settlement now in progress. The rule contained in paragraph 8 of Standing Order No. 4 applies only to cases of lands classified as dry in the districts brought under the new settlement." That order has not been abrogated or cancelled and it has been confirmed. The Government says in what cases that rule should be applied; not in the case of unsettled districts but only in districts which have been settled for a certain number of years. What is our position? All the districts of the Presidency have been settled for a term of years and more than once settled. The settlement operation has brought under classification every wet land available, and every land which

has got a full supply of water by percolation has been classified as wet. This Standing order, which exempts from charge dry land, which has a precarious percolation, is, far from being abrogated by this Government order, confirmed by it. The Board of Revenue protested and emphasised their view and the Government in an Order, dated 19th June 1889, No. 553, stated "The assumption on which the Board's reasoning in paragraph 2 is based, namely, that the percolation is due to the defective character of the irrigation work, is unwarranted in the face of the Collector's assertion that the lands receive a constant supply and are as well off as any wet lands in the districts." Taking this Bill, if you only get that condition, namely, that percolation should give a constant and full supply of water which will make the land fit for the classification as wet, that will be enough. But such conditions would be unnecessary and superfluous, because if there are such lands as did receive a full and constant supply of water probably they would have been included under wet classification and would have been taxed consolidated wet rate. The Government order proceeds to say, "In settled districts where lands have been classed as dry for a term of years, the classification cannot be altered except with the consent of the ryots during that term, it being at their option to take Government water for the lands or not (*vide* G.O., No. 1041, dated 5th November 1887). In districts not settled there is nothing to prevent lands receiving a constant and full supply of water by percolation from a Government irrigation work being classed as wet or a water-rate being levied pending such classification. This course should in practice be adopted only where a constant and full supply of water is secured to the lands and not where the supply is casual and intermittent." These are all the orders on the subject. Reading the last order closely in all its details, I find that the Government confirms the existing Standing Order and leaves it in full force; and in the particular case referred by Mr. Gibson the Government said that there was full and constant supply of water which rendered the land as good as any wet land and as the district of Tanjore had not yet been settled for a fixed number of years it was in the power of the Collector to put them under wet classification and the Government said that the tax could be levied and the lands put under wet classification. I submit therefore that my reference on a former occasion was to an existing living reference and not a dead and a by-gone reference. These are the orders on the subject and the question is whether any case has been made out on any grounds have been given to abrogate any of the Standing Orders. So far as I can gather, absolutely no case has been made out and no reason given at the time when the Bill was introduced for abrogating the existing Standing Orders. The only answer I got was that the Standing Order that I have read was not in existence whereas we now find that it is in full force. Therefore before the Council makes up its mind to abrogate the Standing Order which has been in existence since 1882,—for a period of two decades—it should require substantial reasons and not mere probabilities and apprehensions of danger and other imaginary things but actual facts should be quoted before this Council is asked to abrogate a rule which has been in existence for no less than two decades. The next subject that I wish to deal with is percolation as applied to wells and reservoirs. In this case also I am strengthened by the existing orders on the subject which have not been repealed. The order in this case emanates from no less an authority than the Secretary of State. It was this Government which originally moved in the matter and recommended to the Secretary of State that the previous rule with regard to percolation of water into private wells should be cancelled. The previous order was that wells at a certain distance—situated within 10 or 20 yards—from a Government tank, could

be charged for percolation. That reference was made in 1882 and the Secretary of State tentatively sanctioned the recommendation for a period of three years, and desired this Government to watch the effect of that order for a period of three years and to submit a report at the end of the period. So the working and the effect of the new rule was watched and the final report of this Government was submitted to the Secretary of State and finally the following rule was added: "No water-rate shall be charged on dry lands irrigated solely from private wells situated on land which is private property or constructed prior to the issue of these rules within whatever distance the wells may be from a public irrigation source". That is the present rule embodied in the Standing Order and it is in full force. The question is whether these orders have been abrogated, whether there are any grounds urged for showing that percolation into wells must be charged. I do not require apprehensions and imaginary difficulties but facts that have caused inconvenience to Government. I again ask whether this rule having been passed with so much solemnity after a great trial of its effects, the Secretary of State's sanction was obtained to abrogate this rule, whether any inconvenience was reported to the Secretary of State after an experience of 15 or 20 years. Was his permission asked to revive it? I again ask whether this Bill went before the Secretary of State, whether his attention was distinctly drawn to the existing orders on the subject exempting well percolation, and whether his opinion was asked for abrogating the existing orders on the subject? From the papers placed before us I see no such reference and no permission granted by that functionary for abrogating these orders. Then it is said that, after all, these are executive orders and the legislature has powers to cancel or nullify any executive orders. I quite concede that proposition that an executive order can be cancelled by this Legislative Council, but the question is whether a case has been made out and whether it is safe to proceed on this basis. I take it that it is a matter of mercy and clemency which was granted to us some 20 years ago — to exempt percolation into wells from tax. The question is whether it is safe, proper and prudent to withdraw that act of grace and to do an ungracious act by saying that that act of clemency and grace which was extended to the people of this Presidency should now be cancelled and abrogated — for what reasons? No reasons whatever. If some great inconvenience has been shown, say, there has been great loss of public revenue, by reason of this exemption, there would be some cause to consider whether any alteration should be made. Even then I consider that no trifling cause would be enough, no paltry sacrifice of a few rupees of revenue would justify us in interfering with the existing law. Nothing but dangerous consequences, nothing but paramount necessities would justify us in withdrawing a concession which has been enjoyed by people for a number of years. In the words of Sir Douglas Straight a concession once made should never be withdrawn except by reason of paramount and pressing necessities. The question is whether such necessity has now been shown. Then as to the administrative difficulties in collecting the cess for percolation, my Honourable friend Mr. Vijayaraghavachariar has traversed that to some extent and I do not desire to dilate much upon it. But there is one aspect which I desire to impress upon the Council. That aspect is that persons who are to exercise discretion and to report upon percolation into this well or that well or into this field or into that field are not the high functionaries about whose probity and integrity we have no suspicion. But they are the lower subordinates of the Revenue Department, the karnam and the village munsif. Let us for a moment consider what a wide door for peculation and corruption the introduction of this section will open to people of that class. It is in the nature of things impossible

that the highest revenue functionaries could investigate these little petty percolation cases in regard to fields and wells and pronounce an opinion after personal inspection. That is physically impossible. Therefore in 99 cases out of 100 it is the opinion of the subordinate officials that must ultimately become final. No doubt provision is made in the section for the control of the Collector subject to the orders of the Board of Revenue and the Government. What is the control of the Collector, the Government and the Board of Revenue worth, while as a matter of fact there must be hundreds and thousands of cases in a district where such reports would be made, and all these reports would have to be made by petty officials. In this aspect of the question I consider that, even if there should be a sacrifice of revenue by the exemption of percolation into wells from cess, that sacrifice is well worth making in the face of the great danger of the demoralising effect this will have upon the ignorant people and the officials, and in the face of the fact that a wide door would be opened in addition to numerous other doors that are open with reference to numerous other matters for peculation by the petty subordinates without any corresponding advantage to Government. There is one other aspect, the economic aspect of the question to be considered. Here I would refer to the very gracious and generous help rendered in the famine of 1892 to the cultivators of the Deccan districts in the shape of money advanced for the purpose of sinking wells. Several lakhs were spent in that year and thousands of wells dug in the various parts of these districts, not to speak of other districts. The result of that is that in the succeeding famine of 1897 and in the present unfortunate crisis that the country is going through, the people in particular portions of these districts at least are able to keep up and stand the difficulty for a considerable length of time. All these wells were sunk, no doubt, by the advance of money which had to be repaid. But they had the assurance that they could freely sink a well and enjoy it as a private well and that water was not going to be taxed. That is the assurance on which they have been relying since 1882 and that is the reason why numerous wells have been sunk through the country and lakhs and lakhs have been advanced to the people. What is the benefit? The economic aspect that we have to consider is that all this was done to support and keep up the people in times of recurring distress. If you once declare by means of this little word "percolation" in this section that well water would be taxed, can we expect that such a large number of applications would have been made for Government money and such a large number of wells would have been dug as has been the case. Whatever justification there may be for collecting this tax, I ask whether the economic advantage to the people is not far greater than the little money you are likely to get, the amount of which is not even estimated. Absolutely I have no idea and the others have no idea either as to the amount likely to be realised. Under these circumstances I do not know whether the chance of getting a small revenue, the extent of which we do not know, is worth consideration in the face of grave difficulties that exist in the administration of the tax, in the face of the great danger of demoralising the whole country by opening a door for peculation and in the face of the great economic advantages that would be got by giving a free hand to the people. This question as to the appropriateness of charging for percolation has been dealt with already by the Supreme Legislature, so that all these arguments are not drawn from my own imagination, but these are the pronouncements of the highest functionaries of the State on a similar question when it was taken up for discussion before the Supreme Legislative Council. When the Northern India Canal and Drainage Act was before the Supreme Legislative Council, this word percolation was proposed to be introduced into the section. On that occasion no less a personage than

His Honour Sir George Campbell, the Lieutenant-Governor of Bengal, opposed and pointed out that the lands benefited by percolation would be small in number compared to those injured thereby; that the inquiry into the question of benefits and injuries would be attended with many practical difficulties; and that it was not fair that Government, while charging for benefit caused by percolation, should disclaim its responsibility for compensation for injury caused by such percolation. Here the Government does not openly disclaim its responsibility but it practically amounts to the same thing. In the same discussion the Hon'ble Mr. Inglis said: "The cases in which injury would be done to land by percolation from a canal would be far more numerous than those in which benefit would be received; indeed, it might frequently happen that land which was benefited one year by percolation would be injured the next should the percolation increase, and it would not be right that a charge should be made on the owner in the one case, while no compensation was to be given to him in the other." Then another member, the Hon'ble Mr. Hobhouse, said: "If you diminished percolation and so injured the land, the landlord got no compensation; if you increased percolation so much as to deteriorate the soil, again he got no compensation. But, if your percolation was just of that amount which gave the landlord benefit, you made a charge for such benefit." This is a precedent the highest that we can have on the subject. We are not groping in the dark, we are not going without a precedent, we have the discussion of the Supreme Legislative Council on the subject, we have the opinions of persons who have the highest competency to express an opinion, we have the opinion of no less a person than the Viceroy on whose opinion the motion to introduce the "percolation" was negatived. Up to this day neither in the Northern India Canal and Drainage Act nor in the Bengal Drainage Act is anything said about percolation. They are the parts of India which have the largest and the most extensive works of irrigation. Your Excellency, these are some of the considerations that occurred to my mind. Examine them in whatever light you please, by the light of the best experience in this Presidency, by the light of the orders in this Presidency, and by the light of the practical convenience or inconvenience that would arise by charging for percolation, you will not find any ground for opposing the exemption either in the discussions that took place in the other Presidencies or in the weighty opinions of persons who are likely to know the consequences of such a measure as this. We do not find in them any support for the Bill, we have absolutely no support from any source whatever, we have no support from facts, no support from precedents, no support from high quarters and no support in the orders now existing. My Hon'ble friend the Rev. Dr. Miller wanted as a common sense juryman to have a categorical "no" to this question or that question. If a categorical answer were necessary and if this answer could be supported by authority, I could hardly find any other case in which I could find authority, experience, facts and everything in favour of the contention that I am holding. If in spite of all that, if in the absence of either precedent or fact the Council is pleased still to support this measure, then I must consider that I am unfortunate. The cause that I am espousing is a good, noble, and proper cause supported as it is by the weight of the authority throughout the country and if by my misfortune I have failed to convince you of the justice of my cause, I should attribute my failure not to the weakness of my cause but to my inability in presenting the matter before this Council properly.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment

The Hon'ble Mr. W. J. H. LEFANU:—Your Excellency, at an early stage of the proceedings in referring to the speech made by the Hon'ble M.R.Ry. Ratnasabhapati Illai, the Hon'ble Mr. Stokes said, if I remember correctly, that as a matter of fact percolation had never been charged and it was exceedingly unlikely that it would ever be charged. I should like to ask the Honourable Member, if he recollects the exact words which he used, to repeat what he said, because it may to some extent satisfy the minds of the Honourable Members who are pressing this amendment.

The Hon'ble Mr. G. STOKES:—I don't remember exactly what I said.

The Hon'ble the Rev. Dr. MILLER:—The amendment now before the Council is so much to recommend it that it is hardly necessary for any one to stand up for a whole hour in advocating it. I thought there was so much in favour of it that whatever could be said might have been expressed with advantage much more briefly. It is, Sir, certainly an amendment which I feel called upon to support unless the member in charge of the Bill can give very strong reasons for the inclusion of the word "percolation." I do not think, as my Hon'ble friend Mr. Jambulingam Mudaliyar has said, that I am bound to vote all through for his side of the question on account of anything that has been advanced in this small matter. But what I said before is that unless the main contentions set forth by the Hon'ble Mr. Arundel and Mr. Atkinson were disproved, it was certainly necessary to my mind that something could be done, but I fail, as far as I am advised just now to see that percolation is a necessary part of the something that requires to be done. So much has been said on it that I shall not waste the time of the Council. But it does seem to me that is much involved with that question of wells which surely it is most desirable to courage everywhere. The practical application of this section is so extremely difficult and the agents who will really have to decide these cases are so little to be trusted, I mean the supervision that can be exercised over them is so small, that it seems for these reasons eminently desirable to omit this word percolation from the Bill, unless there be, as I quite admit there may be, some very strong reason for including it of which I am totally ignorant.

The Hon'ble Mr. H. M. WINTERBOTHAM:—I wish to say a few words on what the Hon'ble Mr. Jambulingam Mudaliyar has said about the practice in this Presidency of charging for water supplied by percolation. He gave us the history of the leading cases in this matter. The first case came from Tanjore and in sending up the Collector remarked that water-rate has been charged on these lands for a very long time. That was the practice when he made the reference. The Government, that in its order of May 1889 which the Honourable Member read says, "This being so, the present practice of levying water-rate on the lands should continue and the lands should be classified as wet in the new settlement now in progress." When again the Board was not satisfied on the ground that the Hon'ble the Rev. Dr. Miller now states and the final order of Government (portions of which the Honourable Member read to us) declares as distinctly as possible that as long as the land receives a full and constant supply by percolation it can be classified as wet and could be so classified and that in the meanwhile the water-rate should be continued be levied. I declare that to be the practice in this Presidency with due respect to the Hon'ble Mr. Stokes. Every Collector may have his own practice, but as far as authoritative orders go for the last eleven years it has been the authoritative order that lands irrigated by full and sufficient supply of water derived from percolation should be charged water-rate or should be classified as wet. I have done it wherever I have

been. I was the Collector of Tanjore for three years and I have seen almost every part of the district, and I can declare that almost all the lands irrigated by percolation through embankments are classified as wet or charged water-rate. In my speech at the introduction of this Bill I fully explained why cultivators could not be permitted to claim exemption from water-rate on the plea that the water which irrigated their crops reached the land by percolation. I should perhaps weary the Council beyond endurance if I repeat all that I then said. It will be found on pages 127 and 128 of the supplement to last week's Gazette, published March 20th. The long and the short of it is that when a wet crop has been grown by means of a sufficient and beneficial application of Government water, we cannot leave it open to the cultivator to claim exemption from water-rate on the plea that the water reached the land by percolation. Half the cultivators in the deltas might more or less plausibly raise this plea if they chose to block up the water-passages in the field-bunds by means of which water is passed on from field to field. These water-passages are opened and closed continually by friendly arrangement amongst the ryots themselves according to the requirements of the crops. If percolation were exempted from water-rate, can it be doubted that the water-passages would be generally found closed when the visit of a revenue officer took place, and that exemption would be frequently claimed on the false excuse that the land was irrigated by percolation only. The opponents of the Bill appear to credit Government with some deep laid design to levy water-rate on extensive areas which have hitherto enjoyed immunity from the rate although yielding wet crops by means of percolation. Government harbours no such design; though I admit that the extensive agitation against the Bill is calculated to arouse the suspicion that more persons are profiting by the defective state of the law than Government is aware of. Nevertheless my belief is that such areas, if any, must be insignificant, and though I have travelled far and wide in most of the districts I don't know of any. All that Government wishes to do is to place on a satisfactory footing its right to collect water-rate throughout those wide tracts where no cultivator, who enjoys the boon of assured and beneficial irrigation, is individually able to exclude the Government water, and where every man is now able to evade payment of the rate by the plea that the water is forced upon him without his option. Percolation is one of the ways by which water forces itself. The Honourable Member in his minute of dissent says that "the possibility of an insignificant and unmentionable gain is not worth the consideration of Government." Just so. But what we are considering is the possibility of a very significant and mentionable loss, and it is to prevent this loss that we are unable to consent to any exemption from water-rate in respect of the manner in which the Government water reaches the field, but take as the test as to whether water-rate is chargeable three questions of fact—(1) did Government water reach the land? (2) was a crop irrigated with it? (3) was the irrigation beneficial and sufficient? If these three questions be answered in the affirmative, no cultivator should be permitted to claim immunity from water-rate on the ground that his supply was received by percolation. The amendment must, I submit, be firmly rejected. I must now address myself to answering what the Honourable Member has said with reference to percolation into wells. He made a very moving appeal to Government, that after it had encouraged the ryot throughout the Deccan to dig a number of wells, it has now proposed to pass a measure with the object of levying water-rate on the areas irrigated by these wells. He himself has shown that wells to which he referred are Government wells in ryotwari areas.

The Hon'ble M.R.Ry. JAMBULINGAM MUDALIYAR Avargal :—Private wells.

The Hon'ble Mr. H. M. WINTERBOTHAM :—You admit that up to 1882 we were levying water-rate on water baled out from these wells. In that year by an act of grace and with the consent and approval of the Secretary of State that practice was stopped. Under the present Bill, I admit that we can levy water-rate on water baled from wells supplied by percolation, but we have not the slightest intention of withdrawing the act of grace which the ryots have been so long enjoying. I think I am right in saying that every other province, certainly Bombay, has power to charge on irrigation by wells within a certain distance of its canals and if we take the same power there is no harm that can arise from it. We have had the power throughout and we levied it till 1882 when, as a matter of grace, we gave it up. Though no doubt we retain the power in this Act, yet we do not harbour the slightest intention of using it. The Government of Bombay has a similar power and as you know in all the Native States there is a similar provision. In the State of Mysore large revenue is got by levying water-rate on lands irrigated by wells. I do not say that it is politic or impolitic, but as regards wells sunk by the cultivators themselves we have given them the assurance that we will not increase the revenue in consequence of the improvements which they themselves made. As I said before we simply keep the power and we have not the slightest intention of withdrawing the concession which the ryots have been enjoying in this Presidency so long.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—With regard to the question of percolation, I wish to place one typical case before the Council. We have in the districts of Trichinopoly and Tanjore on both sides of the Cauveri innumerable plantations of plantains, &c., and if this Bill becomes law with the provision as to percolation in it, then the Collectors and the Revenue officials will say that these plantations of plantains are benefited by water percolating through the sides, and that therefore water-rate should be charged. As a matter of fact, we know that plantains do not require water and I wish to know from the Honourable Member in charge of the Bill whether such a case will not be covered by the Bill.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—There are certain matters on which I should like to say a few words. The Hon'ble Mr. Winterbotham said that the Government had no intention to levy water-rate as regards cultivation by wells notwithstanding they may be receiving their supply of water by percolation, but how is that intention expressed by any words of limitation in the Act? We are now called upon to pass an Act which from the comprehensive language used would cover such cases. In reply we are told "let the provisions remain, but we will not act upon them." Is that the way in which laws should be enacted? The Honourable Member said that we are following the practice followed everywhere, especially in Bombay. In no other provinces, in the north of India where the irrigation works are the grandest is this the practice. All the evidence that we have been accumulating as regards Bengal, the Punjab and the North-West Provinces is against us; as regards Bombay I have already brought to the notice of the Council what the practice is. It is confined to within 200 yards of any Government canal and it does not say any natural stream or reservoir. It speaks of Government canals within 200 yards of a well, in regard to which alone a similar provision is made with various limitations. We have no such practice, no such law, as this anywhere in India. I respectfully submit that the idea of passing the law giving enormous power apparently to Collectors but in reality to a lot of low-paid and ill-educated men drawing a small salary of Rs. 3 or Rs. 5 a month is, I think, in the highest degree dangerous. If the ryots cheat you,

you have innumerable remedies in your hands. There is the great remedy of punishment under the Indian Penal Code and you have got also the remedy of double assessment and penal assessment. In spite of these remedies, you want to introduce this provision. Because you think that some ryots may cheat you, you have no right to legalise a principle which is obnoxious and which is recognised as pernicious everywhere. I know that the Honourable member in charge of the Bill has not answered a single question raised by us, as to the propriety of taxing water by percolation and as to the unworkable nature of the law. I quoted the opinions of a few American Judges, but I would now quote the opinions of Judges nearer home, English Judges. These opinions ought to prevail unless something very strong and cogent by way of argument could be advanced by the other side. Chief Justice Tindal said: "The rule of law which governs the enjoyment of a stream flowing in its natural course over the surface of land belonging to different proprietors is well established But we think, on considering the grounds and origin of the law which is held to govern running streams, the consequences which would result if the same law is made applicable to springs beneath the surface, and lastly the authorities to be found in the books, that there is a marked and substantial difference between the two cases, and that they are not to be governed by the same rule of law." It may be that Government may have some advantages now and again as was remarked by the Supreme Council. But the disadvantages that would arise by enacting a law of this kind would far outweigh any little advantage which the Government may reap from it. Another Judge says: "All the water falling from heaven and shed upon the surface of a hill, at the foot of which a brook runs, must, by the natural force of gravity, find its way to the bottom and so into the brook; but this does not prevent the owner of the land on which it falls from dealing with it as he may please and appropriating it." In the case of *Chasemore v. Richards* which eventually went up to the House of Lords we have the following passage from the judgment of the Court of Exchequer Chamber. "The law respecting the right to water flowing in definite visible channels may be considered as pretty well settled by several modern decisions (*Embrey v. Owen, &c.*). But the law, as laid down in those cases, is inapplicable to the case of subterranean water not flowing in any definite channel nor indeed at all in the ordinary sense, but percolating or oozing through the soil, more or less according to the quantity of rain that may chance to fall. The inapplicability of the general law respecting rights to water, to such a case has been recognised and observed upon by many Judges, whose opinions are of the greatest weight and authority. The question is whether the plaintiff has such a right as he claims *jure nature* to prevent the defendant sinking a well in his own ground at a distance from the mill and so absorbing the water percolating in and into his own ground beneath the surface. It is impossible to reconcile such a right with the natural and ordinary rights of land-owners or to fix any reasonable limits to the exercise of such a right." In another case *Brett, M. R.*, said: "The percolating water below the surface of the earth is a common reservoir or source in which nobody has any property, but of which everybody has, as far as he can, the right of appropriating the whole." No doubt, I dare say, that a gentleman of the vast experience of the Honourable Mover of the Bill may be able to quote some instances in which the ryot may have fraudulently made use of percolation occasionally if that is possible and conceivable. Notwithstanding all that the Hon'ble Mr. Winterbotham has said from his experience, which he has frankly admitted may differ from the experience of other Collectors, with all deference to him I submit that we have made out a case, and I beg you will give your votes in support of the amendment.

The Hon'ble the Rev. Dr. MILLER:—I wish to ask a question of the Hon'ble Mr. Winterbotham as to the meaning of the word percolation. He seemed, in reply to me, to say that percolation would be the word used to express the passage of water from one field to another through an artificial embankment set up to keep it out. If that be the meaning of the word, I quite admit that there is some necessity to prevent the passage of water, but the word "percolation" does not to my mind convey any such idea. It is passage through some natural obstacle, say, through a range of hills, not through any artificial obstruction raised to keep the water out. If the word percolation has acquired this specific meaning in the language used in revenue affairs, I can see the necessity for it, but not otherwise.

The Hon'ble Mr. A. T. ARUNDEL:—Perhaps I might give the Hon'ble the Rev. Dr. Miller an instance of percolation which I have actually seen in my own experience. I have seen a reservoir with an earthen embankment and with water standing at some height inside. On the outside of the embankment there was a well below. The embankment was of porous material and the water passed underneath the bund and into the well. The water rose above the surface of the ground and flowed into the field. There is percolation which irrigated the land from this particular source. That is an illustration which I happen to remember.

The Hon'ble Mr. H. M. WINTERBOTHAM:—I should like to read to you what I said at the last meeting: "What is percolation? It is the straining or draining of water through small interstices. What difference in principle is there if the water passes from one field to the next through a small cut in the bund, or through the porous soil of the bund, provided that in both cases the supply is beneficial and sufficient?" I have given in my speech three or four reasons why percolation should not be allowed to be pleaded as a ground for exemption and there is no use in repeating it.

The Hon'ble Sir V. BHASHYAM AYYANGAR:—After hearing what has been said by those who have spoken in favour of the amendment and by the Hon'ble Member in charge of the Bill against the amendment, I mean to vote in favour of the amendment, notwithstanding that I signed the Select Committee's report without a minute of dissent. What I have heard to-day at this Council convinces me that it is quite unnecessary to retain these two words "percolation or." I therefore think that these two words may well be omitted from this section without any perceptible sacrifice of revenue, as it will thereby remove the misapprehension and alarm that has been caused by the insertion of these words in the Bill. The Hon'ble Member in charge of the Bill has plainly stated that it is not the intention of Government at any rate for the present to vary the existing practice or levy water-rate for irrigation by percolation. I fully agree with the Hon'ble Member in charge of the Bill that when there is a constant and steady supply of water by percolation which can be relied upon for cultivation, it is just to make those lands pay water-rate. But it seems to me that the remedy is in the hands of Government itself. In all cases where cultivation of nunga crops or garden crops by a steady and constant supply of water by percolation or otherwise exists, the remedy is very simple, that is, to classify the land as wet land and impose assessment on it accordingly. Of course some departmental inconvenience may be pointed out. But I am not aware of any departmental inconveniences nor is there any additional trouble that is involved if such classifications should take place during the currency of the period of the existing settlement. There is certainly nothing, as far as I am aware, in law which would prevent the land classified as dry from being assessed as wet land if the Government is satisfied that there is a constant and steady

supply of water by percolation and that the holder of the land hitherto classified as dry is benefited by such irrigation and raises wet crops or other superior crops. There is an additional reason why I think this percolation theory ought to be dropped in the Bill as amended by the Select Committee. As the Bill stood originally when it was referred to the Select Committee, Civil Courts could not go into the question as to whether irrigation was the result of percolation or not. Honourable Members will remember that the section in the original Bill was: "No suit shall lie in any Civil Court to set aside or modify any assessment of water-cess made by a Collector under this Act." The Hon'ble Mr. Arbuthnot wanted some information as to the extent to which the change has been made in regard to the jurisdiction of Civil Courts by the Bill, as amended by the Select Committee. I shall just explain that with reference to this point. As the section originally stood, a Civil Court could not investigate whether irrigation was by percolation or not because the jurisdiction of Civil Courts was completely shut out. But the Select Committee recommended that the section might be omitted and the only extent to which the jurisdiction of Civil Courts is shut out or restricted is that the opinion of the Collector that certain lands have been benefited by involuntary irrigation is to be final. That is a matter which the Revenue authorities are likely to determine with greater accuracy than the Civil Courts can upon the conflicting evidence which will be adduced before Civil Courts whether a land has been actually benefited by such irrigation or not. But under the Bill, as it has been amended by the Select Committee, any person who has been charged with water-rate may say that his land has not been irrigated by percolation and it would be perfectly open to him to raise that plea in a Civil Court and the Civil Court will have to determine whether his land has been irrigated by percolation or not. Suppose it is a case of a well or it is the case of a pond or a private tank on his land. It may be that the tank or well is filled partly by spring water and partly by percolation. Under the Bill, as amended by the Select Committee the jurisdiction of the Civil Court is not shut out. And though no doubt the suitor, who contests the validity of levying water-cess in respect of his land, may not impugn before the Civil Court the opinion of the Collector that his land is benefited—though that opinion of the Collector may be conclusive in the Civil Court—yet it would be open to the holder of the land which has been assessed with water-rate to say that though his land is benefited by irrigation, yet it is not by percolation. That question will have to be investigated by the Civil Court and knowing as every one must admit the great difficulty which attends the investigation of this question, I think it is undesirable, especially in the shape in which this Bill is modified, to have this source of litigation by retaining the words "percolation or." I do not see what tangible object there is in retaining these words in view to any prospective advantages, because the Honourable Member in charge of the Bill has said that there is no intention to levy the water-cess in cases which may be covered by the term "percolation." If there is no present object and if it should turn out necessary in the future to raise a revenue from lands which receive a constant supply of water by percolation, it would be just and proper that Government should have unrestricted power, which cannot be questioned by any Civil Courts, to levy a rate of assessment upon that land equal to the wet-rate. There the Civil Court is shut out altogether. Because a Civil Court cannot at all take cognizance of any question as to the rate of assessment on any land. The classification into wet and dry lands is for departmental purposes, and if a dry land is assessed at a higher rate because it receives a constant and steady supply of water by percolation from a Government river

or a tank, there could be no injustice in it and that need not be provided for in this Act. We know that the ryotwari portion of the Presidency is the greater portion, and it is only in regard to zamindari tracts you will be under the necessity of levying a revenue, under this source, as water-rate, because in zamindari tracts you cannot vary the land assessment. In ryotwari tracts you can enhance the land assessment when the land is irrigated by constant and steady supply of water by percolation, whereas you may not be in a position to do it in a zamindari tract. The only question is whether any sufficient cause has been made out for retaining this provision in the Bill for the purpose of raising revenue in zamindari tracts. In the speeches that have been made in favour of the amendments, and in the reply made by the Honourable Member in charge of the Bill, nothing was said as to the operation of this principle of percolation in zamindari tracts. For my own part, I am decidedly of opinion that in the case of zamindari tracts no water-rate should be levied by reason only that some portion of the land, whether it be classified by the zamindar as wet or dry, receives a supply of water by percolation. I thought it necessary to make these remarks, because I mean to vote in favour of the amendment, notwithstanding that I signed the Select Committee's report without a note of dissent.

The Hon'ble Mr. H. M. WINTERBOTHAM:—May I ask the Honourable Member one question. Suppose a Government canal passes through a zamindari area and suppose that the land on both sides of the canal belongs to the zamindar and the zamindar digs wells on either side of the canal with the result that water pours into the wells in the manner described by the Hon'ble Mr. Arundel. Does the Honourable Member consider it wrong to charge him water-cess?

The Hon'ble Sir V. BHASHYAM AIYANGAR:—Legally it would be wrong. But I do not deny that it would be in the power of the Legislature to make such a law.

The Hon'ble Mr. H. M. WINTERBOTHAM:—Here is that very thing we are doing.

The Hon'ble Sir V. BHASHYAM AIYANGAR:—All that I mean to say is that, so far as the greater portion of the Presidency is concerned, namely, the ryotwari tracts, it is unnecessary. I have had no information as to the extent to which irrigation by percolation takes place in zamindari tracts.

The Hon'ble Mr. G. G. ARBUTHNOT:—As this is an important matter and is likely to be pressed for a division, I should like to explain why I intend to vote against the amendment. It seems to me that the Hon'ble Mr. Winterbotham has made out a very good case as to why it is necessary that the provisions about percolation should be retained. As regards percolation into wells, the Honourable Member has said that it is not going to be charged.

The Hon'ble Mr. H. M. WINTERBOTHAM:—That is only with reference to Government and ryotwari wells. In regard to zamindari wells in such a case as the one I mentioned, we may have to consider whether we should not charge water-rate if they drain our canal.

The Hon'ble Mr. G. G. ARBUTHNOT:—As the Government is fully aware of the desirability of encouraging the digging of wells and not discouraging it, I accept the statement of Government and vote against the amendment.

The Hon'ble M. R. Ry. C. JAMBULINGAM MUDALIYAR AVARGAL:—I just wish to say a few words in reply. As to the assurance given by the Honourable Member in charge

of the Bill that this act of grace given in 1882 will not be withdrawn—at least that is the present intention of Government—I take that assurance with all the thankfulness that I should express in behalf of the people; but at the same time I am painfully reminded of the fact that the Government changes every five years, and in that view the question is what value this assurance will have to the people. Once the provision is introduced in the Act, there it is. We are informed by the learned judgments of the highest court in the land that an Act is interpreted without any reference to the valuable discussion that goes on here or to the Statement of Objects and Reasons, or to the report of the Select Committee, or even to the preamble to the Bill itself. That being the case, what value is there in the assurance given by the Honourable Member to the Council, though he may be connected with Government for the time being. That assurance, I submit, has no relevancy whatever with the question in hand. I shall also point out that, in making this assurance, the Honourable Mover of the Bill has conceded the principle that I have been fighting for all this day. If there is no validity or force in the argument that I have been adducing in regard to well percolation, then that concession need not have been made and even that assurance would have been out of place. Reference has been made to the fact that the Bombay Act has got provisions as to percolation and that in Mysore and other Native States irrigation by percolation into wells is charged for. But at the same time one answer that I should make is I do consider and I believe the Council will concede that it must consider that the Act which was passed by the Supreme Legislature in which the opinion of the Viceroy and other members was elicited on the strength of which the introduction of the word percolation was rejected is of a much higher value than the Bombay Act, the discussion of which we do not know. So far as I remember, the Bombay Act has got a restriction that this charge for percolation should not be made for any source beyond 200 yards from the Government works. There is a limit and a restriction. There is no Act in the whole of India without a restriction and without a qualification. The word “percolation” is capable of all kinds of meaning, not the one meaning which is attached to it by the Honourable Mover of the Bill. I am reminded that there are no permanently-settled estates in Bombay. The special meaning which the Honourable Mover wishes to attach to “percolation” is that it is applicable to water oozing out from a small embankment between field and field. That is the meaning which he wishes to attach to the word “percolation.” That has been answered by the Hon’ble the Rev. Dr. Miller, who has said that percolation according to the ordinary acceptance of the word, has a much wider meaning than that. The instance quoted by the Hon’ble Mr. Arundel and the Honourable Mover of the Bill will be covered by the words “direct or indirect flow.” Water flowing direct from field to field is “direct or indirect flow”; and the word “percolation” applies to mysterious flowing which no man is able to see and not to the open flow of water. If the dictionary meaning of the word “percolation” be applied to the particular case pointed out by the Honourable Mover, I should not have objected to it. Whatever may be the meaning attached by this Council to the word “percolation”, the Courts will take the word “percolation” as it is ordinarily understood. This provision as to percolation has no qualification or anything of that kind. As to surface percolation, I have already referred to the orders on the subject. I do still maintain that the Board’s Standing Orders are not repealed. Under these circumstances, I pray that the Council will give its best consideration and see its way to delete the words from the section.

The amendment was put to the Council and lost.

A division having been demanded, it was taken with the following result:—

Ayes.

The Hon’ble the Raja of Bobbili.
 „ Mr. Eardley Norton.
 „ M.R.Ry. C. Vijayaraghavachariar.
 „ „ C. Jambulingam Mudaliyar.
 „ „ P. Ratnasabhapatil Pillai.
 „ „ G. Venkataratnam Pantulu.
 „ The Rev. Dr. W. Miller.
 „ Nawab Saiyid Muhammad Sahib Bahadur.
 „ Sir V. Bhashyam Aiyangar.

Noes.

The Hon’ble Mr. A. T. Arundel.
 „ Mr. H. M. Winterbotham.
 „ Mr. G. Stokes.
 „ Lieut.-Colonel Sir George Moore.
 „ Mr. J. Thomson.
 „ Mr. F. A. Nicholson.
 „ M.R.Ry. P. Rajaratna Mudaliyar.
 „ Mr. G. H. Stuart.
 „ Mr. F. J. E. Spring.
 „ Mr. G. G. Arbuthnot.
 „ Mr. G. L. Acworth.
 „ Mr. J. E. P. Wallis.
 „ Mr. W. J. H. LeFanu.

The Hon’ble Mr. H. M. WINTERBOTHAM:—I think I ought to speak here. I am prepared to accept your next amendment and substitute some other words in lieu of the words omitted. For moving my amendment, I have the permission of His Excellency the Governor.

The Hon’ble M.R.Ry. C. JAMBULINGAM MUDALIYAR AVARGAL:—My amendment is to omit the words “or is utilised for the purpose of irrigating” and not to substitute anything else.

The Hon’ble Mr. H. M. WINTERBOTHAM:—You cannot say what my amendment is until you hear it.

His Excellency the PRESIDENT:—The best thing to do is for the Hon’ble member to propose his amendment and then the Hon’ble Mr. Winterbotham can propose his.

The Hon’ble M.R.Ry. C. JAMBULINGAM MUDALIYAR AVARGAL:—I beg to propose that the words “or is utilised for the purpose of irrigating” be omitted. I suggest that these words should be unconditionally omitted. The wording of the original Bill was:—“Whenever water is supplied or used for purposes of irrigation from any river, stream, channel, tank or work belonging to, or constructed by, Government, and also whenever water, by direct or indirect flow, or by percolation or drainage, from any such river, stream, channel, tank or work, from or through adjoining lands, or otherwise, irrigates any land under cultivation, &c., &c.,”. The words “or otherwise”

have been omitted by the Select Committee and the words "or is utilised for the purpose of irrigating" have been introduced in their place. The object evidently is that the charge for water-rate could be made not only when by direct or indirect flow or by percolation the land is immediately irrigated, but also when water is hoarded up in a reservoir or a tank or any receptacle and is afterwards used for irrigating. This is to make it clear that well water can be charged with water-rate, because water is there stored up. From the time the Bill was introduced into Council and up to the date of receiving the report of the Select Committee my idea was that the mover of the Bill wanted to levy a water-rate on well water. But when I saw the report of the Committee I found the extension given to it which appeared to be a most extraordinary and altogether a novel extension, which was not mentioned in the introductory speech of the Hon'ble Mover of the Bill, and which I did not hear mentioned in meetings of Select Committee. I saw it for the first time in the report of the Select Committee and I consider that the introduction of these words "or is utilised for the purpose of irrigating" in the light of the explanation given in the report of the Select Committee which I have not signed, is very dangerous. The reason given in the report of the Select Committee is:—

"We have omitted the words 'or otherwise' as being unnecessary.

"Under some of our irrigation systems private rain-fed tanks are, without the application of the owner, replenished by direct or indirect flow of water from a Government source of irrigation, and the improved supply thus made available is utilized for extending the mamul wet ayacut under the tank."

So that the case which is in the view of the Hon'ble Mover of the Bill by reason of which these words have been introduced is that of the existing system of tanks. To explain it briefly, there are series of tanks, some in the higher level and others in the lower level, and it frequently happens that the water in the tank which is in the higher level flows through its calingula to the tank which is on a lower level. (*A slip of paper was placed in the hands of the Hon'ble Member*). I understand that the Government desire to accept my amendment, and therefore I have no desire to lengthen my speech, but in view of the fact that the amendment is not unconditionally accepted and that the other amendment which might be proposed might be more dangerous, I am unable to take that acceptance and sit down at once. (*After a brief consultation*). I am advised by my friends that any further remarks that I should make on this question might be made when the proposal of the Honourable Mover is made. For the present, I take the acceptance of this amendment by the Honourable Mover of the Bill and await my opportunity when the next amendment is moved.

The Hon'ble Sir V. Bhashyam Aiyangar seconded the amendment.

The amendment was put to the Council and agreed to.

The Hon'ble Mr. H. M. WINTERBOTHAM:—With His Excellency's permission, I now wish to propose the amendment that after the word "cultivation" in line 19 be inserted the words "or flows into a reservoir and is thereafter used for irrigating any land under cultivation". The Select Committee has explained in paragraph 2 of its report the object with which the words "or is utilised for the purpose of irrigating" have been introduced. I am not sure whether the Hon'ble Mr. Jambulingam Mudaliyar was present at all the meetings of the Select Committee and if he was, I do not understand how he is not aware of the full discussion that took place on the subject.

In the areas commanded by some of our large irrigation works there are zamindari and inam villages interspersed amongst the ryotwari land, and in these villages small areas of what is called "mamul wet" are often cultivated by means of water precariously supplied by small rain-fed tanks or reservoirs. When water is turned on from the Government project it follows the natural drainage of the tract, and in its course it runs into and replenishes the rain-fed tanks to which I have just referred. The zamindari and inam ryots receive the improved supply with joy; store it in the tanks and set to work to extend wet cultivation as far as land is available. But of course they prefer to get the water without paying for it if they can, and at present Government can obtain no return for the water supplied, because it runs into the tanks without any effort on the ryots' part and without their asking for it. I therefore have agreed to the omission of the words "or is utilised for the purpose of irrigating", and with His Excellency's consent I propose to substitute for them the clause I have just read. The addition is intended to effect the same object as the words which the Council has just agreed to omit, but will do so more clearly. I have already at the commencement of this meeting placed in the hands of Honourable Members a corrected draft showing how the section will stand if my amendment is carried. The object of the proposal is the same as the Select Committee had in view, but that is effected in a clearer way by this amendment.

The Hon'ble Mr. W. J. H. LeFanu seconded the amendment.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I do not know if this amendment is in order. Under the rules, your Excellency, six days' notice has to be given. All that is given is a printed copy of the Bill with these words written therein. This is not the way of giving notice of an amendment under any rule or law.

The Hon'ble Mr. A. T. ARUNDEL:—That is only a slip for your information and not a formal document.

The Hon'ble Mr. H. M. WINTERBOTHAM:—I only told you what I was going to do.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Where is the notice?

The Hon'ble Mr. H. M. WINTERBOTHAM:—It does not require much notice. We have given you several hours' notice. Will you quote the rule under which it is wrong?

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Under a former ruling given in regard to myself by His Excellency, I deny you have a right to discuss this point. Under rule 23 "Members who wish to make any motion at any meeting must give notice of their intention at the next preceding meeting or must send such notice in writing to the Secretary at least six clear days before the date fixed for the meeting at which they intend to make the motion. Provided that the President may, at his discretion, permit a motion to be made, of which such notice has not been given". Rule 48 says "Any member wishing to propose an amendment affecting the substance of a Bill shall send a copy of the proposed amendment to the Secretary in accordance with rule 23 and the Secretary will enter the same in the printed statement of business prepared under rule 7; but it shall not be necessary to give previous notice of amendments of a purely verbal character or of amendments consequential upon, or moved in respect of, amendments which have been carried". The Honourable mover of the amendment is entitled to obtain the permission of His Excellency the President to move his amendment on less notice than six days, but in all other respects he is bound to conform to the rules exactly as the elected non-official members are obliged

to do. I respectfully submit there is no copy of the amendment sent to the Secretary^{the} and there is no copy printed on the agenda paper. I submit the Hon'ble Mr. Winterbotham is altogether out of order. What was applicable to me at the last meeting is also applicable to him and he has no right to discuss it.

His Excellency the PRESIDENT:—With reference to the Hon'ble Member's objection, I have to say that, under Rule 23, I have given the Hon'ble Mr. Winterbotham permission to move this amendment without previous notice as required under the rules. With reference to the objection raised under Rule 48, I hold that the amendment that the Honourable Member is proposing is little more than of a purely verbal character. It is certainly an amendment consequential upon the one which has just been passed and also in respect of the same. I therefore maintain that under the rules, the proposed amendment is in order.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR AVARGAL:—I oppose the amendment. The proposition now moved is virtually another form of the words that we just now omitted. The words omitted are "or utilised for the purpose of irrigating" and the words now proposed to be introduced are "or flows into a reservoir and is thereafter used for irrigating any land under cultivation." These words express the meaning intended by the former words in a much clearer language and bring out those ideas more plainly. The instance that was quoted just now is just the same as is mentioned in the report of the Select Committee, namely, that in the case of rain-fed tanks, the water from rain-fed Government tanks flowing into private tanks, if utilised for extending the mamul wet ayacut under the tank, is charged. It principally speaks of one set of cases. These cases are those of Government tanks situated in high level. There are in the whole country a number of tanks situated some in higher level and the others in lower levels with water flowing from the one to the other. In such cases if the tank in the high level belongs to Government and the tank in the low level belongs to private owners such as shrotriendars and zamindars, it is assumed that so long as the water flows from the Government tank in the higher level to the private tank in the lower level and is utilised for cultivation, it is fair that the private owner of the tank, whether he be a zamindar or shrotriendar or any big landholder, should pay for it. That, I take it, is one aspect of the case which entirely ignores the possibility of other cases. Suppose instead of putting the Government tank in the high level you put the private tank in the high level and the Government tank in the low level, suppose the Government tank is replenished from the private tank, is there any reciprocity in the matter of payment? Is there any mutuality in the matter of compensation to be paid to zamindars for the water flowing into the Government tank? I wish to know if the Honourable Member is prepared to deny that there are any such cases. I find from the memorial of the Madras Landholders' Association signed by the Raja of Venkatagiri that there are numbers of cases in zamindaris where zamindari tanks supply water through their calingulas to Government tanks and he says that he has not had time to collect statistics, and if he had time he would have collected statistics showing innumerable cases. I do myself believe that there is no reason for us to presume that all the advantages should be on the side of Government—that all the Government wells should be on the hills and the zamindari wells and tanks should be on the lower level. If, instead of considering only one side of the case, we consider the other side of the case also, we will find there is no equity or justice for this provision. To be reasonable, just and equitable, you must also have a provision in regard to water which flows from a

zamindari tank into a Government tank. There is another aspect in which this matter has to be considered. This flow from tank to tank is the flow from calingula to calingula, filling the various intermediate tanks. Suppose we have a series of tanks, the Government tank being in the high level, what we propose to do is that the zamindar must pay for the water which flows from the Government tank in the high level. I think it is an act of kindness on the part of the owner of a private tank to permit you to allow your water to flow through the calingula into his tank. Suppose he says "keep the water to yourself, I don't want to pay water-rate", suppose he bunds up the calingula, the result will be the tank bund will be breached and the water will inundate the surrounding land. I do not say that such a thing will be a matter of everyday occurrence, or that people will go to that extent. The logical sequence of the position taken up by Government is that if a zamindar is so minded as not to pay his water-rate, he is at liberty to bund up the calingula with the result that the Government tank would be destroyed and the land flooded. It might be said that there is the Penal Code to punish people for mischief. Is it reasonable that men, whom you compel to pay for water, should be punished for stopping the water because they do not want the water. We are all helping to place the Government in a ridiculous position, in an extremely inconvenient and awkward position. Speaking logically, it is impossible to avoid the consequence that will necessarily follow from this measure. Another aspect of the case that I have to consider is that these tanks, many of them, are as old as the century itself. Several of these tanks, whether Government or private, have existed from the time of the permanent settlement. The right and the privilege of the water of one tank flowing into another tank through the calingula has been acquiesced in and enjoyed by the people from time immemorial. With one stroke of the pen without considering the ulterior consequences, are we to go and abrogate the rights created in this land and say that if the Government send water through the calingula to a zamindari tank, the zamindar will be charged for such water. Is it feasible that the legislature should abrogate all these existing rights created and enjoyed by the people for very nearly a century? Lastly I have one remark to make. In the report of the Select Committee it is stated that such water should be taxed when the improved supply thus made available is utilised for extending the mamul "wet ayacut under the tank." That qualification is not to be found in the section as put forward by the Select Committee. There is no limitation that the water will be charged only when the mamul wet ayacut under the tank is extended. What is stated in the Select Committee's report makes that reservation, but if you see the proposition laid before us by the Honourable mover of the Bill to-day, you will find that it has absolutely no qualification. On the other hand, even when the mamul ayacut under a private tank is not extended, it is liable to taxation under the clause introduced by the Honourable Member on the ground that water has flowed from the Government to the private tank.

The Hon'ble Sir V. BHASHYAM AIYANGAR AVARGAL:—I would draw your attention to the second proviso in the section.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR AVARGAL:—I thank you for drawing my attention to it. At any rate we have to consider the question of ayacut whether after all we have adopted a scientific and accurate data upon which the ayacut under the water source, either tank or reservoir, has been fixed. We find that, as a matter of fact, no Government tanks confine themselves to irrigating the registered

ayacut. Almost every year we find that dry lands are brought under wet cultivation by taking water from the tank. If the capacity of the water of the tank is considered as fixed by accurate measurement and the ayacut has been fixed by it, how is it we find that at every jamabandi water is taken beyond the limit fixed? If that does not bind any Government land, why should it bind any zamindari land? Is there anything to show that the capacity of a zamindari tank has been fixed after careful and mathematical calculation as to the quantum of water that it could hold? There is no basis whatever to proceed in this matter. It is after all guess work to say that because some acres beyond the registered ayacut are cultivated, the water for that excess must be the water that flowed from the Government tank. That is a preposterous proposition for which there is no foundation whatever. We find in the interests of the State and in the interests of the ryot population, every encouragement should be given for the extension of cultivation, and in the case of private tanks it is all the more necessary that encouragement should be given for enterprise for the purpose of getting more and more land under cultivation. Are we going to put a stop to that enterprise and useful work and press our claim for a questionable item of taxation? The provision appears to me to place the Government in an extremely inconvenient and ridiculous position. I beg for the sake of the Government that Honourable Members will try and avoid the very inconvenient and the risky position of exposing the Government to ridicule. The logical result of this would be that the zamindar would stop back the water flowing through the calingula, which would destroy the tank bund and inundate the land surrounding the tank.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—There is another point which I would like to urge in regard to this subject. This matter was introduced for the first time in the Select Committee. Not a word was said about it either in the Statement of Objects and Reasons or in the speeches made when the Bill was read for the first time in the Council. The only notice which the country, the zamindars and others affected by it and the general public have had of it is since the publication of the Select Committee's report. I respectfully submit that, apart from the question whether the Select Committee had or had not the power to add to the principle of the Bill, and considering the vast interests affected by this provision, it is undesirable that this provision should be inserted. If this provision is to be inserted we should give more notice to the country and then see if this is to be retained or not. If the Bill in the Select Committee has been in substance altered, it does seem to me that the Committee went beyond their powers, in making this recommendation. Rule 36 says "that Select Committees may be appointed by the Council for any purpose connected with the business of the Council." Then come rules 37 to 45 and then Chapter VIII which relates to the passing of Bills. I now call the attention of the Honourable Members to rule 47 which says "when a Bill has been referred to a Select Committee under rule 34, it shall not be taken into consideration by the Council unless copies of the report of the Select Committee and (if the Bill has been amended) of the Bill as amended shall have been sent to the Madras address of each of the members of the Council at least fifteen clear days beforehand and, in cases in which the Select Committee has not dispensed with the publication referred to in rule 41 until the expiration of twenty-one clear days from the date of the publication. Subject to these conditions the member in charge of the Bill when presenting the report of the Select Committee to the Council may move either that the Bill and report be taken into consideration at once or that the consideration of them be postponed to a subsequent meeting." I would call attention to the last clause of this

Bill,—“The discussion upon a motion under this rule that a Bill be taken into consideration shall not extend to the principle of the Bill.” The rule assumes that there is no distinction between the principle of the Bill as committed to the Select Committee and the principle of the Bill as recommended by them to us. Any amendment which they may make must not be in extension of the principle of the Bill which was committed to them. Otherwise the rule would be meaningless or very harsh. This rule assumes what is everywhere true as regards committees which are appointed under a statute or under ordinary rules relating to public business; committees cannot extend the principle of the measure sent to them for examination and recommendation. It would be strange indeed that the Select Committees should have power to introduce provisions involving new principles, and the Council of which they are the delegates and creatures should be forbidden to discuss those principles. It would be a strange position, indeed, if the Select Committee should introduce principles not contemplated in the Bill submitted to them, and yet the Council should be forbidden the right of discussing the principles of the Bill sent back by the Select Committee. The Select Committee may or may not amend the Bill. In either case the last two lines of rule 47 assume that the principle is the same. The Bill that was sent to them originally did not say a word about the replenishing with water of rain-fed private tanks in zamindari lands. I should like to know what lines in that Bill justified the action taken by the Select Committee in making these new provisions. I respectfully submit that the acts of the Select Committee are *ultra vires* and therefore we have no right to consider any recommendation which they might have made and which is really beyond their powers. That is the legal aspect of the question. On the merits of the amendment a good deal of what I intended to say has been very well put by the Hon'ble Mr. Jambulingam Mudaliyar. All that I say is that it is extremely hard to conduct any investigation in regard to percolation or drainage or direct or indirect flow. How are we to find out if any water has gone into a reservoir by percolation or drainage or indirect or direct flow. Whatever may be the opinion of the Collector, how is he to give any opinion honestly and conscientiously? He must entirely depend upon his subordinates. It will be a case in which he cannot support his opinion by personal knowledge if he is asked as to how he came to arrive at a particular conclusion. He may and must say “I am not prepared to argue the matter with you; my opinion may be right or wrong.” There will be a good deal of difficulty in this matter. If water from a zamindar's tank goes to a Government canal, is the Government prepared to give money to him? Suppose that a Government canal receives a good deal of water from a zamindar's rivers or canals by percolation or drainage or direct or indirect flow, under the law as it stands in India the zamindar will not be entitled to any compensation; but under the present law we see that if the zamindar gets the benefit of Government water he should pay money to Government, but why don't you say *vice versa*? This is an extremely one-sided and unfair thing altogether.

The Hon'ble Sir V. BHASHYAM Aiyangar:—I must point out that the Bill when it was referred to the Select Committee was much more extensive on this point than the restriction placed upon it by the Select Committee, and the Honourable Member in charge of the Bill has now restricted it still further. Therefore, instead of the Select Committee going beyond the Bill which was referred to it, the Select Committee restricted the Bill so far as this matter is concerned. In the original Bill the words used were “or otherwise”. Those words “or otherwise” would include not only the utilising of water but a thousand other things. The Select Committee did not

want to retain those words in the Bill as they were very indefinite and elastic and would include anything. Now my Honourable friend says that the Select Committee have introduced something very pernicious in the Bill as amended by them which did not at all exist in the Bill which was entrusted to them. On the contrary what existed in the Bill which was entrusted to them was perhaps pernicious, because it was vague, indefinite and elastic. You can include anything in the words "or otherwise". What did the Select Committee do? Instead of leaving it so elastic and indefinite, they leave it in the power of the Collector to levy the tax under circumstances which the Select Committee have pointed out and have restricted the section to the object in view by inserting the words "or is utilised for the purpose of irrigating". Now again, how utilised? This also is rather indefinite. The Honourable Member in charge of the Bill proposes, with the permission of the President, under rule 23, an amendment which makes it definite. The words proposed to be inserted are "or flows into a reservoir and is thereafter used for irrigating any land under cultivation." This is definite. For myself I would prefer the words "private tanks" to "reservoirs," and I would suggest the substitution of those words. The charge that has been levelled against the Select Committee is entirely unfounded. As to the legal aspect of the jurisdiction of the powers of the Select Committee, I do not think I need trouble the Council with my views on the question. I simply wish to point out that the Select Committee are the creatures of this Council not only when the Bill is referred to them but also when the Bill is taken into consideration, and this Council can override every one of the amendments recommended by the Select Committee and accept every one of the amendments proposed not only by the two dissentient members but by other members of Council who were not members of the Select Committee. Adverting to the last clause in rule 47, to which the attention of the Council was gravely drawn, namely, that the discussion upon a motion under that rule that a Bill be taken into consideration shall not extend to the principle of the Bill, it has been seriously contended that the Select Committee cannot make any modification in principle in amending the Bill entrusted to it. But the meaning is perfectly clear. When a motion is made for taking a Bill as amended by the Select Committee into consideration, you ought not to discuss the principle of the Bill before it is taken into consideration. When it is taken into consideration, you can cut up the whole Bill by amendments; you can reject the Bill *in toto* on the ground that the amendments made by the Select Committee are pernicious, and that the Bill therefore, as recommended by the Select Committee, need not be passed, and you can go into the principle of the Bill and discuss it at any inordinate length if any member is so pleased. All that this rule 47 provides is this: the Honourable Member presents the report of the Select Committee and moves that the Bill be taken into consideration; it says that before you take the Bill into consideration you ought not to discuss the changes that have been made by the Select Committee and enter into a rambling discussion at that stage. It does not mean that after that stage is passed and when you actually take up the recommendations of the Select Committee into consideration, you cannot differ from the Select Committee or throw overboard the recommendations made by them or enter into any lengthy discussion about the principle of the Bill. I submit that my Honourable friend has overlooked that very elastic and pernicious phrase "or otherwise" which was in the original Bill, and I submit that the Select Committee were right in giving it a definite meaning and the Honourable Member in charge of the Bill has now made it more definite.

The Hon'ble Mr. H. M. WINTERBOTHAM :—I am much obliged to the Honourable the last speaker for the lucid way in which he has supported my amendment. The Hon'ble

Mr. Jambulingam Mudaliyar has pointed out that our Bill, which is merely a fiscal measure to protect our own revenue, does not provide for cases in which private individuals supply water to Government or Government ryots. Possibly there may be some such cases and I am not prepared to deny it. But all I can say is if there are such cases, there are in other provinces laws to meet such cases. It would be quite proper that persons who make private irrigation works should be enabled to collect rents from persons to whom they supply water. If you can find such cases in this Presidency, it would be a very good work for an Honourable Member to draft an Act and propose it for our consideration that private individuals who construct works of irrigation should be enabled to obtain a return therefrom. All that I am anxious to do is to satisfy those Honourable Members who are in the position of impartial jurors that the proposal I am now making is just and necessary and is required to meet an existing evil. As an example I would quote our Periyár irrigation project which has sent Government water pouring into many private tanks. Now the accounts kept by the karnams will show that while on an average the irrigated area for a series of years in the past under a tank was 50 or 60 acres, now there will be perhaps 200 acres. No doubt the reasonable inference is that the excess is due to Government water which has obviously been pouring into the tank. Under the Act as we now have it, we should not be able to collect any water-rate from that private tank owner in respect of the extended cultivation. We now provide that when he uses the water which he has stored up in his tank, for the extension of cultivation under the tank and when the Collector can say that the irrigation has been beneficial and sufficient, the tank owner shall pay water-rate. I hope I have satisfied the Honourable Members that the proposal is just and is intended to meet an existing evil.

The amendment was put to the Council and agreed to.

His Excellency the PRESIDENT :—At this stage the Council will adjourn till 12 noon to-morrow the 31st March 1900.

H. TREMENHEERE,
Secretary to Government.

Proceedings of an Adjourned Meeting of the Council of the Governor of Fort St. George assembled for the purpose of making Laws and Regulations under the provisions of the Acts of Parliament, 24 and 25 Victoria, Cap. 67, and 55 and 56 Victoria, Cap. 14.

The Council met at the Council Chamber in Fort St. George at 12 noon on Saturday the 31st day of March 1900.

PRESENT:

His Excellency The GOVERNOR OF MADRAS, G.C.M.G., G.C.I.E.—*Presiding*.
The Hon'ble Mr. A. T. ARUNDEL, C.S.I.
The Hon'ble Mr. H. M. WINTERBOTHAM.
The Hon'ble The RAJA OF BOBBILI, K.C.I.E.
The Hon'ble Mr. G. STOKES.
The Hon'ble Mr. G. S. FORBES.
The Hon'ble Lieut.-Colonel Sir GEORGE MOORE, Kt., C.I.E.
The Hon'ble Mr. J. THOMSON.
The Hon'ble Mr. F. A. NICHOLSON, C.I.E.
The Hon'ble M.R.Ry. P. RAJARATNA MUDALIYAR, Diwan Bahadur.
The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR, B.A.
The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR AVARGAL, B.A., M.L., Rao Bahadur.
The Hon'ble M.R.Ry. P. RATNASAMY, Kt., Pillai Avargal, B.A.
The Hon'ble M.R.Ry. G. VENKATARAMAN PANTULU GARU.
The Hon'ble Mr. G. E. STUART, M.A.
The Hon'ble Mr. F. J. E. SPRING, C.I.E.
The Hon'ble Mr. G. G. ARBUTHNOT.
The Hon'ble The Revd. W. MILLER, M.A., LL.D., D.D., C.I.E.
The Hon'ble NAWAB SAIYID MUHAMMAD SAHIB Bahadur.
The Hon'ble Mr. G. L. ACWORTH.
The Hon'ble Mr. J. E. P. WALLIS.
The Hon'ble Sir V. BHASHYAM AYYANGAR, Kt., C.I.E., Diwan Bahadur.

BILL TO AMEND MADRAS ACT VII OF 1865 (IRRIGATION CESS).

His Excellency the PRESIDENT:—The Council will now resume the discussion on the Bill to amend Madras Act VII of 1865. The Hon'ble Mr. Jambulingam Mudaliyar will move the amendment which stands in his name.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR AVARGAL:—Your Excellency my amendment in this matter is only a re-arrangement of the section. In that view I propose the omission of the words "in the opinion of the Collector, subject to the control of the Board of Revenue and of the Government," and to put them with a slight modification at the end of the paragraph. I see on the agenda paper that my friend the Hon'ble Mr. Vijayaraghavachariar and the Hon'ble Mr. Venkataratnam Pantulu have given notice of this amendment unconditionally. But that is not my proposition.

My proposition is only a re-arrangement of these words. I do not know if it would not be more convenient that their amendment should be first considered, and if that is negatived, I will move for a re-arrangement of this section.

His Excellency the PRESIDENT:—The course proposed will probably facilitate business, and I will therefore ask the Hon'ble Mr. Vijayaraghavachariar to propose the amendment of the same character that stands in his name.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Your Excellency, there is another amendment which stands in my name before this particular amendment. A similar amendment which stood in the name of the Hon'ble Mr. Jambulingam Mudaliyar was disposed of yesterday, and I therefore beg to withdraw it.

With the permission of His Excellency the President the amendment for the omission of the words "or is utilised for the purpose of irrigating" was withdrawn.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—My next amendment is the omission of the words "in the opinion of the Collector, subject to the control of the Board of Revenue and of the Government." The effect of my amendment will be that wherever there has been benefit to the land that will be placed on a footing of equality with the fact of irrigation. That is whether the land has obtained any supply of water by any of the innumerable ways mentioned in the section and whether this supply of water, no matter how it found its way into the land, has benefited the land are both matters of fact. As such I respectfully submit there is absolutely no reason why while the fact has been placed within the cognisance of the civil court, the latter fact, namely, whether the water-supply has, as a matter of fact, benefited the field should be taken out from the investigation of the civil court. No reason has been suggested by the Select Committee which has modified the law as it was proposed in the original Bill. The original Bill proposed to disallow the jurisdiction of the civil courts altogether, but this has been altered by the Select Committee. There are three elements in this matter. One is whether there has been a supply of water, no matter whether overground or underground, in a straight path or a wandering path; secondly, whether the supply of water has benefited the land; and, thirdly, as a matter of law what amount this land will have to pay under the rules framed by Government. Those rules being the rules framed under the law, they will have the force of law, they will have the same application as law on a given set of facts. I fail to see any reason why out of the two facts upon which a decision has to be arrived at, one fact should be placed within the jurisdiction of the civil court and the second fact should be excluded from the investigation of civil courts. The Select Committee's report says: "We have omitted section 2 which barred altogether the jurisdiction of the civil court. So far as the question of the land irrigated being really benefited by such irrigation is concerned, we are advised that as the section stands no civil court can go behind the opinion of the Collector, subject to the control of the Board of Revenue and of the Government." It would probably be presumptuous on my part to say that even with the authoritative statement of the Select Committee the wording of this provision is not so clear as to exclude the jurisdiction of civil courts and is not sufficient. However, I need not go into the question. Suffice it to say, that this is meant to exclude the jurisdiction of civil courts, and if it is so, I would only ask for the reason why it should be so. As far as I could see, no reason has been given by the Select Committee. The Select Committee introduced nothing new; it took the provision as it stood in the old Bill and made a concession in excluding one portion of it from the restrictive operation of the original Bill, that is,

the fact of irrigation is placed within the jurisdiction of civil courts. They did not think it necessary to state any reason. Having divided the subject into two parts they made a gift of one part to us and as regards the other part they did not give any reason, that being a compromise. Compromises perhaps do not admit of any reason and are simply arrived at as a matter of good feeling. We must go to the old Bill and see whether how far the jurisdiction of the civil courts was excluded. In the Statement of Objects and Reasons it is stated that "it is deemed expedient;" and in justification or excuse of it, certain other laws, as if they are very popular, are quoted in the margin. Leaving it alone, the policy of excluding the jurisdiction of civil courts from investigating these facts has been commented upon by the Honourable Mover of the Bill in a brilliant and original way. As far as I could understand it, the people of this country are fond of litigation and the Honourable gentleman does not want the time of the courts and the public money to be wasted. The Honourable Mover will excuse me if I say that I have the utmost respect for his frankness, and in this instance I must request his permission to say that his frankness is full. But that could hardly be the reason. When you have been defeated in suit after suit arising under this Act, and in consequence of such defeat you propose to take away the jurisdiction of the civil courts, to say now that you do this to save the people from litigation smacks of something other than frankness. This is a statement which does not commend itself to me, and I do not know if it commends itself to you. I am afraid the usual frankness of the Honourable Member has not stood him in good stead when he applied himself to this part of the case. The term used here is "Collector". I need hardly remind you that it will include boys, because unless you say District Collectors, the term includes Deputy Collectors, Sub-Collectors, &c. I cannot understand what subtle virtues a Collector has to make his opinion superior to the judgments of Munsifs, Sub-Judges and District Judges, which they deliver after hearing the testimony on oath and the arguments on both sides. I do not know if the Collectors give their opinion under the influence of kuthumilal—whether religious kuthumilal or revenue and fiscal kuthumilal. Anyway, their decision is to prevail over the decisions of Judges. I respectfully submit that arguments of this kind do not commend themselves to me. If they do commend themselves to you, my amendment will share the usual fate of my amendments of yesterday. If these statements do not commend themselves to you, if you do really believe that there is something in what I say, then you will find that absolutely no ground has been shown as to why the jurisdiction of civil courts should be taken away. I call upon you to say that the burden of proof lies too heavily on the other side, because the Government has constituted various departments on the principle of the division of labour. The civil courts are the best for investigation of disputed questions of fact and for declaring on which side the truth or anything approaching the truth lies. That being so, I submit that the burden of proof, that a Collector's decision as to matters of fact will be superior to the decision of lawfully constituted courts whose sole occupation is spent in the investigation of truth, lies heavily on Government. I need not tell you that such a decision will be a departmental order of Government. A Collector cannot procure the attendance of witnesses; departmentally he may, perhaps, procure the attendance of witnesses, but that is not a legal proceeding. There is nothing to show that the opinion of the Collector is to be arrived at by any proceedings in which he has power to summon witnesses and examine them. Subject to correction from the other side, I dare say that every mandate of the Collector will be obeyed as if it were law. But there may be some cheeky people who may know a little more law than is good for them and may refuse

to come. The Collector will be absolutely helpless, he may not be able to obtain the testimony of independent persons, and the only testimony will be that of the subordinates whose presence he can compel upon pain of dismissal and other penalties. Therefore any decision which the Collector may give will be absolutely one-sided of very inferior quality necessarily. It is for these grounds the contention of the Honourable Mover of the Bill that the decision of the Collector would be superior to the decision of the courts of justice absolutely falls to the ground. Then it is asked, "how does a Munsif know more than a Collector as to given facts?" As I told you neither the Munsif nor the Collector knows much about them. It is a question of decision upon facts and upon testimony. If inspection will have the facilities for the determination of the question, under the Civil Procedure Code, the civil courts have power to go and inspect a spot. Thus Munsifs, Sub-Judges and District Judges sometimes go and inspect spots and often commissioners are appointed to do the work. So far as the ocular inspection will help the matter I do not see how a Collector stands in a superior position to that of a Judge. I should require strong testimony why a man born and bred up in the country and who is accustomed to weigh conflicting testimony should be considered inferior to the young and often brilliant graduates coming from London who are only 22, 23 or 24 years of age. In this connection let me tell you an anecdote which will be of some use. A quarrel arose between the great Judge Coke and James I. over a matter in which James I. thought that his prestige was affected, on account of the view taken by Judge Coke, who was more independent than other Judges. James I. summoned all the judges before him and asked them, "Don't you think that when the king's prestige or profit is affected in a matter pending before you, the king's opinion should be taken?" The other judges knelt and humbly agreed with the king, but Coke was too tough for him. He said "No"; it would be contrary, he said, to their oaths, and therefore he would not assent to what the king said and he would be violating his oath if he consulted the opinion of the king. "Don't you think," the king said, "I know how to decide the matter as well as you do?" The others said "Yes," but Coke said "No". "The science of distinguishing right from wrong is a difficult science and requires very careful application. Though your Majesty has no doubt good common-sense, that is not by itself enough to distinguish right from wrong." We all know the great independence of that Judge whose judgments were an epoch in English history. I deny that the executive officers, however excellent their common-sense may be, however brilliant their education at the Universities may be, would compete with the meanest munsifs in the matter of ascertaining truth as to facts. I respectfully submit that for these reasons my amendment will commend itself to you and you will be pleased to vote for it.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—I beg to second this amendment. The jurisdiction of the civil courts is a very important concession that we ask the Government and Honourable Members not to withdraw. Duty, as I have somewhere read, is defined to be attention to details. The question is, whether the Collector has got enough time to attend to the details of assessment? So far as I am concerned, I draw no distinction between revenue officers and civil courts in point of their sense of duty. All that I say is, that the Collector has many responsibilities and departments to look after, so that he cannot give his personal attention to this matter, whereas the civil courts can. I would earnestly appeal to Government to accept this amendment and to retain the concession.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I rise to support this amendment. Yesterday the Hon'ble the Revd. Dr. Miller expressed his gratification

at the fact that the Select Committee had thought it expedient to expunge the obnoxious provision which barred the jurisdiction of civil courts. But the Hon'ble Mr. Arbuthnot in speaking on this matter referred to the Select Committee's report, from which he showed plainly to the Council that the provision which barred the jurisdiction of civil courts has been resuscitated in the Bill as amended by the Select Committee only in another shape. I would respectfully submit that, in the face of constant demands which have been supported in high quarters for the separation of the judicial from executive functions, I consider that this provision to concentrate more and more powers in the hands of the executive and to take away the same from the hands of the judicial functionaries is a measure which is very retrograde. As I said before, the separation of the executive from the judicial function had been demanded for the last few years, demanded not only by the people of this country but by the highest statesmen even in England and elsewhere. Lord Dufferin expressed himself most eloquently on this question and said that the demand was a counsel of perfection; and the only stumbling block in the way of the Government of India in giving effect to it was the question of funds. I would therefore call the attention of the Council as to whether it considers it desirable that, instead of adding to the functions of judicial tribunals, their legitimate function should be taken away from them and transferred to the executive authority. We have a regularly and properly shaped procedure in the case of civil tribunals which we have not got in the case of Collectors and other executive officers. Any grievance or complaint in the operation of the new law is a grievance which can most satisfactorily and properly be investigated by a judicial tribunal. In Act II of 1864, the Revenue Recovery Act, we have in section 59 this provision: "Nothing contained in this Act shall be held to prevent parties deeming themselves aggrieved by any proceedings under this Act except as hereinbefore provided, from applying to the civil courts for redress, provided that civil courts shall not take cognisance of any suit instituted by such parties for any such cause or action unless such suit shall be instituted within six months from the time at which the cause of action arose." Here is a provision of law inserted deliberately 36 years ago which gave ample scope to aggrieved parties under a cognate law to resort to civil courts for redress. This Water-cess Bill which is sought to be carried is an exactly similar law to Act II of 1864 which relates to the recovery of arrears of revenue. When we find in a cognate law a provision most clearly inserted enabling the ryots to resort to civil courts for redress, I do not see why that remedy should be taken away in a law which is sought to be enacted after a period of 36 years during which Act II of 1864 has been in operation. I respectfully submit that considering the fact that judicial tribunals have not been doing any injury to the interests of Government revenue, and considering also the fact that ryots would feel greater confidence if they are allowed to resort to civil courts and greater safety, this proposed provision in the Bill should be expunged.

The Hon'ble Mr. G. STOKES:—I shall only say a few words. While I recognise, as a matter of policy, the advantage of resorting to civil courts, I do not see that there may not be cases where an exception to that rule may be distinctly advantageous. Personally I have had to deal with water disputes in South Canara, in Salem and in Tanjore during the many years of my service. I have dealt with them practically as a court on evidence; in more than one dispute I have allowed parties to bring forward evidence with the aid of the best vakils of Tanjore. I have dealt with them as a Collector. As such almost invariably in water disputes, I used to go to the spot and bring the parties face to face in the middle of their friends and enemies, so that whenever they said anything that was untrue or anything that was not exactly what it

ought to be, you could see the result in the face of the people around you. In regard to water disputes, I say that that is the very best way in which you can arrive at a proper decision. The machinery of civil courts is unsuited to this class of cases. That it is suited to many others is another matter. No doubt the civil courts have got powers to go to the place or to send commissioners. That is all true. What the court will want is evidence on oath and they will not have anything to do with anything else. What the Collector will do is to bring people face to face, hear what they have to say and explain to them what the situation is, and then arrive at a conclusion which will, I have no hesitation in saying, be far more satisfactory. As to evidence, as that term is usually understood and of the sort which is generally forthcoming in these cases, it is worthless. It is therefore to my mind hopeless that these disputes could be, as a rule, decided by a court with satisfaction or justice even. It seems to me that the provision proposed in the Bill does not go far enough.

The Hon'ble Sir V. BHASHYAM AYYANGAR :—The Honourable gentlemen are aware that in the original Bill the second section was "No suit shall lie in any civil court to set aside or modify any assessment of water-cess made by a Collector under this Act." That section was intended to shut out the jurisdiction of civil courts entirely in regard to the levy of the water-cess under the Act. Whether it would completely bar the jurisdiction of the civil court is a matter which we need not go into now. Lawyers may be able to drive a coach and six even through that section. The Select Committee considered that that was inexpedient, but that the questions, whether any water source is Government water source or private water source, whether it is constructed by Government or whether it is constructed by the zamindar himself or a ryot, whether it is a stream or a channel belonging to Government, are matters which should be adjudicable by civil courts. That is a question of property. Whether a certain channel or a certain irrigation work belongs to Government or is private property belonging to a zamindar or any other private individual is certainly a matter which ought to be adjudicable by civil courts, and therefore it was considered that the jurisdiction of civil courts should not be taken away in regard to water-cess levied from a party using the water which he urges is not Government water but which the Government urges is Government water. Therefore, as the Bill now stands as revised by the Select Committee, that question of right will be adjudicable by civil courts and only by civil courts when there is a dispute between Government and a private individual or a zamindar using the water of any stream or channel or tank. There may be a tank, for instance, which belongs partly to Government and partly to a zamindar and the Government may say that it does not partly belong to the zamindar. All such questions will be within the cognisance of the civil courts and the jurisdiction of the civil court is in no way impaired. Further, whether the land is irrigated by percolation or drainage from any river, stream, channel or work is also a matter in which where the Collector and the ryot proposed to be assessed differ; it is quite open to the ryot to pay the water-rate under protest and have the matter adjudicated by a civil court. The only matter in regard to which the opinion of the Collector has been substituted for the judicial opinion of an ordinary tribunal is this, viz., whether the supply of water, though received indirectly or by percolation, by means of which a wet crop has been grown on the land, is sufficient and whether the growing of such crop is beneficial to the ryot. That is to say, suppose the ryot says: "if I had grown some punja crop or dry crop instead of wet crop which I was obliged to grow because water by percolation or otherwise found its way into my land, I should have derived greater profit;" the Collector will be in a better position than a civil court to form a

correct opinion on such a contention. At least a majority of the members of the Select Committee were of opinion that this is a matter in which a correct opinion is not likely to be formed by judicial investigation by examining witnesses on oath on both sides, and my Honourable friend Mr. Venkataratnam Pantulu very properly said that it is not that he has less confidence in the integrity of the revenue officers than in the integrity of judicial officers that he raises any objection to this. I submit that an opinion on a matter of this sort is one which is not likely to be formed correctly by judicial investigation as it would be by experience and local inspection by local officers. Therefore, I submit that it is not shutting out the jurisdiction of civil courts, but that the opinion of certain authorities on certain matters which are not such as could be satisfactorily decided by judicial investigation, is to be accepted. If precedents were wanted, there are several instances in which the opinions of certain authorities are held to be final. I may mention one special reason why this matter cannot be so satisfactorily decided by a judicial authority as by Revenue officers, and that is this. A Revenue officer may inspect the locality and may form his opinion upon his observation, to say nothing of his experience. I do not think it is intended that the Collector also is to convert himself into a Judge and to make his investigation by administering oath to witnesses in his cutcherry and arrive at the opinion in a manner in which the Judges arrive at their opinion. I do not think it is necessary to refer to Madras Acts or other Acts to determine whether a Collector can administer an oath or not. That is not the object of the section at all as I understand it. The object is that a Revenue officer should be in a position to inspect the spot and make local enquiries and base his opinion upon his experience, his observations and local inquiries. But if a Judge were to make an inspection, it appears that according to recent decisions very probably, decidedly correctly, he cannot base his decision upon his own observations, and if he is going to base his decision upon his own observations he has to step into the witness box and give evidence of his observations upon oath. The object of local inspection by a judicial officer can be used only for elucidation of evidence already on record and a Judge would not be warranted and in fact would be acting illegally in the exercise of his discretion if he were to base his judgment on facts which he actually observed. That is one of the principles of the judiciary. That is, a Judge may no doubt inspect a locality or he can appoint a Commissioner. In the case of a Commissioner, the Commissioner sends a report and he may be examined as a witness, but if a Judge were to go to the spot and make some inspection and if he were to say in his judgment that when he inspected the place he found the land wet or dry or that he observed such and such crop and that such and such crop were short or withered, and if he were to make any such observations in the judgment, at once the vakil for the appellant will say that the Judge has given evidence in his judgment without the sanction of an oath and without subjecting himself to cross-examination, and, therefore, his judgment is vitiated. It is for these reasons and for the reasons explained also by the Hon'ble Mr. Stokes, that a majority of the members of the Select Committee thought that in regard to two matters, whether the supply of water for the crop upon the land is sufficient or whether it is inadequate and whether the crop raised upon the land is beneficial or not, the Collector, if he were to act impartially, would be in a better position to form a correct opinion than a Judge who would have to base his decision simply upon the evidence of witnesses who may be examined on behalf of Government and on behalf of the zamindar or ryot from whom water-cess is levied and it is not to be supposed that a Collector, simply because he is a Collector, has less sense of duty than if the same person were a Sub-Judge or a District Judge.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—There has been no suggestion to that effect.

The Hon'ble Sir V. BHASHYAM AYYANGAR :—If there is no suggestion to that effect I submit that the opinion of the Collector formed, as it would be, upon materials obtained by local inspection is certainly entitled to greater weight than the opinion of a Munsif or a Sub-Judge formed upon the testimony of witnesses, especially when we bear in mind that he cannot form any opinion judicially by the result of the local inspection which he might make. It may often be that five or six years after the suit is brought the judgment is delivered and it may be that the suit is brought one or two years after the produce in question was reaped. When a suit is brought in a civil court it can take precedence only according to numerical order. A judge will not be justified in giving precedence to such a suit in preference to other suits instituted on prior dates. A suit may come up for investigation or trial two years after the suit was instituted and it may take five or six years after the occurrence of the fact in question, before this suit is disposed of. On these grounds I submit that the provision made by the Select Committee does not seem to me to be open to any grave objection.

The Hon'ble Mr. WINTERBOTHAM :—Your Excellency, at the introduction of this Bill I explained to the Council that in providing that no water-rate shall be chargeable unless the irrigation is beneficial and sufficient the Government is making a new and large concession. The existing Act makes the charge depend upon the water being supplied or used. If a cultivator uses the water voluntarily he becomes liable to pay water-rate, notwithstanding that the supply may prove to be inadequate for the requirements of the crop. If he gets any remission it is granted to him as a matter of grace and not as of right. But when a large plain is once placed under irrigation, dry crops cannot be grown upon it and the cultivators are individually unable to exclude the water. Of course they don't want to exclude it, but if here and there an individual did so desire he would not succeed; because water percolates through the surrounding field bunds and would drown any dry crop. This is the difficulty we have to meet, and we are now proposing to declare that if under the above circumstances the Government water cannot be excluded we will not charge for it unless it irrigates a crop, and unless the irrigation is beneficial and sufficient. In making this great concession, it is quite fair, and, as I think, highly necessary, that Government should guard against its being made the door for dragging Government into endless vexatious litigation. For instance, the supply of water from our great anicuts is year after year comparatively constant and regular, while the rainfall is capricious in the highest degree. In some seasons the local rainfall is so copious that perhaps no artificial supply is required, but we have never allowed this as a ground for remitting the charge for irrigation. Yet under the concession which we are now granting it is open to ingenious persons to argue that in years of copious local rainfall the Government supply of artificial irrigation is not beneficial and cannot be charged for. Then we know that the farmer can never under any circumstances be brought to admit that he has got a full crop. From all parts of the country we find a tendency to under-estimate the outturn, and it is seldom that even the Government servants can persuade themselves that the harvest is normal. But if you estimate the crop as less than full, how can you say that the irrigation has been sufficient? In every case of short crop we are giving the cultivator an excuse for pleading that the charge for water should be remitted on the ground that the supply, though beneficial as far as it went, was not sufficient. I will not weary the Council by further hypothetical cases. It

is obvious that the concession which we desire to make may be, and I would say is likely to be, abused. For there is no want of ingenious persons who delight in exposing the cracks and flaws in our legislation. I have already pointed out that the question whether irrigation is beneficial and sufficient is one of fact, which cannot be carried up to the High Court in second appeal. Those who oppose the Bill desire that the District Munsif should be made the arbiter as to whether the irrigation was beneficial and sufficient. They have urged again and again that the Collector's opinion will be merely the opinion of the karnam; but this objection applies much more forcibly if the officer who has to form an opinion be the District Munsif. The Collector's duty is to tour and inspect continually, and to see that the charge of water-rate is properly made in accordance with the law and rules. The ryots have access to the Collector and can represent their grievances without engaging a vakil. The District Munsif, on the other hand, is a sedentary officer; he cannot be approached without filing a suit and engaging a vakil; and he can then only decide the question of fact on the oral evidence produced before him, long after every trace of the irrigation forming the subject of dispute has passed away. And will not the karnam be invariably cited as a witness? And will it not always be alleged that as a Government servant he must be regarded as a witness hostile to the plaintiff? But in fact what will the karnam gain by speaking the truth on behalf of Government? He will gain the reward of a good conscience, and will be called an honest man, by a name in the vernacular which implies that he is one who does not make the most of his opportunities. If by a little oiling of his conscience the karnam can be brought in cross-examination to admit a doubt as to whether the supply was sufficient how triumphant becomes the plaintiff's position! Honourable Members may perhaps have heard that oral evidence is a commodity, which can be freely bought and sold in the bazaars; but Government is under the disadvantage that it neither can, nor will, purchase it. In every case where a plaintiff chose to assert that the irrigation by which he raised a crop was neither beneficial nor sufficient he is able to produce witness after witness before the District Munsif, and Government can only trust to the wit of some local pleader to break down their evidence by cross-examination. On every ground it is undesirable that a new and wide door should be opened to this sort of litigation; and it is not required for the protection of the ryots. The opponents of the Bill have themselves urged that it is not often that the charge of water-rate is contested. When dispute does arise, the land will certainly be inspected by the Revenue Inspector and the Tahsildar, and probably by the Divisional-officer. If the dispute is of any magnitude, the place will be inspected by the District Collector himself. None of these officers has anything to gain by charging water-rate unjustly. The Collector's honesty of purpose is unimpeachable; he is in a favourable position to ascertain the truth, and the assumption, or insinuation, that his sympathies are always against the ryot is utterly unjust and unfounded. I showed at the last meeting that it is quite in accordance with the usual policy of Government not to allow assessments of tax to be challenged in the civil courts. We have now allowed assessments of water-rate to be so challenged on every ground except the one issue as to whether under the new concession which we are about to pass into law the supply of irrigation may be regarded as beneficial and sufficient. Further than this Government is not prepared to go, and time will show whether we have not sprinkled this measure too liberally with rose water. I think it not improbable that Government may one day have to enact that it shall be lawful to charge water-rate on any land on which Government water has irrigated a crop. For these strong reasons which I have very inadequately attempted to state I hope the Council will vote against the amendment.

The Hon'ble Mr. J. THOMSON:—Your Excellency, I do not know if I am in order in speaking at the present moment. If I am I should like to say a word with regard to paragraph 4 of the Select Committee's report. It is there stated: "So far as the question of the land irrigated being really benefited by such irrigation is concerned, we are advised that as the section stands no civil court can go behind the opinion of the Collector, subject to the control of the Board of Revenue and of the Government." The opinion expressed by the Select Committee is that courts cannot go behind the opinion of the Revenue authorities. I have doubts about this, and I should like in the multiplicity of legal opinion that sits around this table to hear something on the point.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—There have been three speeches in opposition to this amendment, of which that made by the Hon'ble Mr. Stokes is most free from prejudices. I therefore begin by answering that. The Hon'ble Mr. Stokes said that he, as Collector, decided these questions legally, that is, practically as a Judge. He went to the spot as a Collector and collected all the available evidence in regard to disputes before him and after all there was no disadvantage, and he did exactly the work of a Judge. If so, I would respectfully ask what possible objection he could have to a Judge performing the function which he does under the name of a Collector. So far as that objection goes that is really no objection. He simply says: have confidence in the Collector, the Collector would do exactly what a Judge would do, neither more nor less. With regard to the Hon'ble Sir V. Bhashyam Aiyangar's objection, I must beg his permission to say I was somewhat startled that so prominent a pleader in India as he should have this kind of criticism to make. Absolutely nothing has been said against the integrity or the moral character or the intellectual character of Collectors. On the other hand, I granted that they were generally very able and often very brilliant men and conscientious. In the face of that statement, I do not know how the Hon'ble Sir V. Bhashyam Aiyangar found that I said they would be inferior morally and intellectually to any Judge, whose jurisdiction, I said, should not be divested. I do not know how the question as to integrity has cropped up. No one has suggested that the integrity of a Collector was inferior to that of a Judge. I submit that all observations made on the other side with regard to the integrity of a Collector is altogether out of place and out of order, not to speak of the questionable taste of such statements. All that I said was that one class of people under a system specially invented for it were drilled by experience, to devote themselves solely to the investigation of truth. If I say that in questions of science I shall apply according as the case may be to the architect or a Zilla Surgeon or the Surgeon-General or the Principal of the Civil Engineering College, it is not fair to say that I underrate the integrity of the Collectors. That is not a fair answer at all. I respectfully submit that the sole question in this matter is who is best able to distinguish right from wrong. I respectfully submit that it is only a tactical answer to say that the integrity of the Collector is equal to that of a Judge. That is no answer at all to my question. As far as I can see, there seems to be a considerable misapprehension. It is assumed that Judges would, as a matter of fact, be in every case against Collectors. If people do go to Judges, it is assumed that the decision passed by the District Munsif or it may be District Judge would necessarily be in variation or in conflict with the orders of Government. This is exactly the way in which the executive officers judge of others. They complain that we judge of them ill while they judge ill of others. Yesterday the Hon'ble Mr. Winterbotham said that in this important Bill the Government was roundly abused. I desire to know whether the Government has ever been so roundly abused as the unfortunate vakils in this Council. Vakils seem to them to be a net-work of agitators, brought into contact with every matter, whether

they had a share or not in them; in testimonials or litigation, they come in for a round share of abuse from quarters least expected. Yet there is another misapprehension: who ever wanted to oust the jurisdiction of Collectors. The amendment proposes nothing of the sort. We ask for the omission of the expression mentioned in the section not because we do not want the Collector to interfere for fiscal purposes, but because the Select Committee has stated that this expression has been used to oust the jurisdiction of the courts. Therefore we ask for the omission of the phrase. On the other hand we distinctly grant that you may insert words for the purpose of enabling the Collector to investigate such matters and come to a conclusion for fiscal purposes. The object of the amendment is not to oust the jurisdiction of the Collector. The object of the amendment is negative, namely, that you shall not take away the jurisdiction of civil courts. That being so, to say that a decision that may be arrived at by a Collector would be superior in quality to the decision of a Judge is out of place. There will be the decision of the Collector even under the amendment I propose, but the only question is where a person is aggrieved by the decision of the Collector, he may also go to a court of justice. That is the question before the Council. The investigation and decision by the Collector not being ousted, the object of the amendment is solely directed to retaining the powers of the courts of justice, and I call upon you not to pay any attention to the comparative merits of decisions given by Collectors and decisions given by civil courts. Then we come to facts. I am astonished that the Hon'ble Mr. Winterbotham, with his opinion of bazaar evidence, with his opinion of the purchasers of the bazaar evidence, with his opinion of the "oiled conscience" of Government subordinates, should object to my amendment. If the subordinates of Government have oiled conscience, it cannot be said that the Collectors, who are to depend upon the oiled conscience of their subordinates, do not get prejudiced by the oiled conscience of the village munsifs, village karnams, delta superintendents and others. My Honourable friend says, "let the Collector depend upon the oiled conscience of his subordinates, upon the accuracy of his inspection, with the revenue Röntgen rays subtle enough to penetrate below the surface of the earth." He says, that a Collector is more competent to give an opinion on the subject, and that a District Munsif is not so competent to pronounce an opinion on a matter like this. Surely a statement of this kind, though, no doubt, it is a dissertation, has not the force of an argument. One or two observations have been made by the Hon'ble Sir V. Bhashyam Aiyangar. It was said that courts of justice would not be in time to inspect the place and the inspection would not be as critical as that of a Collector. I think the Hon'ble Sir V. Bhashyam Aiyangar has somewhat overlooked the provisions of the Act. The Act says: "In the opinion of the Collector, subject to the control of the Board of Revenue and of the Government, such irrigation is beneficial to, and sufficient for the requirements of, the crop on such land." That is, a Collector decides the case only after the crop is matured and not before—whether sufficient water has been derived from percolation, subtle percolation. Can you show me one extraordinary Collector who can declare on looking at the field that percolation is sufficient for a six months' crop? I respectfully submit that the Collector's judgment must be after the crop has at least matured and after it had been gathered. The rates must be imposed on a man, he must decline to pay it, and, in the usual course, the village officers must report it to the Tahsildar, and the Tahsildar to the Collector, and eventually the Collector might come down. But by that time the percolation, the crop and every vestige of it would have gone. This argument, I submit, is more subtle than sound. The argument advanced on this side is sufficient. There is no reason whatever to take away the existing jurisdiction and to deprive the courts of

justice of their proper and legitimate function. In these circumstances, I do beg of you to accept my amendment and not to pay any attention to arguments which are more subtle and diplomatic than fair and frank.

The Hon'ble Mr. J. E. P. WALLIS:—With your Excellency's permission, I desire to answer the question put by the Hon'ble Mr. Thomson. He entertains a doubt whether this provision does really exclude the jurisdiction of courts in cases with which it deals. I only wish to point out that no one can be prevented from bringing an action as to what was settled by the Collector as to whether the irrigation was beneficial or sufficient or not. In such a case the Government would merely produce the certificate of the Collector and that will be conclusive and a judgment will necessarily follow upon that. You cannot prevent a suitor from going to a court. This Act provides that if he goes to a court, in such a case the opinion of the Collector would be a complete answer and the court will not go into the matter at all.

The amendment was put to the Council and lost.

A poll having been demanded, it was taken with the following result:—

Ayes.

The Hon'ble the Raja of Bobbili.

„ M.R.Ry. C. Vijayaraghavachariar.
„ „ C. Jambulingam Mudaliyar.
„ „ P. Ratnasabhapatil Pillai.
„ „ G. Venkataratnam Pantulu.

Noes.

The Hon'ble Mr. A. T. Arundel.

„ Mr. H. M. Winterbotham.
„ Mr. G. Stokes.
„ Mr. G. S. Forbes.
„ Lieut.-Col. Sir George Moore.
„ Mr. J. Thomson.
„ Mr. F. A. Nicholson.
„ M.R.Ry. P. Rajaratna Mudaliyar.
„ Mr. G. H. Stuart.
„ Mr. F. J. E. Spring.
„ Mr. G. G. Arbuthnot.
„ The Rev. Dr. W. Miller.
„ Nawab Saiyid Muhammad (Sahib Bahadur).
„ Mr. G. L. Acworth.
„ Mr. J. E. P. Wallis.
„ Sir V. Bhashyam Aiyangar.

His Excellency the PRESIDENT:—I think it will be convenient now if the Hon'ble Mr. Jambulingam Mudaliyar would take up the amendment which stands in his name.

The Hon'ble Mr. H. M. WINTERBOTHAM:—It has just now been carried that these words should not be omitted.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—The amendment that I now propose is completely different in form and principle from the one which has just been moved and lost. My amendment is not for a total and unconditional omission of the words from the section as was proposed. My amendment is that the words “in the opinion of the Collector subject to the control of the Board of Revenue and of the Government” be omitted, and that the following be added at the end of the first paragraph of section 1: “The opinion of the Collector, subject to the control of the Board of Revenue and of the Government, shall be final and conclusive as to the nature of the benefit, if any, derived, and the rate at which water-cess should be levied for such benefit.”

His Excellency the PRESIDENT:—That would hardly be in order.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—As observed by His Excellency the present form is not quite accurate. My object in moving the present amendment is to subject to the investigation of civil courts one other point besides the two points explained so lucidly by the Hon'ble Sir V. Bhashyam Aiyangar, namely the question as to a source of water belonging to Government or to a private party, that is the question as to the proprietary right of water, and the question as to whether a certain land is irrigated by percolation, drainage or any other method from a Government work. In addition to these two, I want to add one further item for the investigation of civil courts, and that is the factum whether there was benefit or no benefit at all. If on the question whether there was benefit or not a decision is arrived at or there is no dispute, then the subsequent questions as to the quantum of benefit or the nature of benefit and the assessment will be finally settled by the opinion of the Collector. To put it in another form, the question whether percolation or drainage has resulted in benefit, damage or injury to the property or has resulted in no benefit at all—the fact of benefit or no benefit or of damage shall not be taken out of the jurisdiction of civil courts and that it shall, as hitherto, be liable to be contested.

The Hon'ble Sir V. BHASHYAM AIYANGAR:—What shall not be taken away from the jurisdiction of civil courts?

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—The question whether there was damage or benefit. I shall put it in another form. Suppose a Collector gives his opinion that percolation has resulted in benefit, then we do not go to the question as to what is the kind of benefit or the rate of assessment. Suppose the opinion is given that there was percolation and benefit and suppose the tenant disputes that initial statement and says there was no benefit, but there was positive injury and damage, then I submit that the function of the civil court should not be ousted. Paragraph 4 of the Select Committee's report says: “So far as the question of the land irrigated being really benefited by such irrigation is concerned, we are advised that as the section stands no civil court can go behind the opinion of the Collector subject to the control of the Board of Revenue and of the Government.” The section itself has no reference to civil courts and section 2 of the Bill in express terms ousted the jurisdiction of civil courts in every matter appertaining to water-cess. The only reference in the section is to the opinions of certain functionaries of Government, and according to all legal interpretations which have been explained by the Advocate-General, the present form so far as it goes will prevent the civil courts from going behind the opinion of the Collector and deciding whether that opinion is accurate or not. There is an instance in a similar legislation. In the District

Municipalities Amendment Act one of the questions was as to the reasons for which a Municipal Councillor or a Chairman could be removed. Under the older law certain grounds were mentioned and it was said that a Councillor could be removed on those grounds. When a Councillor was removed on those grounds a case was taken up before a civil court and an investigation was held, and it was found that the grounds which were alleged to have existed did not exist and the Municipal Councillor was restored. To avoid this inconvenience, the plan that was adopted in the amending Municipal Bill was that if such and such reasons existed "in the opinion of the Governor in Council", then the removal could be made thereby, thus barring the civil court from going behind the opinion of the Governor in Council as to whether those reasons existed. Once the Governor in Council gave an opinion as to the existence of those reasons, there was a finality. On a similar plan the wording of this section has been adopted, and when the opinion of a certain functionary or an officer is referred to for decision under the statute, it is to be binding in certain matters and the civil courts cannot go behind that. I do not wish to add anything further after hearing the legal points from the Advocate-General. With reference to this point, I said in my minute of dissent though the extreme provision embodied in section 2 of the Bill was removed, a provision has been put in, which almost amounts to the same thing, though not to the same extent. The present wording of the section will debar a person from obtaining the judgment of a civil court on the question whether there was benefit or damage. It is only thus far I require a further amendment, so as to remove the difficulty. In referring to this portion of my minute, the Honourable Mover of the Bill yesterday was surprised that I should have thought fit to make such a statement in my memorandum and made reference to my academical qualifications of Master of Laws and he felt surprised at how I made it. I take it from the kindness and courtesy which I have all along experienced at the hands of my Honourable friend, that that reference was made as a compliment, and therefore I am all the more pleased to explain my views as to how it is I feared that the question whether there was damage or not would be shut out from the jurisdiction of civil courts by the present wording. It was conceded in the Honourable Mover's speech that there was no desire whatever on the part of Government to interfere with the course of ordinary law, whereby people who suffer injury from any cause whatever have a right to go to civil courts and obtain damages by proving that injury. When that concession is made and when the right of a person under the general law is absolutely kept intact and not interfered with, we have to see whether the words herein used have a tendency of interfering with that general law, though there is not the slightest intention on the part of the mover of the Bill or the Government to interfere with the rights of parties to prove injury and obtain damages. The opinion which a Collector has to give in the first instance is whether there was benefit or not, and once he pronounces there was benefit or not the civil courts would become *functus officii*, to go behind the opinion of the Collector. If even by mistake or wrong information a Collector pronounces a case beneficial, the right of the person to get an adjudication in the civil court that it was injurious instead of being beneficial and to recover damages on that basis, will, I believe, be debarred by the existing words in the section. We have at present one tangible instance where a Collector pronounced a certain state of things beneficial which the civil court held to be positive injury and damage. I refer to the Kistna case of 1889, which has been referred to in the papers furnished, where it would be found that a certain flow of water was considered by the revenue authorities to have resulted in a benefit to the land, while the civil courts held it to be not beneficial and even said that it was a positive source of injury and damage to the property,

and that it actually killed the crops—a phrase used by the Board itself. Such being the case, it is not at all unlikely that the revenue functionaries might go wrong. Once you concede the principle that there is no desire or intention on the part of Government to take away the right of persons under the general law to obtain damages for the injury done, I submit it is incongruous and inconsistent to say that the Collector shall have the power to give the opinion whether there was benefit or not. If he once gives the opinion that there was benefit, there is no right for the party to go behind that opinion to show that there was injury and that no benefit had accrued therefrom. By the re-arrangement that I propose the purpose I have in view will be effected. There is no limitation or qualification as to whose opinion is necessary, as to whether there was benefit or not. In the absence of any express mention as to the opinion of certain persons guiding and governing it, the usual course of having the question decided by civil courts is open. I limit the finality of the opinion of the Collector to those particulars that I have mentioned in the sentence which I have drafted, and remove from the operation of the opinion of the Collector the initial question as to whether there was benefit or damage. In every one of these cases, the party will have the right to go to civil courts. If there was benefit, whatever its nature may be, and if the ryot says that it is false there was that amount of benefit, it would be foolhardy on his part to go to a civil court, because the section provides that once the benefit of it is recognised, the quantum of benefit and the nature of benefit will not be open to the jurisdiction of civil courts. It must be a very strong case indeed where a ryot must feel his grievance and resort to a civil court. If by any misfortune or accident a Collector expresses an opinion, where he misconstrues a positive damage or injury into a benefit and levies the rate, then the plea available for the party in a civil court will be there has been no benefit at all, there has been positive damage, and the Collector has been wrong in saying there was benefit. That is the only question adjudicable. It is but fair and just that a party who takes that extreme view and traverses the statement of the Collector ought not to be precluded from getting that question investigated by a civil court. Much has been said by speakers who preceded me as to the facility that a Collector has for making an ocular inspection rather than be dependent upon the bazaar evidence. It is all very well to sit here and argue in that fashion. As very pertinently pointed out by the Hon'ble Mr. Vijayaraghavachariar, the Collector as well as the civil court will have to investigate the case after the crop is harvested, and not when the crop is on the land. It is not in one out of a thousand cases that the Collector will have the facility and opportunity of investigating the matter by inspecting the place at the time when the crop is on the land or when percolation is taking place. These various grievances, so far as I understand, are matters investigated at jamabandi, and jamabandi takes place, not when the crop is on the land, but afterwards. It is stated that the great convenience of having the matter decided by a Collector is that we can have an immediate settlement of all possibility of disputes, and it is stated that a civil court is likely to be misled in this matter. While the civil court decides disputes between parties from one end of the country to the other in all conceivable matters on evidence, disputes also between Government and parties, to say that in this single instance the civil courts are so much hampered by bazaar evidence that they should be altogether rejected, seems to be a proposition not worth much consideration. Then it is also stated that a Collector can go and inspect every locality and therefore we shall have the opinion of the highest revenue functionary in every one of these cases. That is presuming the possibility of doing things which is physically impossible for any human being to do. I know from my own experience that Collectors work under

extreme pressure, and I also know that a great portion of the work has to be mechanically done without the application of direct and personal knowledge and supervision. Under these circumstances, it is hardly right to say that the Collector will be able to run to this well and to that well, and to consider that the Collector is a rapidly flying bird like a carrier pigeon and can have a bird's-eye view of all things. To plead all conveniences and facilities that do not exist and to base the present provision on that ground is utterly useless. The Collector's experience would no doubt enable him to arrive at a correct opinion, which a Munsif or a Judge will have to form only after taking evidence; but, at the same time, it must be conceded that the opportunities of sifting the true evidence from the false evidence do not exist in the case of a Collector, especially when it is considered that it is only the subordinate officials, like the karnams with their oiled conscience, that would appear before him and the ryot would have no opportunity of testing the veracity of the witnesses. I do not dispute the fact that we must attach weight to the opinion of Collectors in these matters. Once the benefit is conceded, it is not safe or politic that the quantum and nature of benefit should be made the subject of investigation by a civil court. But when the factum itself is questioned, when the positive statement of the Collector that there was benefit is completely impugned by the ryot, and when the ryot says that there has been no benefit but there has been positive damage, I say the ryot should be able to put forward that plea before a civil court. It would be very hard that the Collector's opinion that there was benefit and no damage should prevail.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

The Hon'ble Sir V. BHASHYAM AYYANGAR :—It seems to me that the first part of the amendment is substantially the same as the one moved by the Hon'ble Mr. Vijayaraghavachariar and negatived; and the latter part of the amendment is really to take away the jurisdiction of the civil courts which they will have under the section as now amended. "The opinion of the Collector subject to the control of the Board of Revenue and Government shall be final and conclusive as to the nature of the benefit." That is to say, it is not to be conclusive as to whether it is beneficial but it is to be conclusive as to how it is beneficial. I really do not understand the difference between the opinion as to the nature of benefit being conclusive and the opinion as to its being beneficial at all not being conclusive. Moreover, it seems to me that the "nature of benefit" is an expression which I really do not understand. I suppose the benefit that we are concerned with is pecuniary benefit and not any other kind of benefit. We are, I suppose, solely concerned with the question as to whether it is beneficial in a pecuniary point of view. If so, what the meaning of the "nature of benefit" is, I am utterly unable to understand. Therefore, in my humble opinion, if the opinion of the Collector as to the nature of benefit is to be final, it necessarily follows that his opinion that it is beneficial is final, unless my Honourable friend, by the expression "nature of benefit" means something other than pecuniary benefit. That cannot be the meaning of my Honourable friend. Then a reference was made to the speech of the Honourable Member in charge of the Bill that if there is damage the person affected can have his remedy under the general law, that whatever remedy he may have under the general law will not be affected by this Bill. The opinion of the Collector is one on which the civil court cannot give judgment, only in so far as the levying of the cess is concerned. But the opinion of the Collector as to whether it is really beneficial or not for other purposes is one which would be under the control of the court, if a question should arise, apart from the liability to pay the cess. As regards the question of damage, there seems to be

some misapprehension. It is perfectly true that whatever remedy a ryot may have under the general law as against Government for damages is not at all affected by the Bill; but it must also be borne in mind that there may be a damage without injury. It is one of the well-known principles of law that a damage without injury is not actionable. In connection with the irrigation systems of the country, it must be borne in mind that that is a duty which the Government has to discharge. Some of the Honourable Members may remember that a case was recently argued before the Full Bench in connection with damage done to private property by the Madras harbour. In that case it was held there was damage but there was no injury. The leading case on the point is the case of the Madras Railway against the Karvetnagar zamindar, in which the Madras Railway Company sued the zamindar of Karvetnagar for damage done to the railway by the zamindar's tank having burst and washed away the railway line. The Privy Council held in that case that the zamindar was maintaining this tank in discharge of his public duty, and therefore, unless there was positive negligence, any damage that might have accrued to the railway company was not injury in law that was actionable. The Government will stand in the position at least of a zamindar in regard to the irrigation systems of the country and therefore I am not prepared to give a general answer as to whether the Government will be liable to any damages or not when by percolation or otherwise in connection with the irrigation systems of the country, damage is caused. No categorical answer can be given to that question but a general answer will be that if such damage was caused by positive negligence on the part of Government it would be actionable. But even if any damages should be caused by the irrigation system of the country, a system which the Government in the discharge of its public duty has to maintain, whatever may be the damage caused to any zamindar or ryot, so long as that damage is not the result of any negligence, it is not actionable and therefore it is quite unnecessary that in this Council we should debate on that question. I was never more impressed with the wisdom of the canon of interpretation that in construing acts you should never take into consideration the speeches made in the Legislative Council, than I have been to-day. The speeches that have been made impressed me very forcibly with the wisdom of that English canon of interpretation based upon sound experience. The wisdom of this canon of interpretation was forcibly illustrated on many occasions in this Council, when speeches were made, as to the meaning of the law and what was intended. We all know that a Legislative Council can only make laws, and what the courts have to administer is not the intended intention but the expressed intention of these laws. If members of this Honourable Council were to say that the law which they mean to make is such and such and that the law is such and such all that is wisely held by the highest authorities in England as perfectly irrelevant and it is declared that courts should not refer to these debates in Council. I submit that my Honourable friend is really moving an amendment which has been already negatived. So far as the second part of the amendment is concerned, I do not know whether my Honourable friend is aware that it will shut out the jurisdiction of civil courts which is allowed under the Bill as amended. The addition the Honourable Member proposes to make is: "The opinion of the Collector, subject to the control of the Board of Revenue and of the Government, shall be final and conclusive as to the nature of the benefit if any, derived, and the rate at which water-cess should be levied for such benefit." My learned friend had in view the section in the Revenue Recovery Act which declares that civil courts shall have no jurisdiction over rates of assessment of land revenue, but my Honourable friend overlooked the fact that the land assessment is levied not under any law, any statute, but under the common law of the land, and that it is

by the prerogative of the Crown. Whether it is a tax or rent is a matter that we had better not discuss. It does not rest on any statutory basis. But water-rates are levied on a statutory basis and any rules which Government may make under section 1 as to water-rates, namely, if it is a double crop, it will be Rs. 6, and if it is a single crop, it will be Rs. 3, will also stand on a statutory basis. They will be just on the same footing as if those rules fixing the water-rates had been a part of this enactment itself, and the ryot will have every right to contest in a civil court that he ought to have been charged only Rs. 3 under rule No. 5 and not Rs. 6 under rule No. 6, because it will be open to him to contend "I was supplied with water for one crop and therefore I am liable to pay assessment at the rate of Rs. 3 and not at the rate of Rs. 6 under rule 6, which rule is applicable only to cases where water is supplied for raising two crops." Therefore Honourable Members must bear in mind that the rate of water-cess is a question for civil courts to determine, because the rate is fixed by a rule under the statute. If the rule becomes a part of the law, the civil courts can determine whether the rate of rent prescribed by rule No. 1 is applicable or the rate of rent fixed by rule No. 5.

His Excellency the PRESIDENT:—Is the Honourable Member satisfied that he is speaking to the motion? I thought you already said that what the Honourable Member moved has been disposed of?

The Hon'ble Sir V. BHASHYAM AIYANGAR:—That is so, so far as the first part is concerned; but, so far as the second part of the amendment is concerned,—

His Excellency the PRESIDENT:—I must appeal to Honourable Members to speak to the point. We have been spending a vast amount of time over this Bill and we appear to be very often diverging from the points at issue. I hope that Honourable Members will be a little more moderate in the length of their speeches.

The Hon'ble Sir V. BHASHYAM AIYANGAR:—I mean only to point out that the second part of the amendment will take away the right of a ryot to contend that he is liable to pay water-rate as fixed by a certain rule and not as fixed by a certain other rule.

His Excellency the PRESIDENT:—Our object is not to enable the members of the legal profession to cross swords with one another, but to do business. I hope this will be kept in view.

The Hon'ble Sir V. BHASHYAM AIYANGAR:—For these reasons this amendment cannot be accepted, especially as the latter part will have the effect of curtailing the jurisdiction of the civil courts.

The Hon'ble Mr. H. M. WINTERBOTHAM:—It is unnecessary for me to add anything to what the last speaker said. For the reasons he has given I entirely oppose the amendment.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR AVARGAL:—I have no desire to lengthen the business, but I only wish to answer one or two points mentioned by the Hon'ble Sir V. Bhashyam Aiyangar. He has been referring to the Karvetnagar case and to the general law of damage. I submit that all that is not in point. It has been conceded that under the general law, if circumstances arise which show that a party has suffered injury he has a right to go to a civil court, and if he has that right under the general law, it is conceded that that right is not to be debarred by this law. It is stated that such is the intention of Government; but I say that intention of Government will be defeated by the present frame of the section. Whether in a particular case a ryot could or could not enforce damages is beside the question.

Granting there are the necessary circumstances where a ryot would otherwise be entitled to damages, the question is whether this provision would bar that right. To keep the section in consonance with the intention expressed by Government, you should accede to the re-arrangement of the section. I do not quite follow the pertinency of the reference to canons of interpretation of legislative enactments and things of that kind. Absolutely nothing has been said as to the canons of interpretation or similar questions, and I am therefore unable to follow the pertinency of the remarks made on this head. Then it is suggested that the last part of my amendment bars the right of going to civil courts, which is given and which is reserved under the existing words. If it does bar, then it is intentionally put forward in such a manner, because the rates of assessment, as observed in the closing words of the section, are matters to be settled by rules of Government. The Government frame rules for settling the rates, and once the Collector finds there was benefit he applies these rules. In applying these rules it is simply impossible to conceive that a Collector will make a mistake by applying rule No. 1 instead of rule No. 4, and the parties should have the option of going to civil courts and asking whether rule 1 or rule 4 is correct. If my form of the amendment bars the right of a person to go to a civil court and fight out whether rule No. 4 or rule No. 5 is proper, I submit that that prohibition is advisedly made and most desirable it is. I submit I can hardly see the advantage of giving an opportunity to a party to go to a civil court and fight about rule 4 or rule No. 5 as to the rate of assessment, while by express words or implication we prohibit and prevent that person from going to a civil court to establish that there has been damage instead of benefit. It is only a question between the two as to which is more important, whether this fight about rule 4 or rule No. 5 as to which it is simply impossible to conceive that any Collector could possibly make a mistake—because if sugarcane is grown, there is one rule and if ragi is grown there is another rule, and no Collector would apply the ragi rule to the sugarcane rule—or the question of establishing that there has been damage instead of benefit. To open a door for litigation as to whether rule No. 4 or whether rule No. 5 is right is utterly unnecessary and mischievous. What I wish to bar is the fight about the rate of assessment. That is perfectly right and rational. What I wish to see is the extension of the jurisdiction of civil courts to the initial question as to whether there was damage or benefit. I submit that that should not be taken away from the jurisdiction of civil courts. This is the main point at issue, and all reference to various canons of English interpretation is utterly irrelevant.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR AVARGAL:—I beg to propose that the words "or benefited" in line 26 of page 1 be omitted.

The Hon'ble Mr. H. M. WINTERBOTHAM:—I second the amendment. I accept it in behalf of Government.

The amendment was put to the Council and agreed to.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU GARU:—I beg to withdraw the amendments that stand in my name next.

With the permission of His Excellency the President certain amendments which stood in the name of the Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu were withdrawn.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR AVARGAL:—I beg to propose that in the first proviso to section 1 the words "not holding under ryotwari

settlement" be omitted. If you omit these words in the section then all classes of landholders who are entitled to irrigation free of separate charge by reason of prior engagement will be included. The present arrangement is that ryots holding under ryotwari settlement are brought under a separate proviso. The same exemption as is given to a zamindar or an inamdar or any other description of landholder not holding under ryotwari settlement by virtue of engagements with Government is accorded to ryots holding under ryotwari settlement by the next proviso. The idea is that the ryots under ryotwari settlement are not persons with whom the Government has entered into any engagement to supply water or any other kind of engagement, and therefore since they pay consolidated wet assessment they ought not to be included in the first proviso but only in the second proviso. The frame of the section in this form and treating the ryots under ryotwari settlement under the second proviso raises, I submit, a very serious doubt as to the nature and value of the revenue settlement documents, which are prepared by the Settlement department and published in the Gazette, under which various promises are given to ryots which are, I submit, exactly in the nature of engagements, which every kind of landholder or zamindar possesses. To exclude these from the operation of the proviso raises many serious doubts as to the legal nature of these settlement proceedings. Now by the granting of exemption under the second proviso, it appears that the exemption from separate water-cess charged apart from the consolidated wet assessment is only a matter of grace in behalf of the ryots, and is not a matter of right as it would be if the revenue settlement documents were treated as engagements by Government with their tenants. On this subject, your Excellency, I just wish to point out authorities which hold that these revenue settlement operations are exactly in the nature of agreements like sannads granted in favour of zamindars or any other documents. The only difference is that these revenue settlement documents operate during the currency of the settlement 30 or 20 years, whereas the sannads to zamindars operate in perpetuity. During the currency of the settlement—the general rule in regard to this is 30 years—these settlement documents are on a par with legal documents as to engagements. The ryot is for all practical purposes a landholder with a limited term of engagements. When these settlement operations are completed in any district, there is a rule of the Standing Orders of the Board of Revenue requiring a proclamation and a Gazette notification to be issued to ryots, which is in the form of a distinct promise of certain things. The proclamation says:—"Collectors of districts in which settlement by the Settlement department has been completed or is in progress are to notify in their gazettes that the rates will be liable to revision after 30 years' duration. It is to be explained, however, to the ryots that there will be no reclassification of soils or calculation of fresh grain values, that the rates of assessment will be revised entirely with reference to prices, and that no attempts will be made to assess any additional value which may have been given to land by improvements effected by ryots even if carried out by means of money borrowed from Government." Then under the Government Order of 11th May 1895 these words are to be proclaimed: "at each settlement or resettlement of a district, Government will fix at its discretion the period for which such settlement or re-settlement shall be in force. The Collector shall then notify the period in the District Gazette and explain to the ryots that the new rates will not be liable to alteration during the currency of the settlement period." These are the promises which the Government made or engagements which the Government entered into with ryots. It is with reference to these, subject to the conditions notified in the Gazette, they are landholders like any other description of landholders provided for in the first proviso. I would refer to the recent orders of

Government where the Government have recognised these proceedings to be a contract and an engagement. Whether it is exactly in the form of a contract between private parties or not I do not know. The Government have recognised that settlement operations are contracts or engagements. A reference was made in the year 1887 as to certain dry lands which were receiving large supplies of water and which the Collector wished to assess at the consolidated wet rate. The ryots took exception to that and said that as the settlement operations had been completed in these districts for 30 years the Government had no right to levy consolidated wet rate but on the other hand if they used water a water-cess could be levied in addition to the usual dry rate. The Commissioner for Revenue Settlement—the late Mr. Grose was the officer—said: "All the dry lands under this anicut, occupied and unoccupied, have been settled, and when they were settled, the Government contracted with the occupiers not to raise their rates for 30 years from the time of the settlement. Accordingly the owners of occupied lands should not be compelled to take water, and if they take it voluntarily, should pay the usual water-rate. Unoccupied lands should be transferred to wet, assessed at wet rates and given on darkhast as wet land only. With regard to the dry lands under the Rushikulya project it appeared to the Commissioner that these also should be treated in exactly the same way as the dry lands under the Sangam anicut. It was notified previous to the introduction of the settlement into Goomsur that the settlement rates on the irrigated lands in that taluk would be liable to enhancement on the completion of the Rushikulya project, but this did not affect either the wet or the dry lands in Berhampur nor the dry lands in Goomsur." The Government passed orders in November 1887: "The Government concur with the Board in the opinion that occupied dry lands commanded by the Sangam anicut cannot be reclassified as wet during the currency of the present settlement except with the consent of the ryots. Unoccupied dry lands irrigable by the anicut should be reclassified as wet, and, pending such reclassification, applications for lands of this description should be refused." There are also declarations by the Government of His Excellency Lord Connemara passed on the report of the Agricultural Committee that was then formed, and also the Government orders passed on a memorandum on the progress of the Madras Presidency prepared by Diwan Bahadur S. Srinivasa Raghava Aiyangar, wherein recommendations were made that legislation should be resorted to for securing certainty and the confidence of the ryots as to the promises made in the settlement notifications; and the Government gave it as its opinion that legislation was unnecessary, but at the same time maintained that the promises then made were absolute promises in behalf of ryots and not changeable during the time of the settlement. That being the case, it is needless and unnecessary and it shows mistrust and want of confidence to exclude the ryots holding under ryotwari settlement from the operation of the first proviso and to give them the exemption as if it were a matter of grace. The adoption of the words mentioned in the Bill casts a doubt and goes to the root of the permanency in the ryotwari holdings and reduces the ryot from the position of a landlord to that of a day labourer. We should not adopt such language or such an arrangement of the section as to throw a serious doubt as to the status of the ryot. I submit that for these reasons the words I read out might be omitted.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

The Hon'ble Sir V. BHASHYAM AIYANGAR:—It was considered expedient by the Select Committee that the matter should be specifically provided for and therefore it was thought desirable to exclude the ryots' holding under ryotwari settlement from the first proviso. If the words suggested were omitted from the first proviso,

the proviso would run thus:—"Provided that where a zamindar or inamdar or any other description of landholder is by virtue of engagements with the Government entitled to irrigation free of separate charge, no cess under this Act shall be imposed for water supplied to the extent of this right and no more." If the matter stood there the question as to what view the courts might take as to whether the ryotwari settlement gives them a legal right or not is one on which we cannot express an opinion; and in a Bill of this sort which is a purely fiscal measure we should not have any clause which would either directly or indirectly settle the legal relations between Government and the ryots under ryotwari settlement. That is a matter which should be left to be decided by courts if any such question should arise. It was therefore considered expedient that so far as the ryots holding under the ryotwari settlement are concerned they should be specially provided for and they are provided for under the second proviso which says:—"Provided also that no cess shall be leviable under this Act in respect of land held under ryotwari settlement which is classified and assessed as wet." Then there is a qualification engrafted upon that. Therefore the Select Committee considered it best to deal with zamindars and inamdars under one proviso and the ryotwari holders under a different proviso. If my honourable friend's suggestion were adopted, namely, that we are to omit the words "not holding under ryotwari settlement" and consequently to omit also the second proviso, then the question will arise in courts as to whether a ryotwari holder is by virtue of engagement entitled to irrigation free of separate charge. The result of that will be that if the courts should hold that there is no legally enforceable right under ryotwari settlement against Government by a ryot it would be open to Government under the first proviso to levy a water-cess in addition to the land assessment and to prevent that the second proviso was inserted—that is restricting the first proviso to zamindars and inamdars alone so as to prevent Government from levying a water-rate to the extent of land in inam or zamin, to which they are entitled to free supply of water under the permanent settlement and to make a special provision in regard to ryotwari holders to the effect that no water-cess shall be leviable under this Act on land held under ryotwari settlement which is classed as wet. The first proviso, which excludes the ryotwari holders, does not imply that there is no legal engagement between Government and ryotwari holders, nor does it imply that there is a legal engagement. It implies neither the one nor the other. Therefore the ryotwari holders are separately dealt with.

The Hon'ble Mr. H. M. WINTERBOTHAM:—For the reasons given by the Hon'ble Sir V. Bhashyam Aiyangar, the Government is opposed to this amendment.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—My second amendment for the omission of the second proviso falls through as it is only conditional upon the first amendment being carried.

With the permission of His Excellency the President this amendment was withdrawn.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I beg to move the following amendment: That in the second proviso to section 1, the words "unless the same be irrigated from any source hereinbefore mentioned and such source is different from or in addition to that which has been assigned by the revenue authorities, or adjudged by a competent civil court as the source of irrigation of such land" in lines 4 to 10 in page 2 be omitted. I move this amendment under the impression that it is more a verbal amendment than affecting the substance of the Bill. I believe

it is not the intention of Government that when the ryotwari wet lands receive their supply of water for irrigation from more sources than one they ought to pay more than what they are assessed. This would be the effect of the wording of the present proviso. The proviso says:—"Provided also that no cess shall be leviable under this Act in respect of land held under ryotwari settlement which is classified and assessed as wet unless the same be irrigated from any source hereinbefore mentioned and such source is different from or in addition to that which has been assigned by the revenue authorities or adjudged by a competent civil court as the source of irrigation of such land." What I submit is assuming that there is one source assigned by a revenue authority for the irrigation of a particular land, if as a matter of fact that source fails from any cause, suppose a Government tank or a canal coming from a Government stream is adjudged as a proper source of irrigation for a particular ryotwari land and suppose as a matter of fact sufficient water cannot be derived therefrom and this man gets his supply by any of the innumerable ways mentioned in the section—river, tank or channel, or work belonging to or constructed by Government—how will he be treated? The proviso does not say anything as to the way. The ways are numerous—they may be direct or indirect flow or percolation or drainage. I respectfully beg to know whether it is the intention of the Select Committee and the Government that in case this man finding the supply from the authorised source is insufficient, as a matter of fact utilises the water which may find its way by percolation, he would come within this proviso and he will have to be assessed more money. I do not believe that such is the intention of the Select Committee or Government. But according to the language of the proviso it has been authoritatively mentioned to-day that it will be interpreted without taking into account any words that may be spoken here or anything that might be said by the Select Committee. I respectfully submit that the owner of a wet field may have to pay unwittingly more money than he is under law bound to pay. The Hon'ble Sir V. Bhashyam Aiyangar says that it is the recognised duty of Government to supply water to wet lands. I submit that the thing needs a little alteration and that alteration is given effect to by the amendment I propose.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—Your Excellency, I beg to second the amendment. A rule was inserted for the first time in July 1892 in the water-rate rules of the Gódvári and Kistna deltas to the following effect; "Double water-rate will also be charged if water be taken from a sluice or channel or other source of supply other than that which is provided or approved by the responsible officer of the Public Works Department." On account of the overzeal of the officers entrusted with the working of this rule, penal rates began to be levied in my district even in certain cases of "Mamul Pallam" land entitled to free irrigation referred to in proviso 1. Three suits for the recovery of the penal rates so levied were tried by the District Judge of Gódvári in 1898 with the result that the charge was declared illegal and the amount ordered to be refunded. I do not trouble Honourable Members with particulars of those cases, but it is sufficient to say that the power is liable to abuse in actual administration. Of course, it is a different matter if the water from any source other than the recognized source is intercepted and used in such a manner as to cut off the supply to any land causing injury to other ryots. In that case, the injured ryots will have a cause of action against the party who so intercepts the water and I do not see how Government is entitled to charge a water-rate. Another objection that strikes me is that this provision may possibly diminish the value of the guarantee given by Government that the wet-rates will not

be raised during the currency of the settlement. It seems to me immaterial, so far as the Government is concerned, from what source a ryot entitled to full supply takes the water. No ryot takes more water than what is required for his crop. There is not even the guarantee that the charge will be made only when improved supply is provided. Again, if Government takes the power to charge water-rates in such cases, should it not compensate the ryots in cases where there is a diminution or stoppage of supply during the currency of the settlement? I know of cases where the full wet rates are levied in the Górávari district even where there has been substantial diminution of supply. The Yeluru water is utilized by turns both by the zamindari and Government ryots and while the zamindar takes the necessary measures to secure the customary supply to his ryots, the Government ryots under the Thimmapuram canal are left to shift for themselves and it is well-known that they have suffered material loss from causes over which they have no control and which it is in the power of Government to remove.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to support this amendment. It very often happens that in several districts a village has two sources of irrigation, one recognised and authorised by the Revenue department and the other by mamúl. Because there are two sources of irrigation to one and the same village, it does not follow that the village takes double the quantity of water. If the proviso as inserted in the Bill is to stand, it would follow that the Government would be justified in levying double assessment, because water comes to the village from two sources. In respect of the difficulties that might happen practically in working the proposed provision of law there is an important communication received from the mirasidars of Trichinopoly that was placed in our hands after we came into the Council Chamber. I beg leave to read to the Council a short extract from this memorial: "The second proviso to sub-section 1 of section 1 provides for the levy of a water-cess even in respect of wet lands, when such lands are irrigated from a source other than the source of irrigation recognized by the revenue authorities or by the civil court. The Government is, by reason of its classifying lands as wet and levying and assessment for them, bound to supply a quantity of water sufficient to mature a crop. Cases are not uncommon in this Presidency, and more especially in this district, where this recognized source of irrigation fails sometimes to give the adequate supply of water, for causes for which neither the Government nor the agriculturist is responsible, and the crop raised by the latter is sometimes in jeopardy. If, under such circumstances, the ryot avails himself of a different source of irrigation for the purpose of watering the crop already raised on the expectation of an unfailing supply from the recognized source of irrigation, he is liable, under the new law, to be charged not only with the wet-rate assessment to which he is already subject, but also to an additional water-rate, when, as a matter of fact, the advantage gained by him is the same or a little less. It could not be contended that, by availing himself of this second source of irrigation the agriculturist has gained an additional advantage or additional profit. If the original recognized source of irrigation is sufficient, no agriculturist will take it into his head to court an additional source of irrigation. For, the additional source, when the first source is sufficient for the wet crops, will be more injurious than beneficial. It is plain that a second source will be availed of only when the first source yields a scanty or insufficient supply. Under the circumstances, the second proviso will be productive of much harm to the agriculturist." Under these circumstances it is only reasonable that the provision inserted in the Bill should be expunged; otherwise it would lead to practical difficulties. If the letter of the law

should be enforced, it would follow that the ryot would be charged as many times as he has got sources of water-supply to his land.

The Hon'ble Mr. H. M. WINTERBOTHAM:—Will Honourable Members who oppose this provision accept these words if they are substituted? "Unless the same be irrigated without the authority or the sanction of the Collector from any source hereinbefore mentioned."

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—So far as I am concerned I am prepared to withdraw my amendment if you insert the words "due authority". Suppose a man goes to a Collector and asks for permission for taking water, he may be too late. You may decide in each case as to who may give the permission—Collector, Tahsildar or Revenue Inspector. If a Revenue Inspector or a village officer gives permission, it may afterwards be held that such permission was not sufficient.

His Excellency the PRESIDENT:—Honourable gentlemen, it would be to our mutual convenience if we adjourn for a short time—till 3-10 P.M.

The Council re-assembled at 3-10 P.M.

The Hon'ble Mr. WINTERBOTHAM:—Your Excellency I understand that the three Honourable Members who have proposed the omission of these words in the second proviso are willing to withdraw the amendment if the following words be inserted after the word "irrigated" in line 5, page 2, "by using without due authority water." I am prepared to agree to the insertion of these words if any Honourable Member will second it. The word "using" is put in to show that it is to be a voluntary use. Ryots would not be charged unless they use water voluntarily. Your Excellency's permission is required for moving that amendment.

His Excellency the President granted the permission.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—As some substitute for our amendment, I am prepared to withdraw mine.

With the permission of His Excellency the President the amendment of the Hon'ble Mr. Vijayaraghavachariar was withdrawn as well as exactly similar amendments standing in the name of the Hon'ble Mr. Ratnasabhapatil Pillai and the Hon'ble Mr. Venkataratnam Pantulu. The new amendment was then put to the Council and agreed to.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal:—I beg to propose that for the words "or adjudged by a competent civil court" be substituted the words "subject to the adjudication, if any, of a competent civil court." This is only a change of form for the better without any change of substance. As it is, the words seem to exclude the one from the other. The assignment by the revenue authorities and the adjudication by competent civil courts are connected by the word "or" and therefore these two things are exclusive of each other. The provision is if the assignment is made by the revenue authorities, it would be final, and, according to the form adopted, that assignment will not be subject to the adjudication of civil courts. Similarly if a civil court has given an adjudication in any case that is final so far. What I wish to substitute is the assignment by revenue authorities should be final so long as it is not brought before a civil court for adjudication. But if it is brought before a civil court for adjudication then the judgment of the civil court should have preference. My reason is that though the revenue authorities in their registers might have made assignments of certain water sources for certain lands and ayacuts and will use those only for statistical and revenue purposes, yet the allocation cannot be held to decide

any mamul right obtained by parties, and if such mamul rights are by error or from other causes wrongly entered in the register, that register should not be taken to be final. If any person should feel aggrieved that his mamul right has been wrongly entered in the register and desires to have his right correctly adjudicated he should not be prevented from going to a civil court by reason of the existence of this register. I simply place before the Council the analogy of pattas. The revenue registers contain entries of various names, very often of deceased persons and of non-existing persons against pattas, and it has been repeatedly held by civil courts that a patta is no authority or no proof of the title, it is only a document for revenue purposes to show the demand to be collected from the occupier or the person in whose name it is entered. But when the question of the title to the land arises, the title should be proved from other sources. Similarly this entry in the revenue register as to the ayacut under the various sources is only a *prima facie* proof for the purposes of revenue administration. When the question of title arises, this register ought not to be made final. I believe that is the intention of the Select Committee. The view that I have placed before the Council cannot be controverted. If that is so, the language of the proviso does not carry out the purpose. On the other hand the register of the revenue authorities is made final. The effect of my amendment is that the assignment of the revenue authorities will be final so long as the matter is not taken before a civil court for adjudication. But if it is taken before a civil court for adjudication for which every person has a competency so long as he thinks that his right has not been properly entered in the register the civil court will be the authority that will determine the rights of parties. I submit that practical difficulties will arise if the proviso is left in the form it is in and finality is given to registers prepared by village officers for revenue purposes. *Prima facie*, it is impolitic that registers prepared for revenue purposes should be taken for determining the question of title of the parties, and of rights which they may have acquired by easement, &c. I believe the wording I have adopted carries out the idea more effectively. In my opinion the present wording of the proviso seems to exclude the possibility of the assignment by revenue authorities being made subject to the adjudication by civil courts. I do not think that is intended.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—I beg to second the amendment. As the section stands in the Bill it follows that the Revenue Department is treated as co-ordinate authority with judicial tribunals in matters connected with adjudication. It is an undisputed fact that so far as the ryots connected with the irrigation are concerned, the final judgment vests with the civil court. Orders passed in the Revenue Department are not very often correct, and are therefore revised by the judgments of civil courts. The object of the amendment being to place judicial tribunals in the position of appellate authorities to revise the orders passed summarily by the Revenue Department, I second the amendment, and I hope the Council will adopt it.

The Hon'ble Sir V. BHASHYAM AYYANGAR :—I think there is some misapprehension as to the intention of the Select Committee in referring to both the sources of irrigation. The object of this fiscal enactment is not directly or indirectly to settle substantial questions of law as to any obligation which the Government may be under or any right which the Government may have against the ryots. The object of this enactment is purely fiscal, and it declares in what cases the water-rate may be levied for using Government water. This proviso relates to the use of the water from a source assigned by the revenue authorities or from a source adjudged

by a competent civil court. As the section now stands, it exempts a ryot from liability to pay water-rate in addition to the land assessment, if he uses water either from the source assigned by revenue authorities or from a source adjudged by a competent civil court as one from which he is entitled to take water for irrigation. In what cases the civil courts will have the right to do so is a matter which this Bill does not profess to lay down. It is left to be decided by general law. All that this section says is that the ryot shall be liable to pay water-rate when he uses water without the sanction or the authority of the Collector from a source which is a Government source and which is neither the source assigned by the revenue authorities nor a source adjudged by a competent civil court as a source of irrigation. That is the object of the section. But the object of the amendment proposed by the Hon'ble Mr. Jamt. Lingam Mudaliyar is to declare that the assignment of sources by revenue authorities is subject to revision by a civil court. That is not at all the object of this measure. The object of this measure is not to declare that the assignment of sources by revenue authorities is subject to the adjudication of civil courts or is not subject to the adjudication of civil courts. The only object of the section is to exempt a ryot from payment of water-rate whenever he uses Government water either from a source assigned by revenue authorities or from a source belonging to Government and adjudged by a competent civil court as a source from which he is entitled to take water.

The Hon'ble Mr. H. M. WINTERBOTHAM :—I think the Honourable the last speaker is right and the amendment should therefore be opposed.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—I beg to propose, Your Excellency, that the following be inserted as an additional proviso to section 1 :—

“Provided further—

(1) that the rates so levied shall be such that even the land which benefits least by the application of water will yield to the cultivator an increased profit fully sufficient, in the opinion of the Collector, subject to the control of the Board of Revenue and of the Government, to enable such cultivator to pay the same;

(2) that the rates prescribed shall not be raised during the currency of the settlement of any district or part of a district; and

(3) that no increase exceeding 15 per cent. shall be imposed at any revision of the rates.”

Your Excellency, this proviso is divided into three parts. The first affirms the fundamental principle on which the water-cess should be assessed. In sanctioning the 3-rupee rate for the Gódvári and Kistna deltas in 1860, the Secretary of State said “there seems no reason to doubt that even the land which benefits least by the application of water, will yield to the cultivator an increased profit fully sufficient to enable him to pay as water-rent a rate of Rs. 3 per acre.” (Despatch No. 43, dated 6th July 1860, from the Secretary of State to the Government of Madras.) The preamble of the Act of 1865 discloses only an intention that those who use the water in view to derive increased profits should be under an obligation to pay the cess. I cannot bring myself to believe that this Council desires to enunciate a different principle in cases where the rate is levied by virtue of the compulsory provisions now enacted. Unless this principle is embodied in the Act, I fear that cases are likely to occur—as they have occurred in the Kistna delta—in which the water-cess would be levied even where the Government water “killed, not benefited, the crop.” In the

Gó dávari delta, however, the rate appears to have been levied on a different principle and the charge is made only in those cases where the crop has been benefited. (Letter from the Collector of Gó dávari, to Government, No. 65-Ver., dated 13th January 1896.) I submit that the charge for involuntary irrigation should be confined to cases in which the cultivator has derived increased profits by the use of the water, as compared with the profits he would ordinarily have got by raising dry crops. It is not so much the compulsory nature of the rate as the rate itself that presses heavily on the ryots in such cases. For instance, till 1889 the charge for irrigation by drainage water—which is very inferior in its fertilizing qualities and is often injurious to the soil—was one-half of the usual rates. This distinction has since been abolished. The deduction is allowed only in those cases in which the jamabandi officer is satisfied that the supply of water for irrigation is too precarious to allow of the cultivation of the regular wet crops (Board's Proceedings, No. 317, dated 13th May 1889). Full rate has since been levied even in cases of "involuntary flow." All I propose is, that the correct principle of assessment be laid down for the guidance of the executive, so that they may carry out the Act in the spirit in which it is intended to be worked. In the second part of the proviso, I propose that the rates prescribed for any tract shall not be raised during the currency of the settlement of that tract. Till August 1895, the cultivators in the Gó dávari and Kistna deltas were under the impression that there was at least as much certainty about the water-rates as about the land-tax. In fact, during the course of a discussion between this Government and the Government of India in 1891 regarding the water-rates in the Gó dávari and Kistna deltas, this Government stated that no alteration could be made in them during the currency of the settlement (letter, No. 51, dated 26th January 1891, Revenue, to the Government of India). In the irrigation districts I submit that fixity of assessment of land-tax without like fixity in the case of water-cess for a definite term—which is thirty years in the case of land-tax—would be of little value. There are far greater reasons in favour of fixity in the latter case. While revisions of land-tax affect only ryotwari lands, the water-cess affects also lands whose quit-rent or peishcush is fixed for ever. It is owing to the absence of a provision like the one I propose that the water-rates in the Gó dávari and Kistna deltas have been raised by 66·6 per cent. during the interval between one settlement and another. I am sure Honourable Members will agree with me that changes in the rates, if too frequently made, will produce uncertainty in the conditions of agriculture and affect the security which is felt by the land-holding classes in the settlement. The object of the last part of the proviso is to impose some limitation upon the increase to be made at any revision of the rates. Honourable Members are aware that, in reference to the scheme propounded by the Government of India in 1883 regarding the revision settlements, this Government proposed that, when a substantial rise in the value of agricultural produce justifies an augmentation of the State demand, a limit to the increase to be made at any one time should be laid down. Such a safeguard is most important for the reasons urged by this Government in its reply to the Government of India and is calculated to protect agricultural classes from the hardships of large and sudden enhancements, to whatever causes they may be due. For all practical purposes, water-cess is part of the land revenue; and the reasons, which dictate the necessity for such limitations in the case of land-tax, apply with much greater force to water-cess. There would be no security of property, there would be no incentive for exertion, there would be no motive for land improvement, and the country cannot, in my humble opinion, reap the full benefit of the irrigation works, until and unless some limitation is imposed upon the enhancements of these

rates. I have not been able to understand whether it is with reference to the quantity or quality of the water or the benefit caused by it, or the variations in prices or what else, that these enhancements are made. Distinction is made where there is no difference. One year a crop is said to be an "occasionally irrigated" crop and is charged half the rate. Next year it is promoted to the class of "systematically irrigated crop" and is charged full rate. In the third year a new rate called an "intermediate rate" comes into existence and the crop is transferred to that series and charged three-fourths the rate or is promoted to a double crop and is charged double rate. In this way, the charge on turmeric, for instance, was raised in the Kistna delta by 500 per cent. in one decade between 1885 and 1895. All these difficulties arise, because the rates are raised generally without a sufficient knowledge of local conditions. That I have not overdrawn the picture will be seen from the remarks made in G.O., No. 162, Revenue, dated 18th March 1898. In that order Government says: "It will appear that originally the rates for water not only varied in different districts, but that in one and the same district there were frequently more than a hundred different rates. In some cases, no definite principle was observed in charging these rates, but generally the principle followed was to charge as water-rate in respect of land classed as 'dry' the difference between the wet and dry assessment." The water-rates charged in this Presidency are also much higher than those charged in other provinces. Taking the Lahore district watered by the Upper Sutlej Inundation canals in the Punjab for comparison, we have the following rates:—

Crop.	Lahore district.			Gó dávari and Kistna deltas.		
	RS.	A.	P.	RS.	A.	P.
Rice	3	0	0	5	0	0
Chillies	3	0	0	5	0	0
Sugarcane	2	4	0	10	0	0
Turmeric	1	14	0	10	0	0
Gardens	3	0	0	10	0	0

The rates in the Punjab include what is called the "owner's rate", which is As. 12 per acre. Another point to be noted here is, that while lift rates are half the flow rates in Lahore, they are as much as three-fourths here. The average rate levied for the use of the water is one-ninth of the value of the crop in the Punjab and one-twentieth in Bengal; it is considerably more in this Presidency. Already in some cases the water-rates trench on the legitimate profits of the inamdars, as pointed out in the memorial of the Muhammadan landholders of the Gó dávari district. To limit the water-rate only by the amount the cultivator will be obliged to accept, would be contrary to the beneficent intentions of the Government. It would be remarkable indeed if, 35 years after the Act has been in force, this Council should not be able to provide some safeguards against sudden enhancements.

The Hon'ble M.R.Ry. P. Ratnasabhapatil Pillai Avargal seconded the amendment.

The Hon'ble Mr. H. M. WINTERBOTHAM:—So far as I can understand it this amendment seems to point to the graduated rate which Government desires to adopt so that rich lands may pay a high rate and the poor lands may pay a low rate. If that is what the Honourable Member means, that is what the Government intends as I have already explained. Hitherto a uniform rate has been charged, and admittedly that rate is much too high for some of the poor, sandy, swampy, tracts bordering on the sea. Over extensive areas the cultivator is able to refuse and exclude the water if he does not choose to pay the water-rate. What obligation is there in such cases to fix

the rate so that the cultivator may be able to pay it out of his increased profits? If the cultivator does not think it to his advantage to take the water, he will exclude it and there is an end of the matter. If the land is so situated that the cultivator cannot exclude the water, the intention of Government is that the maximum water-rate shall not exceed the difference between the wet assessment and the dry assessment. This will secure the object at which the Honourable Member's amendment aims. Government is not likely to sanction higher rates than it believes the cultivators can afford to pay, and as the amendment leaves it to Government to say what rates the cultivator can pay, its insertion is clearly as useless as it is objectionable. The amendment should be rejected.

(2) By some authorities it is urged that the right to raise the water-rate should be reserved in case of its being necessary to raise extra revenue in time of war, or on account of some other unforeseen emergency. Many (perhaps the majority of) cultivators will have the power to relinquish the water any year. Where cultivators have the option to take or refuse the water, why should Government promise not to raise the rate for 30 years? I can see no reason. In low-lying tracts from which the Government water cannot be excluded, the maximum water-rate is to be the difference between the dry and the wet rate. To ascertain this the land must be classified and this classification is an operation which Government abstains as far as possible from repeating. It is unlikely in such case that the water-rates once imposed will be altered within the period of the settlement, but this fact does not prevent the amendment from being superfluous and objectionable. It should be rejected.

(3) As regards the lands from which the cultivators can at pleasure exclude the water, the limitation is obviously absurd. The cultivators need not take the water if they think the cess too high. As regards lands from which the water cannot be excluded, the arbitrary limit of 25 per cent. is grounded on nothing except the Honourable Member's opinion as to the eternal fitness of the number 15. He is aware that the water rate was raised only a short time ago by 25 per cent., and in case of many of the soils the difference between the dry and the wet-rate represents a sum far higher than 15 per cent. of the existing uniform rate. The amendment would entirely prevent the Government from graduating the existing uniform rate according to the capacity of the soil to benefit by the water. The amendment should be rejected.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—Of course in the case of war or any unforeseen contingency—we hope that will never happen—such a provision might be useful. That is no reason why a reasonable limitation should not be imposed upon enhancements.

The amendment was put to the Council and lost.

BETWEEN SECTIONS 1 AND 2.

His Excellency the PRESIDENT :—The next amendment, which stands in the name of the Hon'ble Mr. Ratnasabhapaty Pillai, runs in these terms :—

After section 1, be inserted the following as section 2 :—

'Nothing contained in this Act shall be held to prevent parties deeming themselves aggrieved by any proceedings under this Act from suing in the civil courts for redress.

'Provided that such suits are instituted within one year from the time at which the cause of action arose,

'Provided also that it shall not be competent for the parties in such suits to question the rates of the cess fixed under the rules as aforesaid prescribed by Government.'

If the above amendment after section 1 be carried, to number sections 2 and 3 as sections 3 and 4, respectively.

This amendment is identical in substance with an amendment previously disposed of, and I therefore declare that it cannot be discussed or put to the vote.

The Hon'ble Mr. H. M. WINTERBOTHAM :—With Your Excellency's permission, I now beg to propose two verbal amendments to section 1 before we have entirely left it. I propose to insert before the first "whenever," "(a)" and before the second "whenever" "(b)." The object is to show that the two clauses are entirely independent of each other and so to avoid possible ambiguities.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment. The amendment was put to the Council and agreed to.

SECTION 2.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—I beg to move that for the figure "2" in section 2 of the Bill occurring in line 11 of page 2, the following be substituted :—

"3. After section 3 of the *said* Act, the following section shall be inserted :—
4."

This amendment of mine relates to a question which the Hon'ble Mr. Norton put yesterday. As the Bill stands it is not clear that these two sections, 2 and 3, are to be incorporated in the Act. My amendment will remove a defect which in my opinion exists. The Act that we are now amending consists of four sections. Of these four sections, sections 1 and 4 are repealed by this Bill. The new section proposed by the amending Bill is to be incorporated as section 1. In the old Act there are sections 2 and 3 and the amending Bill also speaks of sections 2 and 3. The question is whether a portion of this amending Bill should be incorporated in the old Act and a portion of it be kept separately. If this Bill is to be incorporated in the old Act, my amendment is necessary. We have incorporated one section in the place of sections 1 and 4. But if this is to be a separate Act to be read along with the previous Act, I do not at all understand what is the meaning of saying that without repealing the former Act we are to read this as if this had been substituted for it. I do not think there is anything to show that sections 1 and 4 should be repealed.

The amendment fell through for want of a seconder.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—I beg to propose that "1900" be substituted for "1899." All that I wish to see is, that no retrospective effect will be given to this enactment. Already the fasli year has far advanced. If the cess is to be collected, let it be collected from 1st of July next. It will take probably two months for the Act to receive the assent of His Excellency the Viceroy. For these reasons, I commend the amendment to the good sense of the Council.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—I beg to second this amendment. All that is wanted is that the provisions of the Bill should take effect not retrospectively from 1st July 1899, but prospectively from 1st July 1900.

The Hon'ble Mr. H. M. WINTERBOTHAM :—Under the existing Act no water-rate can be legally levied if the cultivator can prove that he had not the option of excluding

the water. The proposed amendment would confer on every cultivator who had not individually the power to exclude the water a right of action against Government to recover the water-rate collected from him for the current fasli. It might in a vast number of cases be impossible to prove that the water had ever been applied for while proof that it could not be excluded would be easily available. The amendment would encourage vexatious litigation and place in jeopardy an indefinite fraction of the revenue from water-rate accruing for the current fasli. The change in date cannot be agreed to.

The amendment was put to the Council and lost.

SECTION 3.

The Hon'ble M.R.Ry. C. VIJAYARAGHAYACHARIAR Avargal :—I will not press my next amendment, as my last amendment has not been seconded.

With the permission of His Excellency the President the amendment was withdrawn.

AFTER SECTION 3.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—I beg to move that the following be inserted as section 4 :—

"Nothing herein contained shall be deemed to affect any law not hereby expressly repealed; or to derogate from—

"(a) Any right of a zamindar or inamdar or any other description of landholder not holding under ryotwari settlement to regulate the collection, retention and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained, or distributed in or by any channel or other work constructed at his own expense; or

"(b) Any right acquired or created before this Act comes into force."

I have adopted the wording of this section from section 2 of the Indian Easement Act V of 1882 with slight modifications. I commend it to the Council without any further observations.

The Hon'ble M.R.Ry. P. Ratnasabhapati Pillai Avargal seconded the amendment.

The Hon'ble Mr. H. M. WINTERBOTHAM :—Our Bill is a fiscal enactment passed to protect an existing source of revenue which is in danger. It is not an enactment to declare and codify the law relating to riparian rights. Our Bill merely declares under what circumstances a tax may be levied on water belonging to Government and supplied for the purposes of irrigation. The proposed amendments are utterly out of place and should be rejected.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—I beg to move that the following be inserted as section 4 :—

(1) "Notwithstanding anything contained in this Act, it shall be lawful for any zamindar or inamdar or any other description of landholder not holding under ryotwari settlement to claim compensation in respect of any of the following matters :—

(a) Stoppage or diminution of supply of water through any natural channel to any defined artificial channel, whether above or under ground, in use at the time of the construction of any channel, tank, or work by Government.

(b) Stoppage or diminution of supply of water through any natural channel used for purposes of irrigation.

(c) Damage done in respect of any right to a water-course or the use of any water to which any person is entitled under the Indian Easements Act, 1882, sections 15 and 16.

(d) Any other substantial damage caused by water by direct or indirect flow or by percolation or drainage from any channel, tank or work constructed by Government, which is capable of being ascertained and estimated at the time of awarding such compensation.

In determining the amount of compensation in cases referred to in clause (a) or (b) of this section, regard shall be had to the diminution in the market value, at the time of awarding compensation, of the property in respect of which compensation is claimed; and where such market value is not ascertainable, the amount shall be reckoned at fifteen times the amount of the diminution of the annual net profits of such property.

No right to any such supply of water as is referred to in the aforesaid clauses, in respect of a work or channel not in use at the time of the construction of any channel, tank or work by Government, shall be acquired as against Government except by grant or under the Indian Easements Act, 1882, sections 15 and 16.

No compensation can be claimed by any person in cases where water is supplied or used for purposes of irrigation or where he has entered into an engagement with the Government for the supply of water for irrigation free of separate charge."

(2) "Notwithstanding anything contained in the Indian Limitation Act, 1877, any claim for compensation for any such stoppage, diminution or damage may be made within one year next after this Act comes into force."

(3) "The Collector shall proceed to inquire into any such claim, and to determine the amount of compensation, if any, which should be given to the claimant; and the provisions of the Land Acquisition Act, 1894, shall apply to such enquiries, so far as such provisions are applicable."

This amendment I have adopted from section 8 of the Northern India Canal Act VIII of 1873, with the exception of clause (d), which I have inserted in view of the compulsory provisions in this Bill which are not contained in the Northern India Canal Act—which does not authorize any charge for percolation.

The Hon'ble M.R.Ry. P. Ratnasabhapati Pillai Avargal seconded the amendment.

The Hon'ble Mr. H. M. WINTERBOTHAM :—The provisions which the Honourable Member has included in the amendment are contained in section 11 of Bengal Irrigation Act III of 1876 and in the Act which the Honourable Member has quoted. Both these Acts are to provide for the construction, maintenance and regulation of canals, whereas our Bill is merely a fiscal enactment passed to secure an existing source of revenue placed in jeopardy by a High Court ruling. The proposal is that the Collector should under certain circumstances determine the amount of compensation due for damage done. Our Bill in no way interferes with the jurisdiction of the ordinary tribunals to hear and determine any and all claims to compensation. If Government had proposed any such interference there would have been a fine outcry. Here we have the Honourable gentleman proposing that the Collector should be constituted the authority to investigate claims to compensation, and that there should be an appeal from his award to the civil courts in accordance with the procedure of the Land

Acquisition Act. In the opinion of Government there is no occasion at present in any way to interfere with the ordinary tribunals, or to impose this fresh duty on the Collector. The amendment should be rejected.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—I beg to move that the following be inserted as section 4: "Every inquiry conducted by the Collector under this Act shall be deemed a judicial proceeding; and he may exercise all such powers connected with the summoning and examining of witnesses as are conferred on civil courts by the Code of Civil Procedure." With reference to this amendment I need only state that all enquiries under the Northern India Canal Act and the Bengal and Bombay Irrigation Acts are deemed to be judicial proceedings. I can see no valid reason why the case should be different in this Presidency.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—I beg to second this amendment. Now that the opinion of the Collector subject to the control of the Board of Revenue and the Government has been declared to be final in certain circumstances, I do not think that any harm would be done by adopting this proposal. All that is said here is that all enquiries should be deemed to be judicial proceedings under this Act and the Collector has to exercise his powers connected with the summoning and examining of witnesses.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—In support of this amendment I also wish to say a few words. If the opinion of the Collector is to be subject to the control of the Board of Revenue and Government there ought to be something more than a monosyllable upon which the Board of Revenue and the Government might dispose of the matter. There ought to be some materials upon which the Board of Revenue and the Government can exercise their judgment in ascertaining whether the Collector is right or not. For that purpose the Collector must have power in his own interest to summon witnesses and to call for documents. For these reasons, I submit, this amendment is necessary, and this is by no means intended to defeat any of the objects which the Government says it has in this amending Bill.

The Hon'ble Mr. H. M. WINTERBOTHAM :—All that I can say is that the proposed amendment is deemed to be quite unnecessary. I must say I oppose it.

The amendment was put to the Council and lost.

The Hon'ble Mr. H. M. WINTERBOTHAM :—Under rule 51 I have the honour to move that the Bill as amended by the Select Committee and now as further amended by this Council be passed into law at once.

The Hon'ble Mr. G. Stokes seconded the motion.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu :—Your Excellency, I do not wish to make any lengthy remarks at this stage. I have already said all that I could say in support of the position I was obliged to take up in reference to this Bill. It is by no means pleasant to me to be under the necessity of opposing a Government measure. I fully believe that the feeling of the Honourable Member in charge of this Bill and those that will vote with him towards those whom this Bill affects is quite as kind as mine. I have no sympathy with those who wish to evade the payment of water-cess for which they are justly liable, any more than the framers of this Bill have. There is no difference between us as to ends. There is unfortunately a difference of opinion as to means. We differ as to the existence of the evil. We differ as to the remedies to be adopted to meet such an evil. Little or no attempt

has been made to meet the arguments and facts laid before the Council by Honourable Members on this side of the table. If I have erred, I have the satisfaction of knowing that I err in good company. In reply to an enquiry from the Government as to the extent of involuntary irrigation in the Gódvári delta, the Collector reported in January 1896: "No practical difficulty is experienced in these cases in levying water-tax as ryots avail themselves of the water-supply by presenting formal applications in time along with the rest of the ryots." Should any difficulties arise in future, I may assure the Government that I shall be converted into one of the advocates of this measure, of course, if it is confined to such cases. I can never believe that any ryot will repay in the form of relinquishments his gratitude for the magnificent irrigation works which the beneficent Government has provided him with. Is it possible that any man can forget the immense good that these works have conferred upon the district? If the ryots in the irrigation districts act in the way in which it is feared they will act, then human nature must be very different from what I think it to be.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—Your Excellency, in spite of the very brilliant assertions made authoritatively in January last and these two days, I find that after a most anxious and conscientious consideration I am not satisfied as to the necessity, justice, or propriety of this courageous legislation which is proposed for our acceptance and our sanction. The issue, I believe, is a very grave and a profound one. The authority of Government, the just authority of Government, the prestige and fame of Government, the prestige and fame of this Council and the individual credit and the individual honour of every one of us is involved in this issue. We are, therefore, most solemnly bound to go to the discussion of the final determination of this issue, conscientiously and without any consideration other than those of justice, equity and the real and permanent interests of Government and welfare of the ryots. On the other hand, as to the necessity of the measure it is very clear from all the statements made that absolutely nothing has been stated by way of argument though brilliant assertions have been made embracing questions of law, questions of revenue up to the occult powers of the Collector to penetrate below the surface of the earth, to find out the meanderings of the subtle fluid from the Government source till its destination *via* private reservoirs and private wells in spite of every obstacle, into the field of a peasant. All these assertions, I submit, have had the ring of imperative orders and have had the effect of depriving the opposition of any chance they may have had of securing the independent and neutral votes. That is all the answer that has been given for the arguments advanced and for the pains taken by the elected representatives of the people for these two months. As regards the necessity of this measure, we asked for all the available testimony in the form of documents, but they have not been placed before us. A very important document which would throw light on the subject as to why and under what circumstances the Bill was conceived and started and developed would be the communication between this Government and the Secretary of State on the subject. This letter was sent in November last, I find. And when I asked for a copy of it, that copy has been refused. In 1882 an attempt was made by this Government in the Legislative department to introduce what was then called the Irrigation Act of 1882, and opinions were invited from various other Provincial Governments—Bengal, North-West Provinces and Oudh, Bombay and even the Punjab—on most vital points affecting that law. That law was based upon the irrigation law in Upper India, upon the irrigation law in Bengal, and upon no law in

Bombay. I asked for a copy of the opinions then obtained, and that application too has been refused. It may or may not be competent for me to make a complaint of these refusals, but I mention these facts to show that I cannot trace the circumstances under which this measure has been started. I am utterly in the dark as to the circumstances under which the Secretary of State hastened to give his sanction, and this sanction accorded by him was squeezed into half a dozen words and was entrusted to Baron Reuter, by no means a satisfactory agent of England for the government of the East. Under what circumstances Lord George Hamilton hastened to put a stop to the law that has worked for 35 years, under which people prospered, under which the Government got plenty of money, I am entirely unable to understand, owing to the refusal of the Government to place all the papers at my disposal. You have all heard what the Honourable Member in charge of the Bill had to say. All that he said was in the shape of orders—"This amendment should be rejected," "that amendment cannot be accepted," and "the Government is not prepared to accept this amendment." Absolutely the whole thing has been in the form of G.O.s., and G.O.s. have had their effect. What did we do? Those additional Honourable Members, few and feeble in the Council, who under some measure of representation are here to represent the genuine wants and the grievances of the people, took a number of objections. You say that in spite of promises, pledges, and authoritative declarations of the Secretary of State, of the Government of India, of the Government of Madras and of the Board of Revenue there has been a revenue practice in derogation of all these. We are taught by missionaries and others that we Orientals are blind followers of custom. Remembering that, in turn we ask you how can you sustain a custom which has been in the face of all these orders and regulations? Absolutely no reply has been vouchsafed to us as to the existence of this custom. In the proposed Irrigation Act of 1882, the Madras Government, notwithstanding the assertion that such a practice has been in existence from time immemorial, absolutely made no provision to give effect to that immemorial usage. Be it remembered that the suit which eventually went up to the High Court upon the termination of which the Hon'ble Mr. A. T. Arundel wrote his letter, which is now placed upon this table, was then pending, so that the Government and the Board of Revenue were not unaware at that time that the revenue practice was not acquiesced in by all the ryots, and yet absolutely no attempt was made when the Bill was framed to introduce it, though the Bill was pending for four years and eventually dropped in 1886 or 1887. Mild as that measure was, two members of the Honourable Council, who were much more influential in those days than we, the elect members, are, recorded their minute of dissent; Justice Sir (then Mr.) Subramania Aiyar and Raja T. Rama Row were the two Honourable Members on the Select Committee who recorded their dissent. One Indian member, Raja Gajapati Row, and four European members signed the report. In those days the Government listened to us, and all events our predecessors were far more influential than we are now, with the result that the Bill was dropped. I am sorry that that measure was not passed, for if it had allowed that law to have been passed, this measure would not have been before us. The Honourable Members on this side of the table asked as to the propriety, justice and equity of Government trying to make money out of what has been declared in America and England to be not property between man and man. We also gently asked Government how with all these powers a Collector is to find out how this new property, this subtle fluid, has found its way to a particular field or not. Absolutely no answer have we received. In that matter, we were within an ace of victory, but somehow or other we were defeated. The Bill was committed to a Select Committee—in regard to whom I speak with the highest respect—but I must say that in spite

of the answer made by the Hon'ble Sir V. Bhashyam Aiyangar and others the Select Committee have, as a matter of fact, made the Bill a little harsher and somewhat more drastic than the original Bill. The sole excuse which my Honourable friend gave me was a dissertation on the two words "or otherwise". The two words would have done you, he said, a great deal of harm, and we therefore removed them and substituted reservoirs and wells and what not. I leave it to you to say whether without this commentary any Collector would have substituted for "or otherwise" private tanks, rain-fed tanks, wells and what not; I believe such an idea would never have occurred to any Collector. The idea is original, and the remedy is worse than the disease. The Bill comes back to us from the Select Committee, and a few elected members, defeated everywhere, propose terms of compromise from their little laager, but we are met with a courage and calmness worthy of a greater occasion where opponents meet on equal grounds. It must not be forgotten that our actual position is very different from what our position is legally supposed to be. I say that the Legislative Council is only a court of the executive government where the Government and the Government majority are judges. I deny that the Government majority are jurors as stated here yesterday, because the jurors are on oath and the Government majority are not. The elected members form the bar. In these circumstances I respectfully claim that their representations, as voicing the views of the people, are entitled to far more respect and far more influence than they have had. Even if they were not quite acceptable to the views of Government, absolutely no attempt was made to meet them half way even in the most trifling matters. The most important matter is the taking away of the jurisdiction of civil courts. In regard to this matter, absolutely on no ground whatever was the question that was decided negatively—whether the water in any of the innumerable ways by which it may find its way has benefited a crop or not should be as much open to the jurisdiction and investigation of civil courts as to that of a Collector. You remember the argument advanced on the other side, and I do not know if it were satisfactory to those who heard it. I was not satisfied with it, and I believe they, too, were not satisfied with it. The result was that we lost their votes, and the Government got them. You know what has been said about inspection. It was stated that the Collector could inspect these things better than a Judge. One important thing has been forgotten, and that is a decision by a court of justice, however imperfect it may be, is received by the people with far more satisfaction than a decision given by anybody else. It must be so and it is so. There they have the completest chance of representing their case, there they can have the best advocates and they can produce witnesses. Then we, Hindus, accustomed to decrees of fate, regard very many of these decisions, if they are erroneous, as decrees of fate and take these decrees with pious resignation if not kindly. But not so when things come from the executive officers. As I stated once before, absolutely no insinuation has been made against the integrity of executive officers—some of them, a few of them, are my friends and I am proud of their friendship. But the vast majority of them including some very able and very good men come to form opinions in ways which are justly shut out in the case of courts, and once they form their opinions, it is impossible to convert them. To take a typical instance, I hope the Hon'ble Mr. Winterbotham will not be offended when I say that he is one such—when he believes that a view is right, no matter that the whole world may think it to be wrong, he sticks to his opinion. The same is the case with a lot of civilians that I came into contact with, and who are as able and as conscientious as he is. They believe that when people go to them with the object of informing them, they go there to deceive them—to put it mildly; when they put the real facts before them, they

fancy that they are in a conspiracy to deceive them. This is the temper of executive officers. *Audi alteram partem* is not their vice. They have got their clubs and games, and in the midst of all these they carry on the work of Government with an adequate staff of ill-paid and overworked clerks. Often very brilliant are their abilities, almost always very pure is their intention, and very warm are their feelings towards ryots. We were, as regards one vital provision of the measure, within an ace of victory, but somehow or other the expected friends voted against us and we lost our proposition. No wonder therefore that the few representatives of the people here get very much depressed. Take the statement made to-day by the Hon'ble Mr. Winterbotham in addition to the very many assertions that he made, that in courts of justice the private parties would have the best of government, because private parties have the advantage of purchasing evidence in the bazaar, while the Government have not got it. It is not for me to say whether he as a trusted colleague of His Excellency can make such a statement as this even if it embodied some truth, in justice to the millions who have no influence in the Government chambers, who have no influence in the Government house. But, however, I am in a position to deny that perjury is the monopoly of private persons. I do not suppose that non-official Hindus indulge in purchasing perjury more than officials or anybody else do. Look at the amount of perjury on behalf of the Crown in the Salt department, in the Abkari department, in the Police department and in the Forest department. If one-hundredth of that perjury were placed on one scale against all the perjury of non-official people on the other, the latter will kick the beam. I need hardly tell you that if the judgment of Mr. Mackenzie in the famous Pittapore case be tapped in the light of the occult literature relating to it, the process will yield results which will by no means tickle the vanity of the Hon'ble Mr. Winterbotham as regards official integrity. In these circumstances when our proposals and compromises are resisted on grounds like this, there is no wonder that we are depressed. It is no wonder that the alarm of the people is great and will become greater and greater when the law is more widely known and its effects better felt. If this is the treatment which the honest efforts of those who serve both Government and people should receive at the hands of the powerful, if beneficent, Government, do you really believe that any thing you may do or you may say will evoke the efforts, the patriotic efforts on the part of the educated people to serve the Government or the people. Despite the oaths in the Senate House, despite the spirit-stirring adjurations addressed to them during the convocations of the University, it would be exceedingly difficult for Government to draw away capable and enlightened men from their everyday work and pleasures to the unpaid but sacred service of Government and of the people, after the treatment accorded to their representatives here and to their representatives elsewhere. On these grounds, I have no hesitation in saying that a crisis has been reached in the organic life of the Madras Government and the Legislative Council. We are much more helpless now that the Council has been expanded, though we are here by right, than our predecessors were who were here by patronage and kindness. As regards the measure before us, it does not rest upon principles of equity, it does not rest upon principles which obtain between man and man. I have no hesitation in saying that it is a great evil. I am not one of those, who, like the gentle and pious priests, believe that the great evils of war, plague, famine and pestilence are sent down by God. I do not believe that God has in Him anything evil. I therefore emphatically say that this is the work of man. I hold the Madras Government, Your Excellency's trusted advisers and Honourable colleagues and the advisers who have influence with them entirely responsible for this measure, exceedingly

mischievous and fraught with disastrous consequences in the immediate future and for ever to come.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal :—Your Excellency, I do not desire to give a silent vote on this final motion. This is the most unfortunate piece of legislation that has been undertaken within living memory. It is a one-sided measure, devised, formulated, and carried through by Government in the teeth of public opinion. The interests of the poor ryots who have to face the disasters of ever recurring famines have not been considered. The most reasonable amendments moved by us have been vetoed, amendments which received the stamp of approval of such eminent men as the Venerable and Hon'ble Dr. Miller and our distinguished countryman the Hon'ble Sir V. Bhashyam Aiyangar. I only trust that the new legislation, when it becomes law, as it will be in a couple of minutes, will be administered by the district officers with that spirit of sympathy and generosity which the economic condition of the country deserves.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal :—I rise to say a few words. I do not wish to refer to the principles and the policy of the measure which have been discussed *ad nauseam* these two days. I only rise to reiterate the fact that absolutely no reason and absolutely no necessity whatever for this measure has been shown in spite of the persistent statements from members on this side of the table that it is a groundless, mischievous and vexatious piece of legislation. We heard yesterday that Honourable Members who are not acquainted with details and technicalities of this measure sat here as intelligent jurymen, and that the condition on which the votes of those intelligent jurymen could be obtained for this side was a denial of circumstances and facts stated by Government in justification of this measure. With extreme courage borne out by a close study of the subject, I did give an emphatic "no" to the assertions made on the other side in justification of this measure. A whole host of orders of all kinds I was able to quote in justification of the position I adopted. I did not get a single order, a single Board's Proceedings, a single Government Order, or an order of the Secretary of State or of any other functionary in justification of the introduction of this measure. The members who were warm supporters of the Bill had no answer to give, many of them displayed gross ignorance of the subject they were dealing with, and if any of them spoke at all, it was, like the lawyer with a bad case, to shower undignified abuse on the other side. In answer to all I said, I was given analogical reasoning; it was said "if you want to institute a punishment for murder, do you wait to see that murder is committed all over the country, before we institute a law for the punishment of murder?" Similarly it was said that there is great danger apprehended and are we to wait till the danger happens in order to pass the law? I respectfully submit that the analogy completely breaks down. It does not require a lawyer's training, a lawyer's instinct to distinguish a murder which is an offence against humanity by common consent of all mankind from a Cess Bill where some money is attempted to be made for the purposes of the exigencies of the State. Beyond that single answer based upon a false analogy, I have had no answer given for the position I so strongly took up. After a discussion for these two days, I find I am unable to change even to the smallest extent the position which I took up at the beginning. There is this fact which the Government itself was kind enough to tell us—that representations and memorials of an unusually large number were received, but their importance was belittled by the remark that many were copies of others, that some were translations, and their importance was further attempted to be belittled by one Honourable Member of this Council, who said that they were the

productions of a conspiracy engineered by some agitators. To that insinuation, I say there is absolutely no justification and no evidence, and it ill-befitted any Honourable Member of this Council to cast a slander upon a whole country—that these memorials to the paternal Government and these representations of grievances were the outcome of the labours of agitators engineering from behind the screens. Then it was again insinuated that these memorials and petitions were the products of persons who had invested their gains of learning in the purchase of land in the districts inhabited by them. I could only say that the highest praise is due to them for using their intelligence and wealth in the cause of the country and in the cause of the masses who cannot speak for themselves, who cannot think for themselves, and whose case has to be advocated by persons who have invested their gains of learning in land and by persons possessing brains. I do not in the least consider it wrong that persons who have brains and who have invested the product of their brains in land should have come forward to represent their views in regard to this measure. It was stated then by one of the Honourable Members that people, or somebody else, judging from the various representations and memorials, considered that Government was inimical to their interests; that there was an impression that the Government was inimical to the interests of the people. I do not know how it was possible that such a proposition could have been asserted by persons who have imbibed the best traditions of English constitution and understood the English rights of petitioning for redress of grievances. If the people had any, the smallest, inkling of these ideas, the very idea of petitions for the redress of their grievances will simply be an incongruous thing. We do not go to our enemies for the redress of our grievances. If the Government is inimical to the interests of people, the people would not approach the Government with petitions and other memorials. It was said that people who are working in this matter are working under a misapprehension. That is possible, and I don't deny the possibility. If we work under a misconception and if we go wrong, we expect the paternal Government to rectify the error and advise us. That is a claim we have against our Government, and the Government cannot possibly reject it. All these petitions and representations have been belittled and their importance minimised with these various allegations, for which I find absolutely no justification whatever. I do not, like my Honourable predecessor take a despondent view of the future, nor am I discouraged by the course which this Council has taken during these two days. Of course Honourable Members on the other side of the table have got as much at heart the best interests of the country as those who come here as representatives of the people. Both sides have got the same idea and I submit that both sides have the same amount of responsibility—no matter the one side is paid for doing the work, while the other side is doing an honorary work. The responsibility and the idea we have is the same, namely, the good Government of the country and the happiness of the people. We may differ as to the means we may propose to reach that goal, but absolutely there is no justification to question the motives of this side or to attribute motives to the people in regard to petitions and memorials that have reached the Government. If we differ from the ideas that we have as to the means of reaching the one common end we have in view, that difference must be taken on both sides to be an honest one. I implore this Council, which is to carry this Bill, to credit the persons who have been opposing it with the same amount of honesty that we on this side of the table ungrudgingly and to the utmost degree credit those who supported the Bill with. That is the only return we expect for the work that we have been doing, no matter that we have been differing in our views. We are not dispirited by the fact that we have not carried our views because I do not believe that we have the storehouse of wisdom on our side and not the members on the other side

I credit both sides with the same amount of wisdom, though we may differ as to the ideas we may possess. I just wish to make this observation: I am not still without hope, I still feel a ray of hope in the amount of opposition which it has evoked, in the amount of earnest discussion it has given rise to, in the amount of careful consideration that the Bill has had. I feel that ray of hope in the power of veto which His Excellency the Governor and His Excellency the Viceroy possess and the ultimate power of veto which the Secretary of State, the representative of Her Majesty, possesses. In all that, I do entertain a ray of hope and, if we ultimately fail even then, I shall not be disheartened, because I have the fullest and the utmost confidence in the liberality and the generosity of the paternal Government in administering a law, however stringent and hard it may be, in the kindest fashion. I do not wish to detain the Council any longer. With these remarks, I beg to close the debate so far as I am concerned.

The Hon'ble Mr. G. L. ACWORTH:—I should like to say one word before we close the debate. I am a cultivator myself, and my sympathy naturally is with the cultivator. So many side issues have been raised that it is rather difficult to grasp what the original intention of the Bill was. As far as I could see, the intention of the Bill was to prevent water by leakage or percolation being used for irrigation without payment, even though it benefits the ryot. Any one who has any knowledge of irrigation must know what an enormous amount of leakage there is from tanks. If any one doubts my statement, I would ask him to visit the hills where my estate is situated. There is within four or five miles of the estate the greatest dam in the world. I have seen it from the time it was first blasted out of the rock till it was finished. I can assure this Honourable Council, in spite of this tremendous dam, which is built of concrete, there is issuing a stream of water through this solid mass of masonry sufficient to irrigate how many hundreds of acres I do not know. If that is the case with a dam made of concrete, what should be the case with a dam made of earth and mud through which the water can silt with the greatest ease. The same thing will apply to wells also. It was only the other day I was short of water on my estate. I accordingly sunk a well in a place of a small depression divided from a stream by a considerable undulation. After digging ten feet, I got water, and there was not the slightest doubt that this water came from the stream which was divided from the well by an undulation on the hill side some 200 yards wide. It is perfectly obvious that wells near a tank must have water percolating into them. A good deal has been said about suppositions and facts. But when facts are as hard as these, it is the duty of Government to guard against suppositions becoming facts. It would be an injustice to the rest of the community if water used in this way were not paid for, because the loss of revenue to Government would fall on the rest of the community, while those that use the water would be benefited. For these reasons I wish to vote for this Bill.

The Hon'ble the Rev. Dr. MILLER:—I am unwilling to give a silent vote after so many allusions have been made to some remarks of mine. I admit that this is a subject on which I am afraid to speak, lest I should fall into pitfalls—since the ground is certainly unfamiliar to me; but I am compelled to say, looking at the whole course of discussion, that on the principles which were enunciated yesterday, a merely intelligent and impartial outsider, like myself, must be content to vote in favour of the present Bill. I think it has been most fully and satisfactorily made out that the revenue of Government, which, as the Hon'ble Mr. Acworth has now so properly said, is really the money of the community at large, is, to a very

large extent, endangered. There can be no doubt to my mind that a case has been made out thoroughly, that there is need of some steps being taken and some provision being made against an otherwise inevitable danger. A knowledge of the details which have been brought before us enables me to say,—whether this particular Bill in all its details is the wisest and the best that could have been brought forward is another question—that it has been clearly established to the satisfaction of every impartial mind not prejudiced or led astray by declamation, that there is need for something being done, and also that what is proposed to be done is simply to conserve what has existed in the past and that it is not, as has been so largely represented, an introduction of an entirely new measure. As far as I am able to judge of the details, it is perfectly manifest that, upon the whole, this is merely the conservation of what has existed for a long series of by-gone years, and I regret very much that our friends who opposed the Bill should have indulged in so much of what I must consider to be declamation against what they call new principles which to me seem to be merely an application and vindication of what has long existed. I must say that if the efforts that have been made to obstruct the Bill and to keep the matter in the dangerous condition in which it has for some years lain—if these efforts had been fairly applied to improving the details of the Bill, something very much better might possibly have resulted. I think it is not at all a fortunate augury that a measure which seems to me upon the whole, however much the details of it may be liable to be criticised, to be for the welfare of the community at large, should have been made the subject of so much that is fitted to rouse ignorant and prejudiced opposition. I think it would be well if our friends who claim to be the guides and leaders of people would look at things somewhat more practically and less rhetorically than they have been doing in the discussion of yesterday and to-day. With these remarks I venture to say that I feel bound to support this Bill, not because I thoroughly understand the details, but because I am satisfied that something in this direction is called for in the highest interests of the community, and that a mere barren opposition to it can only do harm.

The Hon'ble Mr. J. THOMSON:—I rise, in one word, to echo the sentiments of the last speaker. Before I came to the Council, I had studied the Bill and had some few doubts about certain points, but all those doubts disappeared when I came into this hall and saw the opposition, which to me seems blindly factious, that the measure has evoked.

The Hon'ble Mr. A. T. ARUNDEL:—Your Excellency, I should like to say a few words on the subject of this Bill because it so happens that it was when I was the Collector of Kistna I had occasion to bring to the notice of the Board the interpretation which was put upon Act VII of 1865 which has led to all these difficulties. For about five and twenty years the Act worked smoothly enough, and it was not until the novel interpretation of the High Court that I felt that some action would be eventually necessary. At that time the Government and the Board of Revenue thought it desirable to wait and did not consider that any legislation was immediately called for. But things went on and the interpretations of the High Court became more and more pronounced. It has now become quite plain not only to District officers but to Government that legislative action is absolutely necessary for the sake of the revenue. To secure this revenue, we must prevent its being made away owing to the interpretations of the High Court. In taking this power, it is quite conceivable, in fact it is quite probable, that there may be cases where the interests of the individual have to give way to the interests of the community. It is just as well to admit that in large

schemes of this sort the interests of the individual must give way to the interests of the public. It is necessary for us to take the powers which are mentioned in this Bill and which to many of the Honourable gentlemen here seem to be unnecessary, if not unnecessarily harsh, in order to provide that in cases where the taxes are leviable they shall be properly levied, and not avoided by legal ingenuity brought into play in the Civil Courts. That of course allows a possibility of the tax being levied in cases in which it would be harsh to levy it. But is there any real fear that the power taken by Government would be used harshly? I do not deny that individual officers there may be who if uncontrolled, might use it harshly, but my experience is that on the whole the tendency in matters of this sort is towards great leniency. Ever since I came to this country, the tendency of Government has been towards increased leniency in matters of land revenue. Remissions are given when there is a failure of crops on wet lands, remissions are given in times of famine and distress even on dry lands in spite of the fact that the rate of assessment is reduced in order to make provision for the vicissitudes of the season. These are the two instances of the way in which the Government exercises its leniency in the matter of revenue assessments. Then again I remember as a settlement officer that all land which was irrigated by wells used to pay high assessment. That practice still continues in most zamindaris. The enhanced assessments on these wells in ryotwari tracts were subsequently struck off and only the dry rate is now levied. The tendency of Government and the Board of Revenue has been towards leniency in the imposition of assessments and in the granting of remissions and in various other respects. Therefore, I think, the Honourable gentlemen who oppose this Bill so strongly and who laid such stress on the harshness which could be exercised in the administration of this Act, need have no fear that the ryots will suffer. I believe the whole policy of Government for more than a quarter of a century is entirely in the opposite direction and there is no doubt that this policy will be continued in future.

The motion was put to the Council and agreed to.

A poll having been demanded, it was taken with the following result:—

Ayes:

The Hon'ble Mr. A. T. Arundel.
The Hon'ble Mr. H. M. Winterbotham.
The Hon'ble Mr. G. Stokes.
The Hon'ble Mr. G. S. Forbes.
The Hon'ble Lieutenant-Colonel Sir George Moore.
The Hon'ble Mr. J. Thomson.
The Hon'ble Mr. F. A. Nicholson.
The Hon'ble M.R.Ry. P. Rajaratna Mudaliyar.
The Hon'ble Mr. G. H. Stuart.
The Hon'ble Mr. F. J. E. Spring.
The Hon'ble Mr. G. G. Arbuthnot.
The Hon'ble The Reverend Dr. W. Miller.
The Hon'ble Mr. G. L. Acworth.
The Hon'ble Mr. J. E. P. Wallis.
The Hon'ble Sir V. Bhashyam Aiyangar.

Noes :

The Hon'ble M.R.Ry. C. Vijayaraghavachariar.
The Hon'ble M.R.Ry. C. Jambulingam Mudaliyar.
The Hon'ble M.R.Ry. P. Ratnasabhapatil Pillai.
The Hon'ble M.R.Ry. G. Venkataratnam Pantulu.
The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.

BILL TO AMEND MADRAS ACTS II OF 1894, III OF 1895 AND IV
OF 1897.

The Hon'ble Mr. H. M. WINTERBOTHAM, in presenting the report of the Select Committee on the Bill, said :—Your Excellency, in presenting the report of the Select Committee on the Bill to amend the Madras Proprietary Estates' Village Service Act, 1894, the Madras Hereditary Village Offices Act, 1895, and the Madras Survey and Boundaries Act, 1897, I cannot more briefly and clearly describe what the Select Committee has done than in the words of the report itself. We have split up section 1 of the original Bill into two sections—one dealing with the amendment of Madras Act II of 1894 and the other with that of Act IV of 1897. The wording of the original Bill "By virtue of his appointment under the provisions of any Act or Regulation, &c.," would not include, *e.g.*, an executor, a testamentary guardian, a trustee, or a Collector taking possession under Madras Act II of 1864. Instead, therefore, of attempting to enumerate exhaustively the classes of managers who should be deemed to be proprietors, it appeared preferable to draft the proviso so as to include all persons in lawful management, with a specification of four exceptions, *viz.*, agents and servants of a proprietor, mortgagees and lessees.

The Madras Survey and Boundaries Act, 1897, deals not only with estates but also with Government land, and it is necessary that the definition of "registered holder" should be extended in like manner as the definition of "Proprietor." Sub-section (iv) of section 3 of that Act has been amended accordingly. Sections 10, 14 and 19 of the Madras Survey and Boundaries Act, 1897, relate to the recovery of charges incurred by the Survey officer from the registered holders of Government land or proprietors of estates; and in order to prevent the manager, guardian, receiver or other person becoming personally and exclusively liable for such charges, owing to the extension of the definition of "Proprietor", we have amended the aforesaid three sections so as to make those expenses a charge upon the land concerned. The amendments proposed in the Madras Hereditary Village Offices Act, 1895, by section 2 of the original Bill, we have omitted as unnecessary, inasmuch as the word "Proprietor" in that Act is declared to mean a proprietor as defined in the Madras Proprietary Estates' Village Service Act II of 1894, which has now been amended as from date of passing. There is a consequential change in the title of the Bill. No notice of amendments has been given and as far as I know there is nothing further to be said. I therefore beg leave to move that the Bill as amended be taken into consideration at once.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the motion.

The motion was put to the Council and agreed to.

The Hon'ble Mr. H. M. WINTERBOTHAM :—As no Honourable Member has any amendments to propose, I now beg to move that the Bill as amended by the Select Committee be passed into law.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the motion.

The motion was put to the Council and agreed to.

BILL TO AMEND THE MADRAS HARBOUR TRUST ACT II OF 1886.

The Hon'ble Mr. J. E. P. WALLIS, in introducing this Bill and moving that it be read in Council, said :—Your Excellency, I have the honour to introduce a Bill to amend the Madras Harbour Trust Act, II of 1886, I believe a purely non-contentious measure. Section 45, the charging section of the Madras Harbour Trust Act does not authorize—or there is a great doubt whether it authorizes—the levy of harbour rates on goods which are transhipped within the harbour without being landed. It is only if the basin of the harbour can be brought within the definition of the word "dock" in section 3 of the Act, that there is any power to levy rates in such a case. The Hon'ble Sir V. Bhashyam Aiyangar has given an opinion that the basin of the harbour might possibly be held to come within the definition of the word "dock" as given in section 3. However, the point is admittedly doubtful; and it has therefore been thought advisable to make the matter clear by amending the definition of the word "dock" in section 3, sub-section (10). What is proposed to be enacted is: clause (10) of section 3 of the Madras Harbour Trust Act, 1885, shall be read and construed as if, at the time of the passing of the said Act, there were and had been added to the said clause the following words, namely, "and also denotes the portion of the sea enclosed by the arms or groynes of the harbour." That is to say, the definition of the word "dock" in section 3 will include the basin of the harbour, and the result will be that, under section 45, there will be power to levy rates on goods which are transhipped without being landed. Such is the scope of the measure and I do not think I need say any more in explanation of it. I therefore beg leave to move that this Bill be read in Council.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the motion.

The motion was put to the Council and agreed to.

The SECRETARY then read the title of the Bill.

The Hon'ble Mr. J. E. P. WALLIS :—I have the honour to move that under provisions of rule 34 this Bill be not referred to a Select Committee.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the motion.

The motion was put to the Council and agreed to.

The Hon'ble Mr. J. E. P. WALLIS :—Rule 46 says: "When a Bill has been introduced and read in Council under rule 34 and the Council has decided that it is not necessary to refer it for consideration to a Select Committee, the Council shall not proceed to take the Bill into consideration until the expiration of fifteen clear days from the date on which the Bill was read under rule 34." I now move that this rule be suspended and that the Bill be taken into consideration.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the motion.

The motion was put to the Council and agreed to.

The Hon'ble Mr. J. E. P. WALLIS:—I now move that the Bill be passed into law at once.

The Hon'ble Sir V. BHASHYAM AIYANGAR :—I beg to second the motion and I do so because the Bill was drafted in consultation with me in consequence of an opinion expressed by me. The other day I read the report of a case in the English Law Reports for March which I received by last mail in which the meaning of the word "dock" was considered in connection with the Employers' and Workmen's Act. In my opinion I expressed that the word "dock" would, in common parlance, include the basin of the harbour. I find that the Lord Justice Collins in the case of *Hennessey v. McCabe* says: "I think the word 'dock' is used in its ordinary sense, that is, a place which embraces the land bounding the water space as well as the water itself, and that therefore the legislature, when talking of loading or unloading to or from a dock, was not contemplating loading from a barge into a ship." This decision induced me to examine the Bill again critically as to whether under section 45 a rate could be levied for goods transhipped "at" a dock. If the word "from" had been used in section 45 instead of "at" this decision would have been a stumbling block to the Bill being passed into law with any advantage; but as the word "at" is used, it is all safe. Therefore I second the motion.

The motion was put to the Council and agreed to.

The meeting was then dissolved.

H. TREMENHEERE,
Secretary to Government.

Proceedings of a Meeting of the Council of the Governor of Fort St. George assembled for the purpose of making Laws and Regulations under the provisions of the Acts of Parliament, 24 and 25 Victoria, Cap. 67, and 55 and 56 Victoria, Cap. 14.

The Council met at the Council Chamber in Fort St. George at 12 noon on Tuesday the 3rd day of April 1900.

PRESENT:

His Excellency The GOVERNOR OF MADRAS, G.C.M.G., G.C.I.E.—*Presiding.*
The Hon'ble Mr. A. T. ARUNDEL, C.S.I.
The Hon'ble Mr. H. M. WINTERBOTHAM.
The Hon'ble The RAJA OF BOBBILI, K.C.I.E.
The Hon'ble Mr. G. STOKES.
The Hon'ble Mr. G. S. FORBES.
The Hon'ble Lieut.-Colonel Sir GEORGE MOORE, Kt., C.I.E.
The Hon'ble Mr. J. THOMSON.
The Hon'ble Mr. F. A. NICHOLSON, C.I.E.
The Hon'ble M.R.Ry. P. RAJARATNA MUDALIYAR Avargal, Diwan Bahadur.
The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal, B.A.
The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal, B.A.
The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu.
The Hon'ble Mr. G. H. STUART, M.A.
The Hon'ble Mr. F. J. E. SPRING, C.I.E.
The Hon'ble Mr. G. G. ARBUTHNOT.
The Hon'ble The Revd. W. MILLER, M.A., M.D., D.D., C.I.E.
The Hon'ble NAWAB SAIYID MUHAMMAD SAHIB Bahadur.
The Hon'ble Sir V. BHASHYAM AIYANGAR, Kt., C.I.E., Diwan Bahadur.
The Hon'ble Mr. W. J. H. LEFANU.

QUESTION.

His Excellency the PRESIDENT:—The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur will ask the question which stands in his name on the notice paper.

The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur:—

I. (a) Will the Government be pleased to state whether the ryots of the Tanjore district have memorialised the Government against the increase of the staff of the village servants and the village cess which has been recently sanctioned by the Government?

(b) Is it the fact that there is a widespread feeling among the ryots that the increase is likely to cause them considerable hardship? If so, will the Government be pleased to postpone the introduction of the measure until the subject has been fully enquired into and considered by the Government?

M.P.-1

[150—23-6-00].

**BILL FURTHER TO AMEND THE MADRAS
LOCAL BOARDS ACT, 1884.**

The Hon'ble Mr. Forbes:—

- I. (a) Two petitions have been received on the subject.
(b) So far as the Government is aware there is no such feeling. The scheme has been introduced after full enquiry and consideration.

PETITION.

The SECRETARY reported the receipt of a memorial from the Jagirdar of Arni pointing out the grievances of landholders as regards the payment of land-cess on minor inam lands and requesting that the amendments he suggested previously should be made in the Bill to amend the Local Boards Act.

BILL FURTHER TO AMEND THE MADRAS LOCAL BOARDS ACT, 1884.

The Hon'ble Mr. A. T. ARUNDEL, in presenting the report of the Select Committee on this Bill, and in moving that the Bill as amended and the report be taken into consideration, said:—Your Excellency, the report of the Select Committee on this Bill has been in the hands of Honourable Members, and I do not propose to make any lengthy remark in introducing this Bill. The two most important amendments are the following:—The first to which allusion has been made by the Secretary is the suggestion originally brought forward by the Jagirdar of Arni that provision should be made in the Bill to enable landholders to recover land-cess from inamdars. Provision has been made in the Bill to effect this. It was found on further examination since the Select Committee closed its sittings that a slight verbal alteration of the same provision, if made, will apply to minor inams and inamdars as well as to whole inamdars. I fancy that members will be ready to accept a slight verbal alteration to effect this. The other important change is to enable District Boards under certain restrictions to raise the land-cess with the object of obtaining funds for building light railways. That was done under very careful restrictions, so that no attempt can be made to force such proposals on any District Board. After the District Board has assented to a proposal, it is further provided that the resolution should be confirmed at a subsequent meeting. Almost all the other alterations are to improve the Act by inserting provisions omitted in the original Act. I think it is unnecessary for me to take up the time of the Council, and I therefore beg leave to move that the Bill be taken into consideration at once.

The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur seconded the motion.
The motion was put to the Council and agreed to.

Section 6.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I beg to propose the first amendment which stands in my name, namely:—In section 6 of the Bill, after the word "subordinate," in line 34, the words "and to the Taluk Board" be inserted. And after the word "Board," in line 37, the words "and the Taluk Board" be added.

The Hon'ble the Raja of Bobbili seconded the amendment.

The Hon'ble Mr. A. T. ARUNDEL:—I am prepared to accept this amendment.
The amendment was put to the Council and agreed to.

**BILL FURTHER TO AMEND THE MADRAS
LOCAL BOARDS ACT, 1884.**

Section 7.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The next amendment which stands in my name is—

In section 7 of the Bill the following words be added at the end: "and at the end of the section shall be added the words 'but no order dissolving a panchayat shall be passed without previously intimating to the panchayat concerned the grounds upon which the proposal is based and considering the explanation and objections, if any, of the panchayat'".

Section 7 of the Bill relates to section 6 of the Act. Section 6 of the Act as amended by the Select Committee reads thus:

6. (1) The Governor in Council may, by notification from time to time, declare any village or villages or any portion or portions thereof to be an Union for the purposes of this Act, and may, by an order in writing published together with a statement of his reasons for making the same, at any time in like manner modify or cancel such declaration, and dissolve the panchayat of the Union concerned.

(2) The provisions of this Act regarding Panchayats shall come into force in any Union on such date as may be specified in the notification declaring it to be an Union.

The Bill thus says that before dissolving a Panchayat, the Government shall publish a statement of the reasons for so doing. My amendment simply proposes that before the order dissolving the Panchayat is given effect, the Panchayat shall be heard. Since the Government is willing to submit to this procedure that it shall give reasons before dissolving Panchayats, I submit that these reasons should be communicated to the persons concerned and their explanation heard. Both the District Boards and the Taluk Boards will have the right of being heard, and I only ask the Government to give the Union Panchayats such a right too. When an order proposing to dissolve a Union Panchayat is passed, I do not see why that Union Panchayat should not be heard as in the case of the other two kinds of boards. With these words I beg that my amendment may be accepted.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to support the amendment, and in doing so I wish to draw the attention of the Council to section 9 of the Act as amended by the Select Committee, where an exactly similar provision is found. There is no reason why this provision should not be adopted in the case of Union Panchayats. As a matter of fact, before Government proceeds to dissolve Unions, it would call upon the Unions to state their reasons against such dissolution. Inasmuch as similar provisions are made in the case of Taluk Boards and District Boards, the absence of a provision of this kind in the case of Panchayats is apt to be misconstrued, and I therefore think it desirable that this provision should be expressly inserted in the case of Unions also.

The Hon'ble Mr. A. T. ARUNDEL:—Your Excellency, I regret I cannot accept this amendment. It is right that in the case of Taluk Boards which are important bodies this provision should be inserted. But Panchayats consist usually, at least in great many cases, of small villages or unions of villages; and with regard to poorer ones, a great many of them would be thankful to be abolished. With regard to larger ones, it is the desire of Government that they should exist and that their

number should be multiplied. There is no likelihood whatever of any important Union being abolished and it will not be abolished without the fullest enquiry. I note that the Hon'ble Mr. Ratnasabhapatil Pillai, who supports this amendment, has made no minute of dissent on this point, but accepted the provisions of this Bill. I don't deny however that light may subsequently have come to him.

The Hon'ble Mr. W. J. H. LEFANU:—I wish to say one word on the common sense point of view on the subject. I think the Honourable Members who have spoken in favour of the amendment seem to have left out of account the fact that most of the Unions would be exceedingly glad indeed if they were abolished. I should be very much surprised, unless the intelligent and prominent members of the village object to the abolition, in order to exaggerate their own importance, if many of the villages would like to preserve the constitution of Unions, which means taxation. On the one hand, it is the interest of Government to develop its administration as far as possible on the lines of local self-government; on the other hand, it is not at all likely that village unions will suffer particularly from being debarred from entering into any further correspondence on the subject.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I have raised, your Excellency, a question of principle, and I regret to be obliged to observe that the Hon'ble Mr. Arundel and the Hon'ble Mr. LeFanu have overlooked that point. It is not whether these bodies are important or not. I submit they are very important from one point of view. Under the amending Bill the Union Chairman has powers which the President of a District Board has not. He has power to issue warrants for the distraint of property and to get defaulters imprisoned. It cannot but be conceded that the power to issue warrants and power to distrain property within dwelling-houses is one of the most important and one of the most perilous and dangerous powers in this country. I need hardly bring it to the attention of this Council that in Malabar the Rent Recovery Act was repealed solely to avoid friction between Mappillas and others in consequence of distraint of property. Now we are going to give this power to Chairmen of Unions to issue warrants under which he might exercise extraordinary powers. I respectfully submit that I do not think it is quite proper to say that these Unions are unimportant. They are very important as dealing with the people of the village and the agricultural population. I do not also see how the question of importance arises in this matter. The question that we have to consider is whether before the Government abolishes Union Panchayats the persons concerned shall be heard or not. Absolutely no reason has been shown why the principle, which is, I believe, a golden one, and which is applied by the Government in the case of the meanest toties, should be deviated from in this matter. I submit that the question I have raised is one of principle and my Honourable friends, the member in charge of the Bill and Mr. LeFanu, have not traversed that point. *Audi alteram partem* is necessary in private life and much more necessary in matters of local self-government. What advantage the Government hopes to obtain by the omission of this provision has not been stated. That is a point for consideration by Government and this Honourable Council. If the Government should state that there would be a great administrative inconvenience, so great that we are obliged to take notice of it, then it may be a question of choosing the lesser of two evils. If I have found that the inconvenience of Government would be great, I might say "let the Government have its own way," but no allegation has been made that there will be any administrative inconvenience in hearing Unions before they are abolished. If they are not important

it seems to me that is the reason why we should hear them. Taluk boards are presided over by Sub-Collectors, Head Assistant Collectors and Deputy Collectors who are quite able to take care of the boards. It is not likely that they will be easily trifled with in any way. It is only the poor Chairmen of village unions who would be mostly village munsifs that are likely to be trifled with. Of the three bodies, district boards, taluk boards and union panchayats, the union panchayats are the most helpless. I submit that the golden principle of hearing the other side must apply in the inverse ratio to the people according to their ability to take care of themselves. A novel argument has been advanced by the Hon'ble Mr. Arundel and seriously repeated by the Hon'ble Mr. LeFanu, that these unions will be very glad to be abolished. Then why should you not ask them for the reasons? If they will be very glad, it will save the Government from giving reasons. For these reasons I press the amendment on the attention of the Council and the Government.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Your Excellency, my next amendment, I consider, is one of the most important amendments that I have the honour to move to-day. It is after section 9 of the Bill the following section be inserted:—

In section 11—

- (1) the word "shall" shall be substituted for the word "may" between the words "District Board" and "be";
- (2) the word "partly" shall be substituted for the words "either wholly" in clause (a); and the word "or" at the end of the same clause shall be omitted;
- (3) the words "partly so appointed" in the beginning of clause (b) shall be omitted; the words "or in any part of the district over which there is no taluk board having authority" in the same clause shall be omitted; the words "of such part" in the same clause between the words "inhabitants" and "of the district" shall be omitted and between the words "of the district" occurring for the second time in the same clause, and the word "subject," the words, "and by each Municipality in the district, in such proportions and" shall be added.

It is divided into three clauses. It will save some time if I am permitted to address the Council on the first clause, as the remaining clauses are consequential on the first. The amendment deals with the question of the election of the members of district boards. At present it deals with the question of election of district boards, but later on it deals with that of the local boards. The question is whether the election of members of district boards shall be left to the discretion of Government or whether the compulsory election of a certain number of members should be introduced. Section 9 of the Act as amended by the Select Committee says—

"9. (1) The Collector of the district shall *ex-officio* be member and President of the District Board.

"(2) But it shall be competent to the Governor in Council to appoint one of the members of any district board to be the President of such board."

The next thing is that every revenue officer in charge of the division shall be *ex-officio* member of the district board. Then how are the other members to come in.

Section 11 deals with that part of the subject. Section 11 says: "The other members of the district board may be"—my amendment is "shall be"—

"(a) either wholly appointed by the Governor in Council, or

"(b) partly so appointed and partly appointed by election by the members of the taluk boards in the district from among their own number, or in any part of the district over which there is no taluk board having authority, by the panchayats, and by the tax-payers and inhabitants of such part of the district, subject to such rules and conditions as may from time to time be prescribed by the Governor in Council."

Technicalities apart, I call the attention of the Honourable Council to the important feature in the existing law. It does not make it compulsory on the part of Government to direct that any member or any proportion of members shall be appointed by election. Therefore it is I propose to omit the word "may" and insert "shall". If this is carried, the other amendments will follow. I practically take the intention of Government as expressed in the District Municipalities Act and the idea is not an original one, but I took it from Bombay. All that I mean is that a portion of the district board members shall be elected under rules to be framed, by taluk boards, panchayats, district municipalities and rate-payers. I would respectfully ask of you to grant me a few minutes to make my observations. Although the discretionary powers have been vested in the executive Government for these 16 years, as far as I understand, this power has not been exercised at all. I understand that not a single member of the taluk boards is allowed to be elected in the manner stated in this Act nor any member of the panchayats and in the case of the district boards only the members of taluk boards are allowed to elect one. Subject to this small concession, the law has been inoperative up to the present moment. If the Government has been working this law properly, subject to such reservations as might be necessary, there would have been no necessity to convert this word "may" into "shall". As regards the question whether there is a general demand I shall only point to innumerable petitions, which were placed before the Committee in 1882-83, called upon to make recommendations in the matter of local self-government. I believe that during the tours of His Excellency, our esteemed President, addresses were presented to him in a number of places touching on this subject. That shows that there is a pretty wide feeling up-country that if the elective franchise is bestowed on the better classes of people, they are prepared to exercise it wisely. Questions were put in this Council as regards these matters and, I believe, Sir Henry Bliss gave an answer that the people, in his opinion, were unfit to exercise the privilege. I believe His Excellency's answer to the address from the North Arcot district was very much the same, though I do not profess to recollect the exact words, while His Excellency's answers to peoples' addresses in his earlier tours were much more sympathetic. All that I submit is that power has been given to Government 16 years ago and it was given not simply by accident to this Presidency alone but out of a new system which has been formulated under the administration of Lord Ripon. Before it was formulated, opinions were taken on the subject of local self-government from important officers and others, and they are all to be had at the Government office. We find that simultaneously throughout the country under various names local self-government Acts sprang up, and in all these Acts the principle of election, more or less in some cases compulsory and in others optional, has been introduced and practical effect was given to this principle except in our Presidency, where little effect has been

given to it. I submit that the power having been given under very auspicious circumstances and introduced into the statute 16 years ago, after previous correspondence with the Government of India and after full public discussion, I fail to see, especially as this power is exercised in other parts of India, any reason why that power has not been exercised in this part of the country. The advantages of local self-government are too many and it is not necessary to state all of them. I would only state a few circumstances in Southern India. Sir Henry Bliss was pleased to say that the inhabitants of Southern India were unfit to exercise this privilege, but he was not pleased to say the reason why, nor was he pleased to say what evil consequences would follow if this power were entrusted to them. I am somewhat in the dark as to the views the Government then had and as to what views the Government now has. As regards the evil consequences that may arise or that it apprehends, I assume by "fitness" they take educational qualifications. I would call the attention of Honourable Members to the fact that in all rural tracts wherever villages or towns, by whatever names you may call them are sufficiently big to become municipalities, the elective franchise is introduced, if they are three years old as a municipality. It was optional before. As a matter of fact in a vast majority of municipalities more than half the number were allowed to be elected. Under the present Act all the municipalities, provided they are three years old, are bound to have a definite proportion of elected members. I understand that your Excellency was pleased to order generally this proportion should be one-third, although the law does not say what shall be the proportion. That being so, the question naturally arises, is the difference, if any, between the intellectual qualifications of rural tax-payers and municipal tax-payers or the moral qualifications of rural tax-payers and municipal tax-payers so great that the Government will be justified in saying "while we accord this privilege to municipal tax-payers, we shall refuse it to their neighbours the rural tax-payers," divided by an imaginary line. I do not see how this distinction can be long maintained. It may be that people within municipal cities may have somewhat greater facilities to educate their children in schools and so forth. I would also draw the attention of the Council to two facts. Schools are established not only in municipal areas but also in other areas which are called unions; some of them are pretty good villages, big enough to be called towns. I deny that for the purpose of exercising this privilege—that is for deciding who is the fittest person to undertake and conduct local affairs—merely school instruction, some idea of geography and some capacity to work sums by long division, is necessary. Wise men there are, who believe that in the matter of understanding human nature city people are inferior to rural people. My experience is that in the matter of understanding evidence some of our brilliant graduates are inferior to ordinary traders coming from the mufassal. It is not fair that merely because in the city school instruction may have advanced, rural traders and tax-payers should be deprived of the right which is bestowed on the taxpayer of a municipality. It cannot be long maintained that rural population, while they are side by side with the city population, are inferior to the latter in their capacity wisely to exercise this privilege. You ask the rural population to undertake the responsibilities of a city population. You give power to a union chairman to break open houses, turn out women—it may be at an inconvenient hour—and take property, which property may be cooked food and jewels on their person. You are increasing their liabilities while you do not give some right by the exercise of which they can check the arbitrary use of powers which we bestow upon their chairmen. I respectfully submit that, let your intention be ever so good, let the rules under

which you let the chairman and others exercise these extraordinary powers be framed as carefully as possible, abuses will arise and must arise, and it will be impossible to detect and expose these abuses and have them punished by Government. I submit therefore that it would be wise to make the chairmen and the members men not only dependent on the tahsildars and divisional officers but also upon the goodwill of their neighbours, so that they may know that if they abuse their powers, such abuse shall not be continued, but that at the end of three years they will be turned out and more honest men will take their place. With the extension of their liabilities, I respectfully submit that in the interests of rural population, in the interests of Government, an extension of their rights is but fair and necessary. This is a point that I will ask the Government to note. If you do not grant this elective franchise to people, any unpopularity which these unions may give rise to will be put down to Government, although we know that Government is no more responsible than we are. It is but natural that the rural population should consider the unions entirely as a department of Government, and any unpopularity provoked by the misconduct of members of panchayats or taluk boards or district boards will be put down as the misconduct of Government officers, with the result that the Government will be made unpopular in consequence of the unpopularity which these rural bodies may give rise to. In the interests of Government, it is but right to be able to tell them that these men who miscondacted themselves are not entirely our creatures; a good portion of them are your creatures and any unpopularity which they may have caused is due not only to our carelessness in our choice but your carelessness in the choice of people. There will then be that mournful satisfaction which will be shared by people as well as by the Government. For these reasons, I submit, it is to the interest of Government that it should introduce the elective system in rural parts. Next, the Government said that they were unfit, but I should have been extremely obliged if they had stated when it is they looked forward to as the time for the extension of this privilege; I should have been extremely obliged if they had told us what were the processes which were now in existence in the country, or which they would start hereafter, to make these people fit for the exercise of this privilege. There is no answer and there is no solution offered, and the future is dim; and this is calculated, in the highest degree, to cause uneasiness. What has the Government done in this direction? If you look to the education of the people, has the Government done anything to provide a free and compulsory education in rural parts, or has it done anything to extend communications between village and village? We are not able to spend money for purposes in regard to which we cannot always be frugal, and the Madras Government raises the money, but as regards its expenditure it is not as independent as its well-wishers might desire. Have you been increasing grants for education, have you been multiplying roads? What have you been doing to educate the rural population, so that you may say "let these forces and factors bear their natural fruit"? Absolutely nothing. Therefore, when you ask us to wait while the Government has done nothing to prepare the people for the better exercise of this privilege, we are disconsolate. There is another fact to be taken into consideration. Do you say that the rural people have not got sufficient public spirit and assign that as the reason why you do not give them this privilege? If public spirit does not exist, it may be evoked and strengthened from time to time by the exercise of this privilege. At present in rural parts factions and other things are rife, the fact being that some of them have enough of food and nothing to do, and they spend their time in gambling and faction; and all this is due to laziness. Most whimsical causes produce faction.

If you introduce the principle of election, then once in two or three years these people will be trained in a way by which they will withdraw from unholy occupations and exercise their wit and their money in the exercise of their privilege, which will certainly lead to the moral elevation and the intellectual advancement of the people. There is also another fact, and I am pretty certain that the Hon'ble Mr. Nicholson will be with me. Take the village sowcars, who will be the people that will contest seats to be filled up by election and once in three years they would come down on their knees before the village folks. Would this not reduce the rate of interest? I will now show you that these views of mine are not exactly original, and I will quote a few instances to show that these views are shared by far greater men than myself. As regards the question of election in the matter of local self-government, a very great man in Southern India, the author of the representative assembly in Mysore, the late Mr. Rungacharlu, said: "It is a great thing for Government and this country to be able to tell the people that any shortcoming in the administration of the tax is due to the members elected by themselves, and thus any interposition of its authority for the protection of the public interest will be welcome to them." Lord Hobart, when he was the Governor of Madras, made the following apt observations, as regards the extension of elective franchise, every sentence of which is a text for reflection: "There is no excuse for withholding from the people any degree of liberty except that they are likely to use it to the serious prejudice of the public security and welfare. It is not sufficient to say that the men elected by popular suffrage will not be better than or even that they will not be as good as those now chosen by the Government. It is desirable that the power of choosing their own rulers should be given to the people, irrespectively of the question whether the rulers they elect will be as good as or better than those now chosen for them. Such a power is in itself an advantage of the greatest value, apart from all considerations of the degree in which it contributes or is prejudicial to good government. It is valuable chiefly because it gives an interest in public affairs to the many who would otherwise have none, because it gives elevation and self-respect to the character, cultivation and enlargement to the mind." As to the objection on the ground of want of public spirit, his Lordship says: "But this is one of the strongest reasons for giving them the elective franchise, which is the best expedient for supplying the want. It seems quite probable that men charged by their fellow citizens with an important trust and no longer dependent upon the Government—the will of whose officials they dare not now dispute—will be much more inclined than they are at present to take their share in the conduct of local affairs. It must be remembered that Government with the consent of the people is better than Government without it (other things being equal); and that to obtain the consent of the people to administrative Acts is worth some sacrifice of administrative machinery." I respectfully submit that I have not gone to the length to which Lord Hobart has gone in this matter. I would only call your attention to the fact that even if you believe that people are likely to exercise their right by electing men who will be inferior to those whom you may choose, it is desirable that you should permit them to do it and even if there be some administrative sacrifice thereby, it is worth it. I do not think it is possible for me to put the case better than His Lordship has done. We in Madras are worse off than people elsewhere in India. Why should it be? We produce more not for the benefit of us but for the benefit of all. It is said by authorities and by others that the Madras people are the best to deal with; and so many officials, travellers and others have told us that in the matter of the congress declarations if these congress declarations ought to be acceded to,

in the case of Madras alone no European would raise any objection. I have heard this not from one European, but from missionaries and non-missionaries, officials and non-officials and travellers. It shows clearly at all events that there are some Europeans who are satisfied with this Presidency. Is it not an irony of fate that we should be deprived of the privilege which Bombay, Bengal, the Central Provinces, the North-West Provinces and Oudh and the Punjab enjoy? That is a factor, of which I respectfully submit, His Excellency would be pleased to take serious notice. As regards Madras, apart from that, let us go to educational qualifications. It is conceded that the village communities in the Madras Presidency are the best organised. I take the educational qualifications. Turning to table G, page 217 of the Census Report for 1891, by Mr. Baines, we find a comparative provincial statement of illiterate and others. The proportion for Bengal for literate males is 108, out of 1,000, for Bombay 140, for Central Provinces 59, for Madras 149, for the North-West Provinces 63 and for the Punjab 74. I will next take the figures for females. In the same way the proportion for Bengal is four, for Bombay ten—because it contains a host of social reformers and it cannot be otherwise—for Central Provinces two, for benighted Madras ten, the same as in Bombay, for the North-West Provinces three and the Punjab three. In the matter of education of males, Madras is ahead. In the matter of education of females, it is ahead of all others except Bombay to which it is equal. What may be regarded as more important facts in relation to the exercise of this franchise are given in table H, which gives us the not illiterate per 1,000 of each sex by age—period. I shall give the figures for the ages of 25 and over. Let us see how Madras figures. Bengal 133, Bombay 159, Central Provinces 64, Madras 185, North-West Provinces 84 and the Punjab 125 for males. We now come to females: Bengal four, Bombay four, Central Provinces two, Madras eight, North-West Provinces two and the Punjab three. That is to say, if you take the education of adult women of 25 and more, in Madras, it is twice as good as Bombay and Bengal. These two figures sufficiently show that whatever may be the value of education for the purpose, Madras is high up in the matter of education, male or female. Whether we take boys or girls, Madras is ahead of other provinces. May I beg to know then, why the privilege which is entrusted to rural parts in the rest of India should be denied to rural parts in this Presidency. There is another fact which may also be considered if we are pleasantly disposed. If you take table A on page 228, you will find that India ranks the highest in the important mental qualification, which is necessary for the exercise of this and every other privilege. Table A relates to the proportional summary of infirmities per 10,000 of each sex. In 1881 in India for 10,000 people there were four males and three females who were insane and if you take the figures of 1891 for India, there were three males and two females who were insane out of 10,000 people. If you go to any other country in the world the proportion is alarming. If you take England and Wales it is 31 males and 33 females; for Scotland it is 38 males and 39 females; for Ireland, it is 38 males and 34 females; for Austria, it is 22 males and 19 females; for Hungary it is 22 and 18; for Portugal 23 and 17, and even Ceylon 13 and 9, Victoria 37 and 31, New Zealand 33 and 22, and United States 35 and 32. I do not at all understand why the rural population of Southern India should be adjudged to be unfit to exercise this privilege, which by their educational qualification and everything that is calculated to evoke in them a spirit of enquiry they are best fitted to exercise. It is in the highest degree unlikely that if these privileges are granted to them, they will put up men who will abuse the powers entrusted to

them, because by such abuse the people themselves will be the greatest sufferers. Whatever may be their choice, the choice will be on them whom they consider to be proper men. If they commit an error by selecting a bad man, that cannot be a reason to withhold the power altogether. If that is so, nobody is safe. Does not the Government appoint men whom if the Government could have foreseen their character, it would not have appointed to a post? If the village folks err in electing a bad man, they err in company with the rest of mankind and err in company with Government. For these reasons, I hope that my first amendment may be accepted.

The Hon'ble Mr. A. T. ARUNDEL:—May I rise to a point of order. The Honourable Member cannot move a portion of his amendment. I think he should go through the whole of his amendment. He should move the clauses two and three and not merely one.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—For the sake of convenience, I have drafted the amendment in the way it is printed on the agenda in order to prevent confusion. I began by saying that I shall not speak again on these points. As regards the proposal that the District Municipalities should be included among the constituencies, it has been taken from the Bombay Act.

The Hon'ble Mr. A. T. ARUNDEL:—Am I to understand that the Honourable Member spoke to the whole amendment?

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Yes.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

His Excellency the PRESIDENT indicating the Hon'ble M.R.Ry. P. Ratnasabhapati Pillai Avargal:—A similar amendment stands in your name.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—Yes, your Excellency. But that will be merged in this. I wish to make a few remarks as briefly as possible on this amendment. We are now concerned about the constitution of district boards. Taluk boards and panchayats will come later on. In regard to district boards I am aware that it will be said that Government has granted the elective privilege to all the district boards throughout the Presidency by asking the taluk boards within a district to elect half the number of the district board members. I submit that such a franchise is only in name and there is really no representation. As a matter of fact, it could not be called real election, because the electorates, the taluk boards, are themselves nominated bodies, and if the privilege of electing a certain portion of the members of district boards is given to these nominated bodies, I do not think that by any reason it can be said that that is an elective franchise. The Hon'ble Mr. Vijayaraghavachariar spoke at some length in regard to the practical constitution of similar boards in the North—Bengal, Bombay, North-West Provinces and Oudh. In Bengal it will be seen that one-fourth of the district board members is compulsorily elected, while in the North-West Provinces, they elect half the full strength. Coming to Madras, it has been more than once said that there is absolutely no reason why Madras should be treated in a different manner from her sister provinces in the North. I may without any presumption say that Madras is equal if not superior, in point of intelligence and public spirit, to other provinces. I trust that the Honourable the Senior Member of Government will answer the question whether in the opinion of the Madras Government it considers Madras as not deserving of the franchise which is enjoyed, without interference or option on the part of the Government, by her sister provinces in the north. If the Senior Member

says: "Yes, Madras is inferior to other provinces and therefore the Government has made up its mind to make this franchise entirely optional with Government," such an answer would indeed be a poor compliment to the distinguished statesmen who have successively ruled Madras. I will only refer to one authority than which there can be no higher authority. I refer to the frequent reviews which have been issued from the Secretariat of your Excellency's Government, showing the success of local self-government in this Presidency; year after year the annual reviews of the administration of several district boards throughout the Presidency have borne testimony to the excellent work done by them all through. It seems to me that the provision vesting the elective franchise in the hands of Government, which was introduced sixteen years ago in Act V of 1884, has remained a dead letter; and after sixteen years have elapsed, Government has now undertaken the amendment of the Act and it will be an excellent method of recognising the good work done throughout the Presidency by the various district boards if you give an inherent right to these bodies to elect a proportion of their number, whatever that proportion may be, whether it be half or one-third or one-fourth. What we contend for is that the principle may be recognised, and an inherent right may be granted to district boards to elect a fixed proportion of their body, when your Excellency's Government is engaged in the process of amending the Act.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—This amendment is divided into two parts. The first part is non-contentious, so far as it says that a portion of the members of district boards shall be elected. I support the non-contentious part. Since the formation of taluk boards in 1886, half the members of district boards, excepting the Nilgiri District Board, are being elected, and I do not see any harm in substituting "shall" for "may". Then as regards the other portion, that municipalities ought to be constituted as constituencies, I have serious objection. I do not see why the municipalities, which do not contribute anything to the local cess, should be formed into constituencies. It is, in fact, those who contribute to the cess that ought to have a voice in the administration of local funds. As a matter of fact, in practice, various difficulties do arise, from accepting this part of the amendment. We should remember that residents of municipalities already sit on district boards and, if you give them also the privilege of electing certain members, a considerable portion of local funds may possibly be spent on purposes which directly or indirectly benefit the municipal population. I have known instances where the preponderance of such municipal members has tended to this result. I do not really see why the Honourable Mover of the Bill should have any serious objection to the non-contentious portion, because, as a matter of fact, we have been enjoying that privilege already. I do not see why the existing rule of practice should not be embodied in the Bill. With these observations, I support the first part of the amendment.

The Hon'ble Mr. G. STOKES:—Your Excellency, I should like to say just a few words in the hope of shortening the debate. I would point out that the question at issue before us is not the excellence or otherwise of the elective system, not whether the country is fit for the elective system or not, but whether it is expedient to deprive Government of all discretion as to the introduction of the elective system. The effect of the amendment will be to force Government to introduce the elective system in all places whether it considers it necessary that it should be introduced into particular places or not. You all know that there are many places that are unfit for the elective system; especially if such a system of election as that of election by panchayats to

taluk boards were applied, there are many unions which are quite unfit for the elective system. I was astonished to hear the argument used that the effect of the introduction of the elective system would be to prevent corruption and to divert the usual factions of the village. In my opinion it would certainly give rise to corruption and great disturbances and much ill-feeling. There can be no doubt—my experience is also the same—that amongst the more thoughtful men of the native community in many of the larger towns the elective system is looked upon as a doubtful benefit. I do not wish myself to discuss the advantages or otherwise of the elective system, but what I want to point out is that the question now before us is whether the Government is to be deprived of all discretion in the matter of introducing the system of election. Is it expedient that Government should be deprived of all discretion in this matter? That is the question that we have to consider.

The Hon'ble Mr. A. T. ARUNDEL:—Your Excellency, I think the best way to make my comments is to make them in the reverse order. The first point is the proposal to give the municipalities a vote in the election of district board members. The reasons against that proposal have been so forcibly put by the Hon'ble Mr. Venkataratnam Pantulu that it is not necessary for me to say anything further. With regard to what the Hon'ble Mr. Ratnasabhapatil Pillai said about the success of the local board administration throughout the Presidency, I think we must remember that his argument cuts both ways. If the local fund administration in this Presidency is far better than it is anywhere else, it speaks volumes that the system we have of administration here is better than the system of administration they have elsewhere. With regard to the Honourable Mover of the amendment, he has addressed us on general principles at such length that we are a little bit in danger of losing sight of the practical side of the question that we have to dispose of. At present the law is that the members of a district board are either wholly nominated or partly nominated and partly elected. As a matter of fact, in all the district boards with one exception the right of election has been given, that is to say, the members are appointed partly by Government and partly by election. The system of election, as Honourable Members are aware, has existed for a considerable number of years, and the Government has no intention of going back in this matter; but there remains the fact that we have a large population to deal with, we have thirty millions of people of a variety of races and creeds having conflicting interests to deal with, and it does not seem to be either wise or necessary to remove the safeguard which is now in the hands of Government. It has done no harm to anybody. We do not know what may happen in future. Circumstances, it is just possible, may happen in the future which may make it desirable that the Government should appoint all members of district boards. Therefore, I think, it is making a mountain of a mole-hill to consider this a grievance. The Government retains this safeguard in order that it may make use of it when it is necessary. I should like to point out that with regard to the Nilgiri District Board, all the members of it are appointed by Government. The reason of that is there is no taluk board, nor is there a panchayat for electing representatives. If the amendment of the Honourable gentleman were carried, we should be in the curious position that the Nilgiri District Board would not be appointed at all. It may be possible to elect members of the Nilgiri District Board from the tax-payers and the inhabitants. In that case, so far as I can see, the electors would have to be either the few intelligent among the population of the Nilgiris, such as planters, &c., or else the Badagas and Todas, hill tribes who, however estimable they may be, are not the people to whom the principle of election can be entrusted.

From a purely business point of view, it will be impossible to accept the amendment as it stands. On these grounds I regret to say that I cannot accept the amendment.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Of course I spoke relying on all the various constituencies which I propose to be introduced on my amendment being accepted. The objection raised by the Hon'ble Mr. Arundel in regard to the Nilgiri District Board will be quite met if my amendment is taken *in toto*. If my amendment is taken *in toto*, there are two District Municipalities, Ootacamund and Coonoor, which would be able to elect the members for the Nilgiri District Board. I do not, therefore, see any practical difficulty in it. I am sorry that the Honourable Member in charge of the Bill and the Hon'ble Mr. Venkataratnam Pantulu Garu should object to the introduction of the municipalities as a constituency. I respectfully submit that it is a mistake to suppose that the members of municipal councils are such as would be acting in their own interests. There are so many things which—if my friends will read the two Acts together they will see it clearly—have to be done by the two bodies acting in concert and harmony. The Hon'ble Mr. Stokes will bear me out when I say that in Salem some persons on the municipal board and some on the district board were constituted into a committee to enquire into certain matters and to do what should be done both by the district board and the municipality. In the laws prevailing in Northern India, we have got what are called joint committees on which sit some members of municipalities and some members of district boards. I may also add that most of the members of the municipalities are tax-payers to the district boards here. The system I am advocating is in force in the Bombay Presidency, and if the inconveniences pointed out by the two Honourable Members have been felt there, that is not likely to have been continued. It also stands on another principle. Where you are not prepared to allow the people of the country to exercise this privilege on the ground of unfitness, then the existing bodies should be made use of as constituencies. It is upon this principle that my Hon'ble friend Mr. Venkataratnam Pantulu, myself and others are here. It is not by the suffrage of the inhabitants that we are here. The principle enunciated is: if it is true that the country is not sufficiently advanced to elect representatives then the existing bodies should be made use of. That is why the University is entrusted with the privilege of election. We discuss not an iota of business here which concerns the University. The Chamber of Commerce elects a member and the district boards and municipal councils also elect others. Would it be said that the district boards, the municipalities, the Chamber of Commerce and the University have a direct interest in the Legislative Council? The principle there is—I borrowed it from the views and sentiments of those who spoke in Parliament when the Enlarged Councils Act was passed—that in a country where the people are not sufficiently advanced to make use of the elective principle, you make use of the available constituency for the exercise of the elective franchise. I could not see any objection to it. The Honourable Council will remember that my amendment speaks also of election by inhabitants. If there is any objection as to fitness, I submit that rules and regulations may be so framed by Government and the Government may so raise the qualifications of electors that no practical difficulty might arise either with regard to the Nilgiri district or any other district. Can it be said that the man who pays the highest taxes to the Government in the district and who may be a member of the University is inferior to the meanest voter in a municipality because the former lives in a village? Even in the absence of taluk boards and district municipalities,

no practical difficulty can arise as regards the district of Nilgiris, provided that His Excellency the Governor in Council by rules raises the qualification in such a way that the people as to whom it is not considered desirable that they should exercise the vote will be excluded. The Nilgiri District Board will be elected by planters and other tax-payers who will come under the rules which the Government may frame. I do not see why, if the amendment is accepted in its entirety, any practical difficulty should arise in working the Act. The Hon'ble Mr. Stokes asked us why should the Government be deprived of its discretion? I said nothing of the sort. The Government will have the discretion of appointing a great proportion of the members. It does not lose its discretion, and it has the absolute power to appoint a proportion. If people are allowed to elect, the Government loses its right of nominating the proportion which has to be elected. With enormous powers of removal and suspension which the Bill is to extend, I do not see how the hands of Government will be in any way tied down by the new provision which I wish to see inserted. Under these circumstances, I cannot see that the objections raised are insuperable. The whole of what I said has not been answered; the point has been lost sight of as to why the law as it exists should not be given effect to. No Honourable Member has answered that point. Once upon a time, when it was proposed to alter an existing law, it was said that it would be passing a vote of censure on the Council which passed the original Act. Here is an enactment passed sixteen years ago and no effect has been given to it. I complain of it and no answer has been given to me. It has evoked an answer from your Excellency alone on more occasions than one. I have shown that Lord Hobart was sympathetic and but for his premature end he would have given effect to the principle. For these reasons, I hope the Council will give serious consideration to my amendment.

The amendment was put to the Council and lost.

His Excellency the PRESIDENT indicating the Hon'ble M.R.Ry. P. Ratnasabhapatil Pillai Avargal:—I presume that you withdraw your amendment.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—The first portion of the amendment I withdraw, but the second portion is distinctly separate. I therefore beg to move that at the end of section 11 of the Act, the following proviso be added: "Provided that no person who holds a salaried office under Government shall be eligible for the election." Section 11 of the Act deals with the question of vesting, under certain contingencies, in the hands of Government, the grant of elective franchise to district boards; and as it is practically we have all the district boards all over the Presidency electing half the number of their members. What practically happens in several districts is that where a non-official stands for election, the officials—Tahsildars, Deputy Tahsildars and others who are salaried officials, to whom the elective franchise was not intended by Government to be applied—stand in the way of the non-officials getting elected. I do not believe that it was intended either by Government or the Legislature that such a thing should happen. When the elective franchise is given to a body, the salaried officials who claim to be appointed by Government should not stand in the way of non-official members who desire to be elected. Such a provision appears in the Bombay Local Boards Act of 1884. Section 7 of the Bombay Act says "Provided that the person to be elected by any taluk or local board under clause (a) may not be a mamlatdar having jurisdiction in the area subject to the authority of such board." It says that in granting the elective franchise the officials of the description of mamlatdars who correspond to Tahsildars shall not be

eligible for election if they have jurisdiction in the area subject to the authority of the respective boards. Following the principle adopted in Bombay, and bearing in mind the practical difficulty of the officials blocking the way of non-officials in entering district boards, I submit there can be no objection to a provision of this kind being added at the end of section 11 of the Act. Salaried officials can always be nominated by Government, and it is not necessary that the elective franchise should be made applicable in their case. When a Tahsildar puts himself forward, the voters, who are mostly the landholders and ryots living in his jurisdiction, make way for him, because he is their executive head and their immediate authority. I would, therefore, commend this amendment to the favourable consideration of the Honourable Member in charge of the Bill as well as of the Council.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—I beg to second this amendment. In my own district, I may tell Honourable Members, the incongruity of Tahsildars offering themselves for election as members of district boards attracted the attention of the Presidents of taluk and district boards and, as a matter of fact, Tahsildars and Deputy Tahsildars are dissuaded from so offering themselves for election. First of all, Mr. Meyer passed such an order, later on Mr. Brodie, and then Mr. Cumming, who were of opinion that Tahsildars and Deputy Tahsildars should not offer themselves for election. There is not a single Tahsildar among the elected members of the district board now. If they offer themselves for election, I may tell Honourable Members that three-fourths of the seats can be monopolised by Tahsildars. Twenty out of forty seats are elective seats and of these twenty, fifteen can be monopolised by Tahsildars and Deputy Tahsildars if they choose to do so; but it is these orders that prevented them from doing so. Before these orders were issued, a number of elective seats were held by Tahsildars and Deputy Tahsildars. It would really be a farce if Tahsildars so elected presided over by a Collector should administer local affairs. The people will understand that it is merely a department of Government. I should think that such a provision as the one proposed will be a salutary one. By inserting it we shall only be embodying in the Act a provision which is being observed as a rule of practice in my own district, where we have had sympathetic Presidents of district and taluk boards. I would therefore commend this amendment to the good sense of Honourable Members.

The Hon'ble Mr. A. T. ARUNDEL:—I hope the Honourable Mover of the amendment will not object if I make a complaint that when he was in the Select Committee he did not raise this question so far as my recollection goes.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg your pardon. Myself and the Hon'ble Mr. Jambulingam Mudaliyar pressed this more than once.

The Hon'ble Mr. A. T. ARUNDEL:—Probably it escaped my memory; but I do not see anything with reference to it in the minute of dissent which the Hon'ble Mr. Ratnasabhapaty Pillai has appended to the report of the Select Committee. With regard to the amendment, it seems to me that if seats are monopolised by the Tahsildars, it is perfectly open to the President to bring about a satisfactory solution in the way the Hon'ble Mr. Venkataratnam Pantulu pointed out. As far as my experience went in Kistna, I do not remember having seen any order prohibiting the Tahsildars from being elected, but certainly the district board was not over-balanced by any number of such officials. The representation on the whole was very good. I do recollect that from one distant portion of the district, there came a village munsif who certainly appeared to be a most intelligent person and there came from another portion of the

district a village karnam who was also a very useful member on the board. But the munsif and the karnam would be debarred from sitting on the board if this amendment is carried.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—Village officers are classed as non-officials under the Act.

The Hon'ble Mr. A. T. ARUNDEL:—The Honourable Member is right. In some of the district boards, which are backward, it is necessary that salaried officials should be members. In some of the districts, the salaried officials, such as Tahsildar Deputy Tahsildars and others, would be the most capable members of the board. I therefore regret to say that the Government cannot accept the amendment.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I have to make one or two observations by way of reply. My attention has been drawn by the Honourable Member in charge of the Bill to the minute of dissent I appended to the report of the Select Committee. In that minute I intended to touch only on the general principle of election, and I did not go into the detailed principles of the system. When I dealt so briefly on the question of election, I meant popular election and not the election of salaried officials of Government. I would recall to the memory of the Hon'ble Mr. Arundel that at the committee stage myself and my colleague the Hon'ble Mr. Jambulingam Mudaliyar, pressed this point very much. The Hon'ble Mr. Jambulingam Mudaliyar referred to the Tahsildars in the Cuddalore district standing for election and blocking the way of others. It was also conceded by the Honourable Member in charge of the Bill that Collectors may remedy the evil by issuing departmental orders. The Hon'ble Mr. Venkataratnam Pantulu has referred to similar orders issued by certain sympathetic Collectors. I do not know whether such circular orders overriding the provisions of the law will not be *ultra vires* when the law gives the principle of election without any such restriction. I have myself heard complaints from Tinnevely, Madura and South Arcot that the Tahsildars and their deputies block the way of others. In Tanjore I need not appeal to the Hon'ble Mr. Winterbotham or to the Honourable the Chief Secretary to be made out that we have almost all the Tahsildars getting themselves elected to the district board. One other observation that suggests itself to me is this. The district boards have been constituted as electorates for electing members to this Honourable Council, and there is no reason why the popular element and the official element should be mixed up together for this purpose. I therefore respectfully submit that if it is conceded that there ought not to be a provision enabling the officials to get themselves elected, and that the defect complained of could be removed if a Collector so chooses by issuing a departmental order, this Honourable Council could remedy the grievance by inserting an appropriate provision in the law itself, which it is not amending, rather than leave it to the discretion and departmental orders of the executive officers.

The amendment was put to the Council and lost.

Section 10.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—There is one amendment of mine under section 10 of the Bill which is worded exactly in the same way as the one that has been lost. That being so, if your Excellency will permit me, I would like to make a verbal alteration and move it under section 12 of the Act. The

amendment under section 10 of the Bill relates to section 12 of the Act which fixes the proportion of officials and non-officials, the former at one-fourth and the latter at three-fourths. Section 12 of the Act, as amended by the Select Committee, says:—

“12. Any person holding a salaried office under Government in the district may be appointed *by name or in virtue of his office* to be a member of the district board, provided that the number of such persons appointed by the Governor in Council to be members of any district board together with the *ex-officio* members shall not exceed one-fourth of the whole number of members of such board.”

That section relates to the Government appointing a certain proportion of persons who hold salaried offices under Government to be members of a district board. The permission that I now seek at your Excellency's hands is that after the words the “Governor in Council” in this section the words “and elected” be inserted. The effect of the amendment will be that one-fourth will constitute, not only the nominations of salaried officials, but also such of the elected members as are salaried officials. Taking both of them together the proportion would be one-fourth.

His Excellency the PRESIDENT:—Am I to understand that you wish to propose a new amendment?

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI AVARGAL:—It is not a new amendment; it conveys the same sense.

His Excellency the PRESIDENT:—If it conveys the same sense, that cannot be allowed.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI AVARGAL:—My object is that one-fourth should include the nominated officials as well as the elected officials, otherwise there is no object in fixing the proportion, the object being defeated by Government servants standing in the way of others.

His Excellency the PRESIDENT:—This amendment does not appear on the notice paper.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI AVARGAL:—In the place of the amendment that stands under section 10, I would ask your Excellency's permission to move this amendment.

His Excellency the PRESIDENT:—I do not think it is advisable, as it is more than verbal, and as it is more than consequential upon an amendment that has already been discussed.

Between Sections 10 and 11.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR AVARGAL:—I beg to withdraw the next amendment that stands in my name, as my previous amendment has been lost.

With the permission of His Excellency the President, the amendment was withdrawn.

Section 12.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR AVARGAL:—My next amendment is in reference to section 12 of the Bill. My amendment is:—

In section 12 of the Bill, the following words be added:—

Pr The word “shall” shall be inserted in the place of the word “may” between the words “board” and “be”. In clause (a) for the words “either wholly” the

word “partly” shall be substituted, and the word “or” at the end of the same clause shall be omitted. In clause (b) the words “partly so appointed” shall be omitted. For the word “or” in the same clause between the words “number” and “by” the word “and” shall be substituted. Before the word “subject” in the last line but one of the same clause, add the words “in such proportions and”. And add the following proviso to the section: “Provided the number of the elected members of a taluk board shall, unless the Governor in Council, for reasons to be recorded, otherwise directed, be not less than two-thirds of the whole number of members of such board.”

This amendment is of the same nature as the previous one about election, only that the previous amendment relates to district boards and the present one relates to taluk boards. This amendment relates to section 16 of the Act. Section 16 of the Act reads:—

“16. The *other* members of the taluk board may be—

(a) either wholly appointed by the Governor in Council, or

(b) partly so appointed and partly appointed by election by the members of the panchayats in the taluk from among their own number or by the tax-payers and inhabitants of the taluk,

subject to such rules and conditions as may from time to time be prescribed by the Governor in Council.”

I would remind the Honourable Council of the observations I made generally as regards qualifications of the inhabitants of the rural parts of the Presidency. Whatever objections may be raised to the proposed constituencies for the district boards the same cannot be raised as regards this amendment. There are two constituencies given in the Act—the panchayats and the tax-payers and the inhabitants of a taluk. As far as my information goes, no member of any taluk board has ever been elected either by a panchayat or tax-payers and inhabitants of a taluk. This section 16 has been altogether inoperative ever since it has been enacted, and I therefore beg to propose to give some life to it by substituting the word “shall” in the place of “may” and by making corresponding changes in clauses (a) and (b). The Hon'ble Mr. Arundel made one observation, that the reviews of this Government, as regards the success of local self-government, showed that the system adopted here was better than the system adopted elsewhere. In applying that argument, the Hon'ble Mr. Ratnasabhapaty Pillai spoke about the reviews of municipalities and municipalities only.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI AVARGAL:—Local boards also.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR AVARGAL:—Then I will take one portion. I will take the reviews of municipalities. So far as the reviews of municipalities are concerned, it cannot be an argument because a large portion of municipal members are elected. The Collector is not an *ex-officio* member or president, although he has very large powers. The chief revenue officer of the place in which the board or the municipality is situated is the only *ex-officio* member. Excepting that, the official interference with the discretion and decision of a board is least in a municipal council. Therefore, as the success of local self-government in this Presidency is a matter for congratulation, it is equally an argument for extending the elective franchise to the people. It is not a fair argument to say that because you have already

succeeded, leave things alone. It is not a question of the success of administration in the matter of raising funds, but it is a part of administration of the Government itself. As Lord Hobart said, while you are called upon to put up with some administrative inconvenience, you must educate the people and teach them to conduct their own affairs more and more. Election is the only method as yet found for creating that spirit, not only to take part in the selection or election of members, but to watch and supervise their conduct and to tell them from time to time that they will become fit for re-election two years hence or three years hence, only according to the local public spirit that may be shown. I could not understand the argument of the Hon'ble Mr. Stokes that this will lead to corruption. He did not say corruption by whom. In all these matters it is exceedingly difficult to understand the mysterious monosyllables. If the Honourable the Chief Secretary meant that the would-be candidates would corrupt the electors, that is an argument against all election not only in this country, but in all countries. I am sorry I did not preserve a great many bits from the English papers touching elections when one of the greatest men of England, Mr. Gladstone, was a candidate; one of the men that came with a stout cord asked, "Where is the cow? I was told that if I gave my vote to Mr. Gladstone, I would be presented with a cow." As regards corruption in election matters, human nature is exactly the same everywhere, and if we are destined to go through the same process we must face the question all the same with firmness and with all the experience of the past. I do not think that an argument of this kind should prevent us from extending the privilege to rural parts. Does the Honourable the Chief Secretary mean that the time would one day arrive when men will be in such a superior position that not one pie would be spent on elections? The objections raised for giving effect to the existing law—my amendment is only to give effect to the existing law—are not serious and are easily answered. Under these circumstances, I beg to move that the amendment be acceded to.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—I beg to second this amendment. I would urge the desirability of conferring on the people the privilege of electing a certain proportion of the members of the taluk boards. To constitute a real local self-governing body, the members composing it ought to be chosen by the people. It would be undesirable to adopt the system of nomination in the first instance. It can be resorted to whenever and wherever the other system is not or cannot be taken advantage of. I should not be understood to mean that the election at first would be as successful as could be wished. But I say that it is only by repeated trials and experience gained in course of time that the people can and will become accustomed to the system. A beginning may well be made. So long as the privilege is not conferred on the people, they have no opportunities of learning it. It is the old story of not allowing a boy to go into water till he can swim; he will never learn to swim unless he goes into the water and incurs a little risk and paddles about. In a people brought up under a benevolent despotism, it indeed takes some time for the seed of local self-government to take root. But seeing, as we do, the signs of healthy growth all round and the intelligent interest the people have now begun to take in local affairs, I submit that there is evident ground for satisfaction and ample justification for further progress on the lines laid down by the Government of India in 1882. There can be no possible objection to this privilege being given to the local boards in this Presidency at this distant date, seeing that the same privilege was conferred on the rural population of Bengal and Bombay 15 years ago. In this connection, I beg

also to invite the attention of Honourable Members to a resolution passed by the District Board, Gódvári, at a meeting held on the 30th May 1898, which runs follows:—"The Board is of opinion that the elective system should be introduced in the taluk boards and that one-fourth of the seats on the taluk boards and the office of the vice-presidents of taluk and district boards be thrown open for election. The board earnestly requests that Government will be pleased to grant the said privileges to the local boards in this district and that the necessary rules be framed. In introducing the Bombay Local Boards' Bill in 1883, the Hon'ble Mr. J. Peile, C.S.I., said, "We think that no objection need be raised to the introduction of the election system which has special advantages in the case of local bodies. The people may very well choose representatives for the management of their local affairs who have not the qualities which would fit them for representative government as a nation. We are not proposing to sanction the election of representatives to a Parliament which should deal with imperial questions, but simply arranging that the people shall be invited to manage the local affairs in which they are personally interested through representatives to be chosen by themselves. If the voters through ignorance or indifference make a mistake in the selection of their first representatives, the local mischief which may ensue to their interests will be their best instructor to be more careful in their choice a second occasion." I am not aware that there is such an essential difference between Madras and Bombay as to justify this Government thinking that the elective system will prove a failure here. Again, so far back in 1883, the Madras Native Association, presided over by my Hon'ble friend Sir Bhashyam Aiyangar, expressed itself in favour of the introduction of the system on the following terms:—"The opinions of the gentlemen whom the association has consulted on this subject unmistakably show that the elective system can be adopted in all parts of the country excepting those hilly or jungly tracts inhabited by wild tribes. . . . After a careful and anxious consideration of the question, the association has come to the conclusion that the system of election can be adopted in all parts of the country except those tracts inhabited by wild tribes; but at the first stage of the experiment, it will be necessary for Government to retain in its hands the power of nominating a fixed proportion of the members." In reviewing the administration of local boards in different Provinces since the Acts of 1884 and 1885 came into force, the Government of India said: "The working of the district boards, taluk boards and union panchayats in the Madras Presidency is regarded by the Madras Government as, on the whole, satisfactory. With this opinion the Government of India concur and the working of the system in the Madras Presidency appears to the Governor-General in Council to have progressed more than elsewhere in India (Paragraphs 4 and 14 of the Resolution of the Government of India, Nos. 18—dated 20th August 1897.) Can it be said in the face of this testimony that the proposal is in any way extravagant?"

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I wish to make a few observations very briefly in support of the amendment, as I have myself given notice of a similar amendment. There is a difference between the constitution of district boards and the constitution of taluk boards. As regards district boards there is an appearance of election, inasmuch as the Government has allowed the taluk boards within their respective districts to choose members for district board. In the Act IV of 1871, and in that Act there was no mention of election or elective privilege. Thirteen years afterwards this Government proceeded to revise and amend Act IV of 1871, with the result that there was Act V of 1884, which is now the sub

of revision. In this Act the elective element was introduced, but it was made entirely dependent on, and optional with, Government to give the election. Sixteen years have elapsed during which the provision for the election of certain members of taluk boards remained, but there is no taluk board in which this option has been exercised by Government. I do not see any reason why the Government have not thought fit to grant this franchise—which is intended to be given at the will and pleasure of Government—to any one of the taluk boards in this Presidency. The case with regard to the taluk boards is much stronger. In the Presidency of Bengal two-thirds of the taluk board members have to be compulsorily elected without the intervention of Government. It is stated that taluk boards shall elect two-thirds. Under the Bombay Local Boards Act, the proportion that is elected is half and in the North-West Provinces and Oudh it is three-fourths. Thus the Council would perceive that in Bengal, Bombay and North-West Provinces this elective privilege is granted in such a high proportion as two-thirds, one-half and three-fourths, and this is a matter of inherent right in these respective boards. Coming down to our own Presidency, although a privilege of this kind was made optional with Government and made dependent upon the will and pleasure of Government 16 years ago, that option has not been exercised even in favour of one taluk board. Now I would ask the Council to say, is it not a position of extreme humiliation in the matter of self-government to the Presidency of Madras? As regards the reviews, to which I made allusion, of the administration of the local self-government, I would ask the Council to bear with me for a minute in reading one short passage. This is from a resolution of the Government of India, dated 20th August 1897, in which a reference is made to your Excellency's Government review. In summing up the general results, the Government of India say, "The working of district boards, taluk boards and union panchayats in the Madras Presidency is regarded by the Madras Government as, on the whole, satisfactory. With this opinion the Government of India concur, and the working of the system in the Madras Presidency appears to the Governor-General in Council to have progressed more than elsewhere in India." Here we have the strong testimony of the Government of India that the local self-government has progressed more satisfactorily in the Madras Presidency than in the other parts of India. I would ask the Honourable Council to consider whether, in the face of this testimony given by your Excellency's Government and ratified by the Supreme Government as to the success of the local self-government in this Presidency, which is far more advanced than the other provinces in the north, it is not unfair that Madras should lag behind and should still be kept out of the elective franchise which was vested in the option of Government. As regards the aptitude and capability of the natives of India, such capacity is as ancient as the country itself. I would quote just one short sentence from the late Mr. Chisolm Anstey, who said, "We are apt to forget in this country when we talk of preparing people in the east by education and all that sort of thing for municipal government that the east is the parent of municipalities. Local self-government, in the widest acceptance of the term, is as old as the east itself. No matter what may be the religion of the people who inhabit what we call the east, there is not a portion of the country from west to east, from north to south, which is not swarming with municipalities—here municipality is used in its wider sense of local self-government—and not only so, but like our municipalities of old, they are bound together as in a species of net work so that you have ready-made to your hand the frame-work of a great system of representation." In fact it is inherent in the natives of this country the spirit of governing themselves. To quote a practical example. In the

Settlement which is almost next door to us, in the French territories of Pondicherry, the people are entitled to elect members to the Chamber of Deputies in Paris. If such is the case in the backward localities of Pondicherry and Karikal—I do not mean any disrespect to our brethren in the French Settlements—and if they have been using that privilege satisfactorily, I do not see why in this late hour of the day, 16 years after this privilege was granted to us, this shall not be given effect to in regard to taluk boards in this Presidency. I heard the Honourable Member in charge of the Bill using a very ingenious argument against the amendment. He says that the very fact of the Government of India giving a favourable testimony shows that the system adopted in this Presidency is good, and that that system ought to be adhered to. I do not know whether you consider that this argument is sufficient to keep the things in the same condition as they are. To my mind it appears that is exactly the reason why people should be entrusted with more and more rights, and more representation should be given to them to carry on the work of local affairs. I would therefore ask the favourable consideration of this Council and the Honourable Member in charge of this Bill to this amendment.

The Hon'ble Mr. A. T. ARUNDEL:—The practical objection that I have to this amendment, as it stands, is that it would be unworkable in the Nilgiris, in Malabar and South Canara where no union panchayats exist. As the amendment stands, it would not be possible to accept it. With regard to the principal matter, I confess that, to a certain extent, I am in sympathy with what the Honourable Member has been urging. But I think it would be extremely unwise if we were to alter an Act in such a way as suddenly to change the constitution of the taluk boards. That would be the effect of the amendment if we carry it. At present no member of a taluk board is elected, and if we pass this amendment there will be elected members. The power exists to allow an election to take place under certain rules. But up to this time that power has not been exercised. It would be extremely unwise to change the whole constitution of taluk boards throughout the Presidency in this way. I hope that in course of time there may be cases in which taluk boards will be allowed to elect a certain number of members, and if any Collector would send up a scheme that is carefully worked out and in other respects suitable, I have no doubt that the Government will sympathetically consider it. To change the law as now proposed would be inadvisable, and the Government cannot therefore accept the amendment.

The Hon'ble M. R. Ry. C. VIJAYARAGHAVACHARIAR Avargal:—As far as I understand the objections to this amendment, they are two-fold. The first is that in the case of Malabar, Nilgiris and South Canara, it will be impracticable to carry out the amendment, because there are no union panchayats. I respectfully submit that my amendment is that where both the constituencies exist, that is, panchayat and tax-payers, it is for the Government to fix the proportion to be elected; but if there are no union panchayats it will be left to Government to say how many should be elected by the tax-payers. In these places, until the Government chooses to establish unions, the only constituency will be the tax-payers and inhabitants who, under such qualifications as the Governor in Council may choose to fix, will elect a certain number of members. The first objection does not therefore hold good. With regard to the second, it is hardly an objection. The Hon'ble Mr. Arundel says that he is somewhat in sympathy with the amendment. What does the objection come to? The objection is that we should not alter the law suddenly. The law should have been gradually altered from 1884. Is it fair to say that on this ground you cannot

accept the amendment? I complain, and in fact I lament, that the power bestowed on Government has not been exercised and the counter-complaint is if you alter the system it will be a sudden change. Where is the alteration? It is said that if, in course of time any Collector has the hardihood to propose a scheme, the Government will consider it. I do not know which Collector will take it into his head to accede to our prayer. We must transfer our address from His Excellency to Collectors from time to time and ask him "Please be good enough to make a scheme for the acceptance of Government." A somewhat novel way of leaving such a question in the hands of a Collector. One Collector may say "yes," another Collector may say "I don't understand anything about it" and a third Collector may say "I disagree with you. We have enough of work and we should not be called upon to submit schemes for such purpose." It is in the highest degree impracticable that we should be referred to Collectors. If the Government is sympathetic and if the Government is prepared to pass it, why should it not do so, why should it say that if the Collector recommends a scheme it will be favourably considered? Cannot the addresses of people and the recommendations of elected members be put on equal footing with the recommendations of Collectors? I do not know why the recommendation of a Collector is worth more than the recommendation of people's representatives. I am very sorry to say that the reply makes one sad.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—My next amendment is merged in the one just lost. I therefore beg leave to withdraw it.

With the permission of His Excellency the President the amendment was withdrawn.

Section 14.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The next one I do not press.

With the permission of His Excellency the President the amendment was withdrawn.

His Excellency the PRESIDENT:—It would be for the convenience of Honourable Members that we should now adjourn for a short time. The Council will adjourn till 2-55 P.M.

The Council re-assembled at 2-55 P.M.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—The next amendment stands in my name. The first portion of my amendment for omitting the words "if any," falls through as a matter of course on account of the two preceding amendments about compulsory election having fallen through. The second portion of my amendment, which I beg to move, runs in these terms:—

To add the following as clauses (d) and (e) in section 14 of the Bill:—

(d) In section 20 the words beginning from "The Governor in Council" to the end of the words "from among their own number," shall be omitted.

(e) Before the word "subject" in section 20 shall be inserted the following words:—

"Every local board shall from time to time elect one of its members to be its Vice-President,"

et

Section 20 of the Act runs thus:—

"The Governor in Council may appoint one of the members of any local board to be the Vice-President of such board, or he may, by notification from time to time, authorize the members of any local board to appoint their Vice-President by election from among their own number."

As the section stands, it makes it optional with Government either to appoint a member of a local board to be its Vice-President or to authorize a local board to appoint by election one of their own member to be its Vice-President. In respect of this question, my position is strengthened by the Government of India's despatch, dated 25th March 1898, paper marked No. 2, and circulated with the Bill, to Honourable members. That communication was addressed to your Excellency's Government in connection with this very Bill, when it was in the hands of the Select Committee. The Government of India on page 2 of their order in paragraph 4 say—

"I am also to convey the following further observations for the consideration of the Governor in Council and the Select Committee:—

(i) In connection with section 20 of the Act, which is left untouched by the Bill, I am to invite attention to paragraph 4 of the letter marginally noted, in which it was intimated that, in the opinion of the Government of India, the power of electing their Vice-President was one which might with advantage be left freely to the local boards in all cases without the intervention of the Local Government. I am to observe that in Bengal, the North-Western Provinces and Oudh and the Punjab, the appointment of Vice-Chairman does not require such intervention."

This was the recommendation which the Government of India made on the 25th of March 1898 for the favourable consideration of your Excellency's Government. The matter came before the Select Committee of which I was a member, and we pressed on the attention of the Honourable Member in charge of this Bill, this provision. If I remember aright the Honourable Member said that it was necessary for him to consult the Government before giving an opinion for the guidance of the Committee. I am not in a position to say whether later on he did consult the Government and what conclusion the Government arrived at in this matter. The Government of India made a reference to the Provinces of Bengal, North-Western Provinces and Oudh and the Punjab. I would add that in Bombay there is a similar provision for electing Vice-Presidents of both taluk boards and district boards. When such is the case, I do not see any reason why in the existing state of things district boards and taluk boards should not be allowed to elect non-officials as their Vice-Presidents. In the districts of Górávari, Kistna and Cuddapah the district boards have been allowed by Government to have non-official Vice-Presidents and the review of the work done by these Vice-Presidents is before your Excellency's Government. I need hardly recall to the minds of Honourable Members that the work of the Vice-Presidents of these three district boards who are nominated Vice-Presidents has been well reviewed. In respect of the Bengal Act, section 26 says that every local board shall from time to time elect one of its members to be its Vice-Chairman. In regard to North-Western Provinces and Oudh and Bombay, the Local Boards Acts contain a similar provision. Several amendments moved by us giving the inherent right of electing a fixed proportion of members of the district boards and taluk boards has been vetoed by your Excellency's Government and I would submit that at least so far

the election of Vice-Presidents is concerned, seeing that the Presidents are *ex-officio*, being district officers, our prayer may be granted by your Excellency's Government, especially when the recommendation has proceeded from the Government of India, based upon the practice prevailing in the Provinces of Northern India.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—In seconding this amendment, I wish to make a few observations. The constituency by which it is proposed that Vice-Presidents should be elected consists of nominated members. All the members of taluk boards are nominated by Government. So practically the constituency by which Vice-Presidents are to be elected is a nominated constituency and there is no danger that the privilege of election will be abused by such a body. Secondly, what are the duties assigned to Vice-Presidents by the Act? The only statutory duty is to preside at meetings in the absence of Presidents and to discharge any duties delegated by them. That delegation rests entirely with the President himself. The President may or may not delegate any of his duties and if one President delegates a duty, his successor may withdraw it. So, whether we look to the constituency by which Vice-Presidents are to be elected or whether we look to the duties they have to perform, Honourable Members will see that there is no harm in entrusting this privilege to local boards. The Government of India, as my Honourable friend Mr. Ratnasabhapatil Pillai has pointed out, is also in favour of this privilege being granted to local boards. In 1883, the Madras Native Association asked that the privilege of electing Vice-Presidents should be given to local boards and further that the executive powers should be entrusted to Vice-Presidents. Neither of these requests has been granted. The most harmless request that we prefer is that power be given to local boards of electing their Vice-Presidents. The Gódvári District Board requested that the said privilege might be granted. As a matter of fact, some of the taluk boards have already got that privilege in this Presidency. When some of the taluk boards have got that privilege, when the request for the same has been preferred since 1883, when the Government of India says that the privilege should be granted, and when the taluk boards in the other Presidencies do enjoy this privilege, I do not see why any serious objection should be raised on behalf of Government to this amendment. The present Act enlarges the duties and obligations of local boards. It creates a new tramway cess, authorizes the expenditure of local funds in scheduled districts beyond the present local fund areas. Yet Government is not pleased to consider our request concerning the election of Vice-Presidents—to make even this small concession. After all, the President is *ex-officio*; the members are nominated; the delegation of duties to the Vice-President depends upon the will and pleasure of the President. Under so many safeguards, if Government be not pleased to grant this privilege, I do not know what other privileges we can hope for.

The Hon'ble Mr. A. T. ARUNDEL:—Your Excellency, I am sorry to have to inform the Honourable Mover of the amendment that I do not feel able to accept his amendment. In regard to what has been said as to the suggestion of the Government of India, all I can say is that the Government of India does not desire to press its suggestion against the decision and views of the Madras Government. The power of electing Vice-Presidents is one that may be given by Government with regard to taluk boards. Already certain taluk boards elect their Vice-Presidents and a good start has been made in that direction. But so far as the district boards are concerned, no district board now elects its Vice-President, and I am not sure that it is advisable to do it, unless in exceptional cases. District Boards have very large sums of money

at their disposal. Our district boards have very large sums of money as compared to what the district boards in Northern India have, where even the districts themselves are very much smaller than the districts here. The administration of district boards is very largely carried on by Revenue officials and this is not actually provided for in the Act itself, so far as I recollect. As a matter of fact orders go out from the President and the Vice-President, who is usually a Deputy Collector, sends them to Tahsildars, Deputy Tahsildars and village officials, who largely assist him in carrying on the work of the district board. I believe that is one of the reasons why our administration has been so successful. If we have a non-official Vice-President, I am not at all sure that there would be the same ready compliance given to orders that he may issue. Again, although the Honourable Members would not entirely approve of what I am going to say, yet I feel that in the case of an elected Vice-President, it might be that the Vice-President and the Collector might not be in entire harmony, and there would be danger in such a case of intrigues. If any such thing happens, the practical work of the district board would not go on so well as it would if things were otherwise. If the Collector finds himself thoroughly hampered by discord, the work of the district board, unwisely no doubt, will be left in other people's hands on the ground that he has got lot of other work to do, and the work will then be neglected and the interests of the district would seriously suffer. I know that in certain places complaints have been made even with regard to district municipalities. The change that has been made in the law makes the Collectors take much less interest in them than before. In regard to district boards, it would be most unwise to allow any such thing to happen. The amount of money that has to be spent is very large. The interests of a very large population depend upon the way in which the work is done. It seems to me that the proposition now put forward in the amendment that this power of election should be generally exercised is one that is not advisable, and, if carried, the interests of the Presidency will suffer.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I could not understand the Honourable Member in charge of the Bill when he said that there was a large amount of money to be spent by the district boards, and it is therefore not advisable to give them the privilege of electing the Vice-Presidents. I do not understand what inference should be drawn from his remarks. If the elective privilege is given to a district board, and if it elects a non-official Vice-President, he is not to be left to himself; he is only a Vice-President to assist the official President, the Collector, in the discharge of his duties. He has not got the sole power of handling large sums of money which are said to be in the hands of district boards. Assuming, for the sake of argument, that he has got large sums to dispose of, it cannot be said that these people cannot be trusted with the administration of large sums. It has also been said by him that if non-official Vice-Presidents were appointed, the work of district boards would suffer. In Gódvári, Kistna and Cuddapah the district boards have not got elected Vice-Presidents, but nominated non-official Vice-Presidents to assist the respective Collectors in the discharge of their duties. The Collectors, as *ex-officio* Presidents, have repeatedly acknowledged the valuable help rendered to them in the discharge of their work by their non-official colleagues in the capacity of Vice-Presidents. It was also said that if a non-official were appointed as a Vice-President the same ready compliance would not be given to his orders or communications as would be given in the case of an official Vice-President. I fail to see the force of this argument. If a Vice-President is elected, whether he be an official or a non-official, he has got certain powers and if the orders emanating from him are not obeyed and if proper compliance

is not given to them, there is the Collector, *ex-officio* President, to see that such orders are properly carried out. The non-official Vice-President is simply a colleague of the official President and if his orders are disregarded, it is as good as disregarding the orders of the Collector, as he is simply the representative of the Collector-President. Lastly, the Honourable Member has said that the Government of India has not pressed the matter of the election of Vice-Presidents. I am not further enlightened on this subject than I was at the commencement of the debate on this amendment. There is the Government of India's despatch in such distinct terms, advocating the principle that we suggest; and the Government of India could not put the recommendation in a stronger language. If the privilege of election is given, the result of the election is always to be subject to the approval of His Excellency in Council.

The Hon'ble Mr. H. M. WINTERBOTHAM:—Not under your amendment.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I don't move for the omission of this phrase. There is the safeguard "subject to the approval of the Governor in Council." Considering that after the lapse of sixteen years taluk boards are not yet given the privilege of electing a proportion of their members, I trust that in the case of Vice-Presidents at least the principle of election, which has been approved by the Government of India, will be given effect to by your Excellency's Government.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The next amendment which stands in my name is: "Add as clause (d) to section 14 of the Bill the following words:—

The words 'subject to the approval of the Governor in Council and' in section 20 shall be omitted."

Under section 20 of the Act, wherever a Vice-President is elected, whether by a taluk board or a district board, the appointment is subject to the approval of the Governor in Council. I respectfully submit that the expression "subject to the approval of the Governor in Council" may be omitted. In the first place, the rules and regulations under which the election takes place are made by the Governor in Council, and such a privilege is only to be rarely granted to local boards. It is admitted that it is not exercised by district boards, and it is also admitted that it is exercised only in a few local boards. We all know what the phrase "subject to the approval of the Governor in Council" means. That is, the appointment is virtually in the hands of Collectors. We have the experience in the case of Secretaries to municipal councils, whose appointment is "subject to the approval of the Governor in Council." Those who have watched the appointment of Municipal Secretaries know that it is practically in the hands of district officers. Therefore, as the Government has refused to exercise the power given under the law, and as it proposes to utilise the power only in rare instances, I submit that in these rare instances there is no object in further fettering the hands of electors by saying that the appointment is "subject to the approval of the Governor in Council," which means "if you suggest the name which the Collector approves of, we shall also approve of it." That is, I believe, hardly election.

The amendment fell through for want of a seconder.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to withdraw my amendment for the omission of the proviso to section 20.

With the permission of His Excellency the President the amendment was withdrawn.

Section 18.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I beg to propose that in section 18 of the Bill, the words at the end of clause (a), namely, "other than an *ex-officio* President or member," be omitted. The Bill proposes to add an exception by saying "other than an *ex-officio* President or member". I do not see the policy of it quite. There will be this difficulty. If the Governor in Council believes that an *ex-officio* member is unfit to be a member of a local board, and if it has no power under the Act to remove him, it may be said that in his capacity as Government servant he will be transferred; but wherever he is removed, he will be an *ex-officio* member. Suppose the Government believes that an Assistant Collector or a Deputy Collector is unfit to be a member of the Taluk Board of Coimbatore, and if it has no power to remove him from the taluk board, he may be removed to some other place, and if he is removed to some other place, he will still be an *ex-officio* member of the taluk board of that place.

The Hon'ble Sir V. BHASHYAM AYYANGAR Avargal:—Why not he be removed?

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Then comes the question whether, if a man is unfit to be a member of a taluk board, that will be sufficient for Government to remove him from service. In principle, I do not see the difference between an *ex-officio* member and an elected member. I do not see why power should be taken by Government in the case of persons other than *ex-officio* members, and why in the case of *ex-officio* members such a power should not be exercised. I do not see the reasonableness of the distinction; nextly it will not enable Government to retain certain officials in the Government service without, at the same time, keeping them as members of local boards as well, however undesirable it may be to keep them in such boards.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—The Government has got power to deal with *ex-officio* members.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to second this amendment. Suppose a divisional officer is an *ex-officio* President of a taluk board, it follows he cannot be removed from the *ex-officio* position which he occupies. As a divisional officer, he may be a most competent and efficient man, and unless he be removed from the office he holds as a divisional officer, he still retains the *ex-officio* position notwithstanding that he is guilty of serious faults in the capacity of President of the Taluk Board. This will lead to a very anomalous position. The answer to that may be that if he is found to be not discharging his duty as *ex-officio* President of the taluk board properly, the Government will remove him from his appointment as divisional officer. It does not follow that the Government will do it. He may be considered by the Revenue department to be a most competent officer. It is only when he is removed from his office as divisional officer he will cease to be an *ex-officio* President. It seems to me there is no necessity for making any exception in the case of an *ex-officio* President. This exception has been made by the Select Committee, and I do not know exactly for what reasons, because I happened to be absent from that particular meeting at which this was decided.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—He becomes a member of a local board *ex-officio*, that is, so long as he holds a certain office he is a member. How can he be removed in the manner proposed by the amendment?

How is another person to be brought in to fill up the vacancy? He is a member by virtue of his office, and so long as he holds that office, he ought to continue as a member. The Government has the power to remove him from service, and it is only when he is so removed he ceases, in law, to be a member. That is the constitution provided by the Act, and if you approve of the constitution, you cannot introduce a rule that *ex-officio* members should be removed for misconduct. I put it to the Honourable Mover of the amendment to reconsider the matter.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I will reconsider it when the time comes.

The Hon'ble Mr. A. T. ARUNDEL:—I must oppose the amendment, and I cannot state the argument better than the Hon'ble Mr. Venkataratnam Pantulu has done. The Government, instead of passing an order as they would do in the case of others, will promptly gazette him to some other appointment.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The objection seems to consist in an extraordinary play upon the word "*ex-officio*." If an *ex-officio* member cannot be removed, why say so? If you say that so long as a man continues to be an *ex-officio* member you cannot remove him, why say so and enact a provision to guarantee to him that which he has already as his indefeasible right by virtue of his salaried office? Will you reconsider your objection? I would ask the Hon'ble Mr. Arundel to reconsider his objection too. This kind of quibble and play upon words is becoming too common and is not worth the dignity of this Council. If the ingenious interpretation put upon it by the Hon'ble Mr. Venkataratnam Pantulu and the Hon'ble Mr. Arundel is right, this is a meaningless expression "*other than ex-officio*." Why should you introduce that farce? It is clear that you think that such a law as this is necessary—that an *ex-officio* member should not be removed. The meaning of it is you do not want to remove him, notwithstanding the fact that he may have misconducted himself and you consider him to be bad. Why may not the Government take power to deprive its servants, if necessary, of a portion of their power? Is it not the case that when an official has got multiple powers, the Government deprives him of a portion of his powers? Have there not been cases in which the Government deprived Sub-Collectors and Joint Magistrates of their magisterial powers? It is not easy to see the objection raised by the play upon words. The objection is more facetious than based upon the real merits of the case. Therefore I hope the amendment will be accepted.

The amendment was put to the vote and lost.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I beg to propose that in section 18 of the Bill for the present words of clause (c) substitute the words "clause (iii) of the same sub-section shall be omitted." This amendment deals with clause (c) of the Bill in section 18. Clause (c) relates to sub-clause (iii) of sub-section 1 of section 24 of the Act. Section 24 of the Act deals with the removal of members under particular circumstances. Under sub-section 1 there are a number of sub-clauses. Sub-clause (iii) says that a member may be removed "if his continuance in office is, in the opinion of the Governor in Council, dangerous to the public peace or order or likely to bring the administration of the local board into contempt." This provision is taken from the District Municipalities Act. I respectfully submit that this provision is not calculated to attract desirable men for serving on the board. If a member is convicted under this section, he is prevented

from proving his innocence in a court, because, judged from the light of discussion we have had, the expression "in the opinion of the Governor in Council" will prevent him from establishing his character in a court of law. As soon as a member of a local board is told by an order of Government that he is a man whose continuance in office is dangerous to public peace or order, he cannot establish the contrary. He may complain to the Governor in Council and try to refute the charge. You have got the Criminal Procedure Code under which persons whose character is dangerous to public peace or order can upon evidence before a magistrate be punished, or asked to furnish security; but here you have a special law having the provision therein which is more subtle than the provisions of the Criminal Procedure Code, and which says in effect "Although we have not got judicial evidence, we are satisfied that your stay in the Council is dangerous to public peace." What can that man do to retrieve his character? It seems to me that it is to make too large a demand upon this Council and to magnify the position of a member of the local board, to say that the retention of that one man is dangerous to public peace or order. Clause (1) says that if a man is declared insolvent or is convicted of any such offence or subjected to any such order as implies a defect of character which unfits him to be a member of a local board he may be removed. What is intended to be achieved by sub-clause (III) is certainly covered by sub-clause (I). The only difference there is that he will have the advantage of adducing evidence in a criminal court and of showing that the character imputed to him is not deserved by him, whereas here it is not a judicial proceeding, and by a departmental enquiry, without taking his explanation, he is to be declared unfit and dismissed. The most important objection is that this provision will prevent a man of character from entering the board. This acts as a kind of terrorism—this departmental adjudication that a man is dangerous to public peace or order will act as a terrorism. I do not believe this is the intention of the Act, and I therefore move that this clause be removed from the section as being absolutely unnecessary.

The amendment fell through for want of a seconder.

The Hon'ble Mr. A. T. ARUNDEL:—Does the Honourable Member wish to go on with the remaining amendment?

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I don't see any use in moving it, nor do I see any use in abandoning it either. I beg to propose "that in clause (c) of section 18 of the Bill, for the words "likely to bring" be substituted the words "has brought." The provision "or likely to bring the administration of the local board into contempt" is a very objectionable one. Any person may be said to be "likely" to bring the administration into contempt. If you say that, as a matter of fact, a man has brought the administration into contempt, then the Government will have some tangible thing to go upon. But if you merely say "likely to bring it into contempt," the expression is exceedingly subtle and is calculated to deceive Government as well as anybody else.

The Hon'ble M.R.Ry. P. Ratnasabhapati Pillai seconded the amendment.

The Hon'ble Mr. A. T. ARUNDEL:—The objection to this amendment may be put in the proverbial language of shutting the stable after the horse is stolen. If it is likely that the administration of the board will be brought into contempt, it is better not to wait until the administration has been brought into contempt.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Without being guilty of disrespect, may I ask how many members of the noble Civil Service will enter the service if this provision were entered against them?

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The next amendment is: "In clause (e) of section 18 of the Bill for the words 'clause (iii)' in line 26 of page 8, be substituted the words 'the provisions'." What I say is the persons accused under this Act shall be heard. The section says that persons accused under clause (iii) of sub-section 1 shall be heard. If any member is to be removed, I do not see why every person that is removed should not be given an opportunity to defend himself. I do hope that it may be possible for Government to accept this amendment. It must be remembered that it is not a conviction on any evidence that makes him removable from office. Since the Government is called upon to exercise its judgment on certain facts, I submit that the accused person who is to be affected by the judgment should be heard before the judgment is passed. This is one of the things that the British Government has adopted in this country. Therefore, whenever the Governor in Council is about to give judgment it ought to give the accused person an opportunity to make his representations. For instance, if a man is absent for more than three months, he may be removed. But if an explanation is taken from him it may be possible that the reasons which he may give for his absence might be sufficient in the opinion of the Governor in Council, who may excuse him. Unless the Government has all the materials on the case, its judgment will be one-sided. Let a man who is to be removed say what he has to say.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to second the amendment. As the section is amended by the Select Committee, it gives an opportunity for an accused person to explain only in regard to the clause which says that a man is removable if his continuance in office is dangerous to public peace or order or is likely to bring the administration into contempt. There are other contingencies under which the Governor in Council may remove him, and I do not see why an opportunity should not be given in every one of these cases. The suggestion put forward is a harmless one, and I do not see why it should not be accepted by the Honourable Member in charge of the Bill.

The Hon'ble Mr. A. T. ARUNDEL:—I regret that I cannot accept the amendment of the Honourable Member. In the cases of clauses (i), (ii) and (iv), the Governor in Council need not make any special reference, because they are all upon matters of fact upon which the Governor in Council has to pass orders. In the case of (iii) it is provided in the Bill that it is desirable that an explanation should be given and nothing more is needed than that.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—It is one thing to make a charge and hear the defence upon it and it is totally a different thing to take a general explanation before a definite charge is laid. As in the case of officials the thing should be reduced into a charge. The accused member might not know how much of the explanation given, the Collector has accepted and how much the Government has accepted. By using the word "charge," I do not intend to take it in a technical sense. What I mean is that certain facts should be alleged against him and he should explain them. As regards clause (i), there are so many things to be done. What is the harm that will accrue if the Government accepts this amendment? If it can do no harm, what is the objection to hearing the accused member? In the

case of conviction it is possible that he might put forward a new fact. There are certain convictions which are summary and not appealable, and will it not be open to members to put forth before Government "I have been convicted summarily by the Court. I have no power to appeal. I will place the true facts before Government. Please judge of me in the light of these facts"? No reason has been shown why this provision should not be embodied in the Act, but on the other hand such a provision as this will do a great deal of good.

The amendment was put to the Council and lost.

Section 29.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I move that in section 29, clause (vii) of the Bill, be added the following after the word "*institutions*":—"and for the inspection by them of the Public Works belonging to such board." Section 29 of the Bill relates to section 34 of the Act as amended by the Select Committee. Section 34 of the Act is a section which empowers every local board to make rules consistent with this Act and for purposes such as place of meeting, &c., and the Select Committee has added a clause, clause (vii). That clause says: "The inspection by members of the board of institutions under the control of such board and the inspection of accounts, books, registers and returns, reports, statements and other documents appertaining thereto, belonging to such institutions and": I would add to these multifarious duties of inspecting registers, &c., the most important duty which a member of a local board can very usefully perform, namely, the inspection of public works. Public works are the things upon which the bulk of local funds is employed and if any useful work can be done by a member it is in inspecting the public works in progress. If he is empowered to inspect institutions and a host of records connected with institutions, I would respectfully submit that he should also be empowered to do the most important and useful work of inspecting public works while they are in progress.

The Hon'ble Mr. WINTERBOTHAM:—Will you give an illustration?

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—Roads, bridges, tunnels and all sorts of public works done by a District Board Engineer. As the Select Committee thought it fit to include inspection of so many things, it is reasonable that the most important department on which the bulk of the money is spent should be included in such inspections. It is there the local knowledge of members can be utilized to great advantage, and I submit that the power of inspecting public works should be given to members of local boards.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—In seconding this amendment, I just wish to make one observation. Honourable Members are aware that under the orders issued by Government, 50 per cent. of the land cess and receipts from tolls are spent on public works. In the case of Municipalities, Municipal Councillors inspect public works. Municipalities and local boards are constituted on the same basis, and there is no reason why a distinction should be drawn between Municipal Councillors and members of local boards. Considering that a considerable portion of local funds is spent on public works, it is highly desirable, if not necessary, that the members should have some insight into these matters. I hope that the Government will be pleased to accept this amendment, which seems to me a harmless one.

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The Hon'ble Mr. G. STOKES:—I wish to say a few words on this amendment, your Excellency. I regret I have to oppose it. It seems to me that I can admit at once that members of taluk boards would most usefully employ their time in inspecting the local works. As Collector-President of a district board I received very great assistance indeed from members of the district board, in this direction, and I often asked them to inspect the works when they were being executed. But it seems to me that while the fact may be so, it is a totally different matter to give the members of taluk boards and district boards a legal right to go upon the works and to call upon officers in charge of them to submit to them accounts, explanations and so on. It is a matter in which every board can make rules giving their members the requisite power. I regret I have to oppose the amendment because in my experience I have met with a case in which a member of a taluk board being at enmity with a local fund overseer had certain objects of his own in view and would certainly have carried his point if he had any such power as this given to him. I fear that the power, though a very useful one if given to proper persons, is one which, if given generally, is likely to be abused. I may be wrong, but I speak from my own experience. It is inexpedient to tie our hands by making this provision. For these reasons, I oppose the amendment.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I am glad to find that the Hon'ble Mr. Stokes considers this suggestion of mine to be a most useful and desirable one, but at the same time he regrets that he is unable to support the amendment before the Council. He says that in practice the members being permitted to inspect work is one thing, but it is a totally different thing to give them a legal right to do so. I do not see what difference there could be between the two. In practice they do a certain amount of useful work by inspecting public works, and there is no reason why the same should not be done as a matter of right. Such a work can be done with a greater amount of usefulness and weight if it is done as a matter of right than as a matter of grace. I should not have brought forward this amendment but for the provision introduced into this Act by the Select Committee. The Select Committee has thought fit to enact clause (vii) giving the right of inspecting institutions, &c.; and when there is an express permission given in respect of certain matters, it will be argued later on that if any member is curious enough to inspect or takes an interest in inspecting public works, and brings to the notice of the Collector irregularities in the construction of public works, such as bad materials, &c., then it will be said that the legislature has given certain rights to members, but it has not given them power to inspect public works. If this clause is deleted or had not been introduced by the Select Committee, it is open to the Collector-President to avail himself very freely of the assistance of the members in the matter of supervising the public works. The Hon'ble the Chief Secretary also quoted an instance in which the power has been abused. Every rule has got its exception, because in a solitary case the power which is admitted to be useful and desirable has been abused, that is no argument to say that the power ought not to be given at all. There may not be a single provision of law to which an exception cannot be taken, and if arguments of this description can be advanced, every provision introduced in this Bill can be opposed on that ground. I would therefore once more respectfully submit for the consideration of this Council that this amendment may be carried.

The amendment was put to the Council and lost.

Section 32.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The next amendment which stands in my name relates to section 37 of the Act as amended by the Select Committee. Section 37 says: "(1) The Governor in Council or the Collector of the district may, by order in writing, suspend the execution of any resolution of any local board, or of any order issued by any local board or President or cancel such resolution or order, or suspend or cancel any license granted by any local board or President, and may prohibit the doing of any act which is about to be done, or is being done, in pursuance of, or under colour of, this Act, if, in his opinion, such resolution has not been legally carried, or such resolution, order or act or the issue of such license is in excess of the powers conferred by law, or the execution of such resolution or order, or the doing of such act or the continuance in force of such license is likely to cause obstruction, injury or annoyance to any persons lawfully employed or danger to human life, health or safety, or is likely to lead to a riot or an affray." My amendment is that in section 32 of the Bill at the end of clause (a) be added the following words:—

"To the same sub-section add the following proviso: 'Provided that no final order under this sub-section shall be passed by the Governor in Council or the Collector, without previously intimating to the board or the President, as the case may be, and to the licensee or other person that may be affected by the proposed order, the grounds upon which the proposal is made and considering their explanation and objections, if any.'"

I believe it will conduce to greater prestige of Government and the orders will be received with greater satisfaction, if, as I respectfully submit, as there are so many complicated matters to be gone into under this section, persons most likely to be affected by this order are given the opportunity of being heard. With these words I beg to move the amendment.

The Hon'ble M.R.Ry. P. Ratnasabhapati Pillai Avargal seconded the amendment.

The Hon'ble Mr. A. T. ARUNDEL:—I do not think that this amendment should be accepted. As far as the Governor in Council is concerned I think the power ought to be retained in full to pass such orders as may be necessary; and when the Collector makes an order, the Governor in Council may rescind his order after giving the local board a reasonable opportunity for explanation. With regard to the licensee, it is clear that the local board would ascertain in the first instance whether the license could be given, and after giving the license it will take care to defend itself by every argument which a licensee would put forward. Thus provision is made for everything. I must therefore oppose the amendment.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I only rise to say one thing. What the inconvenience is that will arise by accepting this amendment has not been stated. What will be the inconvenience to Government or anybody concerned if this amendment is accepted? As regards the licensee, it is said that the grounds which the licensee might put forward will be urged by those who grant the license. I beg to differ from this statement, for it may not be always so. We do not know under what circumstances the licenses are granted. By the time this action is taken by Government, persons who granted the license might have disappeared from the board by efflux of time. I submit that a licensee's interests ought not to

left in the hands of local boards. It is possible that the minority of the board might have voted against the grant of license and that minority might have become the majority when the explanation is taken. I really hope that this matter will be taken into consideration. The interests of licensees might be totally different from the interests of the board. It is possible that a licensee might spend a good deal of money and he might have a version of his own to give, and it is desirable, I submit, that the Government should and ought to adopt the well-known maxim of hearing the other side.

The amendment was put to the Council and lost.

Between Sections 37 and 38.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The next amendment relates to section 45 of the Act, which says: "The President may, subject to the provision in section 42, sub-section (3), and to such control as the Governor in Council may from time to time prescribe, fine, suspend or dismiss any of such servants and appoint others in their stead. I beg to move that after section 37 of the Bill be added the following section:—

"In section 45, add the following at the end: 'Such orders are appealable to the local board, of which he is the President, within one month from the date on which the order was communicated to the servant concerned'."

This amendment simply gives the right of appealing to the local boards which I now see by the rules issued by Government is departmentally recognised. I only want to introduce into the statute the right of appeal which is now given in practice by rules departmentally issued. If there is any doubt about the matter, the Local Fund Code can be sent for and a reference made to articles 67, 68 and 69. In the case of a servant of a taluk board if he is fined and the fine exceeds one rupee or if he is suspended or dismissed, he can appeal to the district board President and if he confirms the order, he can also appeal to the district board. In the case of district board servants, if a man is punished by the President he can appeal to the district board and in certain cases to Government. These are the rules as I recollect them. I mention these subject to correction.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—My impression is that, when servants under taluk boards are dismissed, an appeal lies to the President of the district board under the existing rules. As the Vice-President of a district board, I remember having disposed of some appeals under the powers delegated to me. I have no objection to the existing rule being embodied in the Act. I therefore second the amendment.

The Hon'ble Mr. J. THOMSON:—I am not quite sure whether Honourable Members quite understand what the effect of this amendment will be, and I am not quite sure whether I understand it properly, but as far as I can gather it is intended to give a general right of appeal against a President's order of fine, suspension or dismissal. If so, I wish to oppose the amendment. Some years ago I happened to be a district board President, and I remember two occasions on which I was put in the very unpleasant position of having my orders called in question by the board. One of these occasions was in connection with a dufterbund, a menial subordinate whom I dismissed for grave misconduct and another was in reference to a clerk whom I dismissed for general uselessness and for cultivating contractors more than doing his

work. My opinion was upheld by a majority of one, in the first case, but in the second appeal I was upset altogether. In these two cases I felt perfectly certain that what I did was quite correct. The second case was dealt with by a board which would be considered the most intelligent board in the whole Presidency. In both these cases I enquired afterwards as to the reason why things turned out in this way, and was told that the culprit had gone round to the members, prostrated himself before them and sought their protection. Being so appealed to, they accorded him protection by in one case upsetting my order. The quality of mercy is not strained with the people of this country. It takes a long time to develop in the individual a sense of public responsibility, and I say unhesitatingly that an average member of a local board is constitutionally unfit to discharge the duties of an appellate authority. There is further no reason why a local board servant should have greater privilege when misconduct is proved against him than an ordinary servant of Government, and Government will not be justified in weakening the hands of the executive in local fund matters more than in ordinary matters. I am therefore opposed to the grant of any general concession in the matter of appeals.

The Hon'ble Mr. A. T. ARUNDEL:—In addition to what has been said, I oppose the amendment on the ground that it is quite unnecessary to give a statutory right of appeal in such cases as these. It is proposed to give a statutory right of appeal against a fine of 4 annas inflicted on a menial servant. The section itself provides that the President may from time to time fine, suspend or dismiss a servant subject to such control as the Governor in Council may, from time to time, prescribe. Under section 144 of the Act rules have been provided by which appeals are made. But it is quite unnecessary to give statutory powers in these matters.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—What is the harm of giving the right of appeal in this Bill when the departmental rules allow the same thing?

The Hon'ble Mr. G. S. FORBES:—The rules may be restrictive, but what you propose is general.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The rules refer to all suspensions, all fines and all dismissals. I do not see any difference between my amendment and the rules as they now exist. Some arguments have been advanced by the Hon'ble Mr. Thomson and they have been adopted by the Hon'ble Mr. Arundel. I do not know if the Hon'ble Mr. Arundel means to adopt the personal experience of the Hon'ble Mr. Thomson. Our misfortune in this country is so many gentlemen whose honesty and veracity cannot be questioned take to such things. The Honourable Member said "I am told he went and prostrated." Who is it that told him? Is it his butler or butler's relations? It is the height of absurdity on the part of Collectors to believe any information that comes through the back-door. There is nothing to show us by what means the Hon'ble Mr. Thomson has obtained this information. I know from experience how this kind of information finds its way to exalted quarters. I hope he would not be offended with me when I say that in the present state of social intercourse between the Europeans and Indians, it is dangerous to depend upon such information. The best course is to proceed judicially or semi-judicially in these matters. You take the information behind our back and we have no means of checking it, either by way of correcting it or exposing the falsehood of it. Experiences of this kind are most delusive and most dangerous and ought not to be

to be made the basis of serious action in the Legislative Council. One great characteristic of our rulers is that they think they are always right and all others are wrong. Proceeding on that line, the Hon'ble Mr. Thomson began to solve the mystery. May it not be that somebody who wished to please the Hon'ble Mr. Thomson went and told him that the man went to everybody and prostrated himself before them? The information coming in that way is hardly worth anything. I demur to the value of that information given by the Hon'ble Mr. Thomson as a fact; the value of it is worth nothing. He further says that an average member of the local board is unfit to discharge the duties of an appellate authority. I thought that hitherto it was the unfortunate elected member that was going to be unfit, but my Honourable friend deems that an average member chosen by Government is quite unfit. If so, is it not time to abolish these boards and place them in charge of Government officials? If elected members are unfit, if the average nominated members are unfit, what is the use of figure-heads who are really unfit to discharge their duties? Why do you call them a board? Call them by their proper name, call them Collectors' departments. That would be more honest, unless you wish to enact a cruel and costly farce. It is a costly farce because you are to pay travelling allowances to these men. It is well to do away with this costly farce and call a spade a spade.

The Hon'ble Mr. J. THOMSON:—I only wish to say a word with reference to what has fallen from the Hon'ble Mr. Vijayaraghavachariar. I am acquainted with the Law of Evidence and know how to value evidence with reference to the quarter from which it comes. My information was reliable.

The amendment was put to the Council and lost.

Section 47.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I move that clause (d) of section 47 of the Bill be omitted. Clause (d) says:

"(d) the following shall be inserted as clause (vi):—(vi) Fees for the putting up in such local areas, in a union, and at such rates as may be approved by the Governor in Council, of any verandah, balcony, sunshade, weather-frame, or the like to project over the pials and pavements in front of any building or land."

As far as I can see I have not been able to gather any reasons for inserting this clause. I therefore beg to move that this be omitted.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to second the amendment. This provision has been taken by the Select Committee from the District Municipalities Act and this is out of place here and would lead to inconvenience and oppression in the case of poor people.

The Hon'ble Mr. A. T. ARUNDEL:—Your Excellency, this provision was put in after a careful consideration by the Select Committee on the representation made by the Collector of Madura who pointed out that in some of the large unions in the district there were a great many pandals and sunshades which were encroachments upon roads and it was thought desirable to exercise control over them, either by removing them or by levying fees for permitting them to remain there. It is right that this section should remain. If the section is retained, I want to propose one or two verbal alterations.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—My only objection that this section practically gives power which might be exercised in any case. I

very humbly submit that the exercise of this power will be entrusted to a number of men who are not likely to know what was going on here and with what reservation this was passed.

The amendment was put to the Council and lost.

The Hon'ble Mr. A. T. ARUNDEL:—I now beg leave to ask your Excellency's permission to introduce a small amendment in the clause as it now stands. That is to substitute for the words "over the pials and pavements" the words "over the road". As a matter of fact, balconies and verandahs are put in front of the building over the road where there is no pial or pavement. I beg leave to propose the amendment. I do not know whether it is strictly verbal or not, but in either case I ask for your Excellency's permission.

The Hon'ble Mr. H. M. Winterbotham seconded the amendment.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—May I ask a comma to be put after the word "like"?

The Hon'ble Mr. A. T. ARUNDEL:—The Secretary will look to the punctuation.

The amendment was put to the Council and agreed to.

Section 54.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to move that in section 54 of the Bill, clause (b), between the words "intermediate landholder" and the words "as the case may be" be inserted the words "holding on an undertenure created, continued or recognized by a landholder." This amendment relates to section 64 of the Act. Clause 3 of section 64 says:—

"(iii) In the case of lands held on any other tenure, the annual rent payable to the landholder or intermediate landholder, as the case may be, by his tenants together with any water-rate which may be payable for their irrigation shall be taken to be the annual rent value of the lands held by such tenants; and where such lands are occupied by the owner himself or by any person holding the same from him free of rent or at a favourable rent, the annual rent value shall be taken to be the rent ordinarily payable to the landholder for lands of similar quality leased out by him in the neighbourhood, together with any water-rate which may be payable for the irrigation of the lands so occupied by the owner himself, or by any person holding the same from him as aforesaid."

I want this amplification to be introduced.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal seconded the amendment.

The Hon'ble Mr. A. T. ARUNDEL:—I accept that amendment.

The amendment was put to the Council and agreed to.

Section 57.

The Hon'ble Mr. A. T. ARUNDEL:—I am prepared to accept a modification of the Honourable Member's amendment to this section.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI AVARGAL :—I agree to the modifications suggested in the illustration proposed. The illustration to be at the end of section 73 of the Act. In lieu of the amendment which I have notified under section 57 of the Bill and which deals with section 73 of the Act, with your Excellency's permission, I beg to move the following:—

In section 57 of the Bill, line 4, between the words "lands" and "as" be inserted the words "with or without a right of occupancy" and that the following be added to the section as clause (d).

"(d).—To the same section the following illustration shall be added:—

'Illustration.—An intermediate landholder is entitled to receive from his tenants, if any, Rs. 500 as the annual rent on 100 acres of land. The intermediate landholder has to pay to the landholder Rs. 50 as kattubadi, jodi, poruppu or quit-rent. If the local tax be at the rate of one anna per rupee, the landholder has to pay to the Collector Rs. 31-4-0 on Rs. 500 and the landholder can recover from the intermediate landholder the sum of Rs. 29-11-0, being the difference between Rs. 31-4-0 and half the local tax, namely, Rs. 1-9-0, assessable on the said Rs. 50. The intermediate landholder can recover from his tenants, if any, Rs. 15-10-0 being half the local tax on Rs. 500.'

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment. The amendment was put to the Council and carried.

Section 67.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR AVARGAL :—My next amendment is that in section 67 of the Bill, sub-clause (ii) of clause (c) and clause (d) be omitted. Sub-clause (ii) says: "(ii) if for any reason the distraint or a sufficient distraint of the defaulter's property is impracticable, by prosecuting him before a Magistrate." The idea of prosecuting a man who makes a default in payment of taxes due under this Act is, I respectfully submit, an innovation and the question is whether such a provision as this should be introduced. The present law is what is contained in section 81 of the Act, and to this we propose to add a clause for the prosecution of the defaulter as if the default were an offence. I submit that it is a serious thing to prosecute a man criminally for default; and we have other provisions to the effect that after the Magistrate makes an order adjudging the amount, he shall have to pay certain money as costs and if he does not pay all these he will be imprisoned. Virtually a man who does not pay his tax is prosecuted, as if he were an offender and if he does not pay even after that, he is imprisoned. I have seen absolutely no valid reason either in the Statement of Objects and Reasons or in the report of the Select Committee for the introduction of such an important provision as this. If it is conceded that the object of union panchayats is to make provision for the sanitation of a particular village, I seriously object to the improving of the sanitation of the village and providing for other little matters, by subjecting the villagers to such extraordinary liabilities as this. This is not the way in which local self-government ought to be extended in this country. It is asserted—I do not admit it—that the people are unfit to exercise the full privileges of local self-government. As far as my memory goes, while higher privileges are enjoyed in the rest of India, there is no penal provision, similar to the one we are now proposing, anywhere in India, that is a person who in any manner makes a default in payment of tax shall be prosecuted as if he were an offender before a

criminal court and shall be subjected to the consequences of a conviction. It is no wonder therefore that people don't take to self-government of this sort kindly and that occasionally riots do take place. I submit that we have no evidence to show that the powers hitherto exercised were insufficient for the collection of taxes. There must be evidence to show that the union panchayats have not been managed well with the existing powers, and that higher powers, which I consider and the Government of India rightly observed are liable to serious abuse, are needed. In the absence of such evidence, such an important provision as this ought not to be introduced and the villagers ought not to be submitted to a prosecution. There are a host of laws under which people are subject to prosecutions, the Abkari laws, the Salt laws, the Forest laws and the Penal Code. In addition to that, it is now proposed to place them in the hands of the petty union panchayat chairmen who might be village munsifs. The Hon'ble Mr. Stokes stated that a member of a local board prevented an overseer from making a road owing to enmity that he owed him. May we not suppose that a chairman might bear ill-will to a neighbour and prosecute him? To work this provision would require an amount of patience and enlightenment which are not likely to be possessed by the chairmen of union panchayats. I do hope, therefore, that the existing law may be left alone.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI AVARGAL :—I beg to second the amendment. The Bill, as originally committed to the Select Committee, contained a very small provision. That provision relates to attachment in default of payment and also stated that the chairman of a union panchayat was at liberty to bring a suit in the civil courts. In the place of that provision, we find a most sweeping and revolutionary change introduced by the Select Committee. Clause (ii) and clause (c) with two sub-clauses under it are perfectly new, and it seems to me that such a stringent provision as this for collecting small taxes from poor villagers is entirely out of place. A provision of this kind may be a useful one in the District Municipalities Act but to apply such a stringent provision as this to hamlets, groups of houses and villages would cause inconvenience and hardship. It would be sufficient if the power of attaching the moveables is preserved, and I think the provision contained in the original Bill is sufficient. The idea of empowering a union chairman to prosecute these people before a Magistrate does not commend itself to me for reasons which have been already stated.

The Hon'ble Mr. A. T. ARUNDEL :—I beg to say that I am not able to accept the amendment. The matter was carefully considered and it seemed desirable to put in this provision. I draw your attention to what follows after prosecution. That is, it should be proved to the satisfaction of the Magistrate that the person wilfully and negligently omitted to pay the amount due and wilfully prevented the distraint of property. These things have to be proved to the satisfaction of the Magistrate and it is only then he would impose a fine not exceeding twice the amount of the taxes due and also award the costs of the prosecution. That is the penalty if these different facts are proved.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR AVARGAL :—Except the fact that it was considered by the Select Committee, there is no argument advanced which would justify the retention of this provision. I do not think that the fact that it was considered by the Select Committee would be enough to satisfy the Council. In addition to what the Hon'ble Mr. Arundel has said, there is another section which says that if after the Magistrate's order he is unable to obey it, he should be punished 15 145

by being imprisoned. We make an offence of default which under the general law of the land is only liable to be made the ground of a civil action. If a man is to be prosecuted before a Magistrate, if when he is unable to obey the orders of a Magistrate he is to be imprisoned for it, I submit it is treating it as an offence. This is a peculiar function of the Magistrate altogether. We invest the Magistrate with some startling powers and we want him to help the chairman of a union panchayat by ordering a defaulter to pay a fine which may be twice the amount of the taxes due besides the costs of the prosecution. What is the meaning of the costs of the prosecution? The principles of assessing the costs have not been declared by us.

The Hon'ble Mr. A. T. ARUNDEL:—Will the Honourable Member allow me to ask him if he would like to accept a modification of his proposal that in clause (iii) of section 81, the words "or negligently" be struck out. That is, it has to be proved before the Magistrate that he wilfully omitted to pay the amount due.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Suppose he has got money in the form of a decree and he is unable to realise the money for the present. Then what view should be taken of his position? I am, however, obliged to the Honourable Member for proposing to omit the words "or negligently".

The Hon'ble Mr. A. T. ARUNDEL:—Do you wish to press your amendment?

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Half a loaf is better than no loaf and therefore I accept it.

With the permission of His Excellency the President, the Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal withdrew his amendment and moved the following amendment instead: That the words "or negligently" be omitted in clause (iii), line 24.

The Hon'ble M.R.Ry. P. Ratnasabhapatil Pillai Avargal seconded the amendment.

The amendment was put to the Council and agreed to.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I gave notice of the following amendment in case my first amendment is not carried: That for the words "for any reason the distraint or a sufficient distraint of the defaulter's property" occurring in sub-clause (ii) of clause (c) of section 67 of the Bill be substituted the words "the defaulter has property which may be legally distrained under this Act and if, owing to fraudulent conduct on his part, the distraint or a sufficient distraint of the same." This is not covered by the previous amendment. Suppose a man has a decree under which he could realise if it is executed Rs. 2,000; it takes some time for him to apply for execution and it may be deemed property for the purpose of distraint under this Bill. In the meantime, the chairman may rush to a prosecution. I move this amendment to save the villager from being prosecuted except for fraudulent conduct. I do not know if the Honourable Member is prepared to accept this amendment. By all means punish him for fraudulent conduct.

The Hon'ble M.R.Ry. P. Ratnasabhapatil Pillai Avargal seconded the amendment.

The Hon'ble Mr. A. T. ARUNDEL:—I am not prepared to accept the amendment. The word "willingly" is nowhere defined, but the word "fraudulently" is defined in the Penal Code. The meaning of the word "wilfully" may depend upon the interpretation which each man may put upon it.

The amendment was put to the Council and lost.

Section 79.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I mean to propose two amendments to section 79 of the Bill. We have given this village functionary, the chairman of the union panchayat, the powers of distraining property under a warrant. A very important question then arises as to which are the properties which this gentleman can distrain and which not. A list is given in section 94 of the Act as amended by the Select Committee. The section says: "The following property shall not be liable to be distrained." I wish to add to this list the following as clause (d): "tiles and other materials forming houses and other buildings notwithstanding they may be easily detached from such houses or buildings". The reason why I move this amendment is because I have known of cases in which certain ingenious gentlemen have fanciful ideas of moveable properties. Immoveable property is defined as something permanently fixed. Tiles fixed to the roof are held by these gentlemen not to be immoveable property, and the chairmen of unions will be enabled to take away the tiles and leave the people to the mercy of the sun, unless you introduce this amendment. I beg of you to accept this amendment, so that the unfortunate peasant may be left alone in order that he may labour more for the chairman and the rest of the village. If there are tiles for sale, they may be taken away. I have had a painful experience in this matter and I hope the Council will be pleased to accept this amendment.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I second the amendment. The Honourable Council are probably aware of the way in which these taxes are collected in villages. Instances there are in which doors have been removed from the door frames and brought to sale. The amendment which my Honourable friend has moved is in regard to tiles standing on roofs; and if doors could have been removed with impunity, they would next go to tiles and other materials forming houses.

The Hon'ble Mr. A. T. ARUNDEL:—Your Excellency, I am not prepared to accept the amendment. I am not sure whether the tiles and other materials do not go to form a house. The wording of the amendment is by no means accurate and it goes too far. If you go into details of this kind, I do not know where we shall stop. The next amendment is also on similar lines and I should like to hear what the Honourable Member has to say in favour of it.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The only objection is that it is inaccurate phraseology. It does seem to me that, if it is so, it can be corrected on the spot, the alteration being verbal. I have explained what I meant. Tiles are considered by some to be moveable property and by others to be immoveable property. A case has not been taken up to the High Court and so we have no legal decision on the point. Whether my expression is happy or not there is no misconception about it. I consider tiles on the roof of a house as forming part of the house. Tiles heaped in one portion of the house to be taken on to the roof might be taken away. Tiles on the roof of a house should not be removed. I must press my amendment and press it in the interests of the poor agriculturists.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The next amendment is also on similar lines. I simply wish to know whether the Government has power to exclude certain things. I descend to these details notwithstanding the Honourable mover's apparent objection to it. We have details given under the A

At any rate there is no power given under the Act under which the Government can exclude certain things. Either we must introduce the details in the Act or power must be given to Government or a Collector under which these details can be attended to. If the chairman of a union does act in the manner I have pointed out and if anybody takes an objection to what he does, he might say that what he does is not illegal. The Hon'ble Mr. Arundel's objection is that this is going too far into details. But on the other hand the inconvenience in not going to details will be great. Let the Government either take the power to decide what properties are to be attached or give some of these details in the Act. If the Government should take the power to exempt certain articles from attachment, I should be content. If, in any particular case, any hardship is brought to the notice of Government, the Government should have the power to exempt certain articles from attachment. In the absence of such a power, the only way to get on is to insert these things in the Act. I therefore propose that the following should be added to the list under section 94 as clause (d):—"Threshed and pounded grain for immediate use." There was an extraordinary case in which I appeared before a Collector. An attaching officer went into a poor man's house at night time, turned out all the women and locked the kitchen door and what was found therein. When I appeared before the Collector, the extraordinary statement of that gentleman was that to squeeze the money from them he wanted to deprive them of their supper that night. Being moveable property he had the legal right to attach the rice. I only ask you, gentlemen, if a person—I will tell you at once that he was a Tahsildar—in the position of a Tahsildar could defend his action in attaching cooked rice and curry, whether it is not necessary for us to make a provision to meet such cases? If you go to a poor man's house you may find threshed and pounded grain not for trade, but actually about to be cooked. I respectfully submit that the chairman should be told "thus far shalt thou go and no further." Absence of a provision like this may lead to faction and crimes. If there is rice for sale, of course that will be attached.

The Hon'ble Mr. H. M. WINTERBOTHAM:—Do you mean to say that the rice required for one day should be exempted?

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I don't say one day. Suppose there are ten members in the family and they are to prepare food for two and three meals.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—The amendment now sought to be introduced in regard to food and rice does not introduce any new principle. It simply follows the line of policy adopted by the Select Committee in including in the exempted articles such things as bedding, seed-grains, &c. Seed-grains may be necessary only six months hence. But under the policy of the law they have been exempted. The law is very sympathetic in the case of poor people to exempt bedding also. That being the case, the rice cooked for immediate use must go into that category. That is more necessary to be exempted than cattle, seed-grains and bedding. This amendment does not go against the policy of the Select Committee. I respectfully submit that the Honourable Member in charge of the Bill will see his way to accept this exemption. With unsympathetic authorities the present provision of the Bill may be productive of a great deal of harm. For these reasons I second the amendment.

The Hon'ble Mr. A. T. ARUNDEL:—I cannot accept the amendment. There will be a difficulty regarding the word "immediate." If you go into such details, we may

have to go to still further details. Exemptions made in the Bill are amply sufficient to meet the requirements of the case.

The amendment was put to the Council and lost.

Section 81.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to move that in clause (b) of section 81 of the Bill be added the following at the end:—"The words 'poor-houses' with a comma shall be inserted after the words 'lunatic asylum'." There are several clauses in section 81 of the Bill. Section 81 refers to section 95 of the Act which deals with various purposes to which the funds of taluk boards may be applied. Clause (iii) of section 95 states some of the purposes—"the construction, maintenance and repair of hospitals, dispensaries, lunatic asylums, choultries, markets, slaughter-houses, cart-stands." I want to insert in the clause after the words "lunatic asylums" the word "poor-houses." The construction and maintenance of poor-houses stand exactly on the same footing in regard to local funds as the construction of hospitals and lunatic asylums. The omission of the word "poor-houses" is due to an oversight on the part of the Select Committee, and if it had been suggested to the Select Committee, there would not have been any objection to its inclusion. The District Municipalities Act contains a provision for the erection and maintenance of poor-houses. The present Bill has been more or less amplified upon the provisions of the District Municipalities Act. I therefore suggest that "poor-houses" should be included in clause (iii) following the lines on which the District Municipalities Act has been framed. The Bombay Local Boards Act, section 30, clause (b), provides for the construction of "Dharmasalas." The word "Dharmasalas" refers to poor-houses. Practically we have a movement now in Calicut in conjunction with the district board to erect a poor-house. If poor-houses are not mentioned in this clause, it might be said hereafter that this was purposely omitted. I submit that one of the legitimate objects which ought to be included under clause (iii) should be the construction and maintenance of poor-houses.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

The Hon'ble Mr. A. T. ARUNDEL:—I cannot accept the amendment. It would be a dangerous thing to introduce this principle into the Bill. Up to the present I have admired the way in which the Hindu society has managed to dispose of the question of their poor. But if you once admit the principle that poor-houses are to be erected under the control of district boards and local boards there is hardly any limit to which the demands on the funds will not go. The funds at the disposal of these boards are limited, and if works of this kind are to be undertaken, I must warn Honourable Members that an increase in taxation will have to be made. Every local board finds it a difficulty to carry on the work it has to do. During the past year the Government had to make various allotments to local boards not to speak of the allotments to municipalities. Now it is proposed to introduce a far-reaching idea that poor-houses should be provided by local boards. This is a dangerous proposal and the Government cannot accept it.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I am only to say that the statement of the Honourable member in charge of the Bill that it will interfere with Hindu charity is rather a groundless apprehension. The provision

not a new one as it is already in the District Municipalities Act and in the Bombay Local Boards Act. If this is not expressly inserted in this way it will come under clause (vi) of section 95 of the Act which says:—“(vi) Other measures of local public utility calculated to promote the safety, health, comfort or convenience of the people.” Inasmuch as there are so many other provisions about sundry matters, this might also be safely included without any serious objection.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—My next amendment is that between clause (b) and clause (c) be inserted the following as clause (b1):—“In clause (iv) after the words ‘maintenance of schools’ shall be inserted the words ‘public libraries, reading-rooms, gymnasia or any institutions connected with the diffusion of education.’” I would ask Honourable Members to refer to section 95 of the Act, clause (iv), which says:—“The diffusion of education, and, with this view, the construction and repair of school-houses, the establishment and maintenance of schools, either wholly or by means of grants-in-aid, the inspection of schools and the training of teachers.” My amendment is simply an amplification of the principle embodied in this clause. This thing is provided for in the cognate Act of the District Municipalities Act and it is better that it is expressly stated in this Act.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal seconded the amendment.

The Hon'ble Mr. A. T. ARUNDEL:—I am more out of sympathy with this amendment than with any other hitherto proposed. It is perfectly true that the Act provides for education. Our policy has hitherto been as far as may be to encourage expenditure of local funds upon primary education. I cannot say that this has always been done. But at any rate that is our policy. Government spends very large sums on secondary education and it is now proposed that out of local funds we should have such things provided as public libraries, reading-rooms and gymnasia. With regard to reading-rooms and public libraries, if any of these were to be provided for out of local funds, it would be in larger unions where the people who would avail themselves of their advantage would be the officials and vakils and schoolmasters; and the people from whom the taxes are levied which go towards providing these things would for the most part and with rarest exception derive no benefit. In proposals such as these we are altogether going beyond what is wise and expedient for local fund boards. The Government must oppose the amendment.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I respectfully submit that public libraries are necessary.

The Hon'ble Mr. A. T. ARUNDEL (interrupting):—You have already spoken. You seconded the amendment.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The rule in question does not apply to amendments. I only seconded the amendment. The Hon'ble Mr. Thomson also spoke twice. Rule 16 says: “Except in discussing amendments, when the Council is settling the several clauses of a Bill no member other than the mover shall speak more than once upon a question; but the mover shall, if he has spoken to the question in making his motion, be allowed to reply. Provided that if the matter before the Council be an amendment of a Bill, the member in charge of the Bill shall be entitled to speak next after the mover and seconder of the amendment.” In the case of amendments the rule that a man cannot speak twice does not apply.

His Excellency the PRESIDENT:—You must refrain from speaking until this point of order is settled. (After a short while) I have no hesitation in ruling that rule 16 does not give right to a member who has spoken on a single amendment to speak again on the same amendment.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—My next amendment is that clause (v) of section 95 of the Act be omitted. Clause (v) says:—“The establishment and maintenance of relief works in time of famine or scarcity.” In support of my amendment I appeal to the authority of the Honourable Member in charge of the Bill and the argument which he used in connection with the other amendment under the same section in regard to the establishment of poor-houses, public libraries and reading-rooms. The Honourable Member said that the funds of the local boards were limited and we ought not to spend money on all kinds of objects. The question of famine and the establishment of famine-relief works is an Imperial one, and I do not think that any Honourable Member will contend for a moment that the funds of the local boards and district boards in the presidency will even be enough for providing for such a large Imperial and Provincial purpose as the establishment of famine-relief works. In support of my amendments I would refer to a similar provision in clause (i) of section 30 of the Bombay Local Boards Act, viz., “and the local board may at the discretion provide out of the said fund for the following matters, namely, the establishment and maintenance of relief and local relief works in time of famine or scarcity, &c.” There is a difference between the provision in our Bill and the provision in the Bombay Act. It is left to the option of the boards concerned to provide for famine relief if it is found they are able to do so. But here it is a compulsory provision in our Bill. The Bombay Local Boards Act says that in respect of famine relief it shall be lawful for every district board, subject to such limited expenditure as may be prescribed by the Commissioner, to open relief works. The provisions of law obtaining in Bengal are also similar. The funds of local boards should be limited to the scope of local objects for which those funds are in the first instance intended. I respectfully submit that Imperial works are out of place in a Bill intended to improve local wants and requirements. It may be said that the Government does not put this clause into operation and it takes upon itself the starting of relief works on occasions of famine or scarcity. If that is practically so, there is no necessity for a provision of this kind which might, on exceptional occasions, be sought to be made use of.

The Hon'ble M.R.Ry. G. VENKATABATNAM PANTULU Garu:—In seconding this amendment I beg to observe that under ordinary circumstances I should be extremely unwilling to increase the financial responsibilities of these boards. I quite agree with the Hon'ble Mr. Arundel in saying that the present funds of these boards are not enough to make them cope with their present requirements. But, who is responsible for this state of things? In the resolution of 1882 the Government of India directed that whenever a liability was transferred to a Local Board, a corresponding source of revenue should also be transferred. In 1884 the responsibility of establishing and maintaining relief works in times of scarcity was transferred to Local Boards without a transfer of any corresponding source of revenue. The Provincial Committee also recommended in 1883 that the 12 lakhs that used to be spent out of Provincial funds for the maintenance of trunk roads should be made over to Local funds, and Mr. Webster in introducing the Bill which became Act V of 1884 said that these contributions would continue.

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though not to the same extent as before. This assurance remains unfulfilled to this day. The establishment and maintenance of farms is an object which appeals to the sympathy of the rural population. I heartily sympathise with this object and there seems to be no other way of achieving it. The Local Boards cannot give effect to the new provision now proposed unless the Local Government comes forward to assist them with contributions.

His Excellency the PRESIDENT:—Are you speaking on this amendment or the next amendment?

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—I see I have been speaking on the next portion of the amendment. Anyhow I second the amendment before the Council.

The Hon'ble Mr. A. T. ARUNDEL:—If I could sever my official existence from my private capacity I should express myself personally in accord with the amendment now put forward. If the Government of India would permit us to throw the whole burden of famine on them as we hoped originally they would allow us to do, nothing would be more agreeable. But the policy of the Government of India is against the amendment brought forward by the Hon'ble Mr. Ratnasabhapati Pillai and this Government is unable to accept it.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to propose that after clause (b) be inserted the following clause (b2):—

“(b2) After clause (iv), the following clause (iva) shall be inserted:—

“(iva) The establishment and maintenance of model farms, the acclimatization of exotics, the importation and distribution of superior kinds of seed, the improvement of the breed of cattle and horses, and the introduction and preservation of fish”. If the funds of Local Boards can be spent legitimately on any object, it is on objects of this description. The funds of the Local Board mainly come from rural tracts from ryots and landholders. The Local Boards consist mainly of these ryots and landholders and nothing would interest them more than that District Boards and Taluk Boards should interest themselves in establishing model farms, in introducing exotics, in importing and distributing superior kinds of seed-grains, in improving the breed of cattle and introducing and preserving fish. The bulk of Local Boards consist of ryots and landholders, that is, persons interested in the improvement of agriculture. I need hardly submit that this would be a most useful and most desirable way of spending the funds contributed by the ryots themselves. The Local Boards Act of Bombay has amongst other things such provisions as the one I am proposing; and if I am permitted to say what I have just heard from the Honourable the Senior Member of Government, the Government will always be—

The Hon'ble Mr. A. T. ARUNDEL (interrupting):—I beg leave to say that I made no statement which the Honourable Member can quote.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I would therefore commend this very important matter in which almost every member of Taluk Boards and District Boards and Union Panchayats is personally interested. I would commend this suggestion to the favourable attention of Your Excellency and this Council. This is not a new provision but a provision which obtains in other provinces of India. The establishment of model farms depends upon the question of funds. If any particular District Board is able to command funds, there is no reason why the law should not legalise the expenditure on such objects.

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The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

The Hon'ble Mr. A. T. ARUNDEL:—I must oppose this amendment on the ground that Local funds are not able to bear this expenditure. I admit that the objects mentioned are very desirable and the Government, so far as they are able to do from “Provincial,” will be glad to make allotments; and even from Provincial funds they have been unable to do what they desired to do. Even the smallest farm would cost Rs. 10,000 a year. I must warn the Honourable Member again that these things lead to additional taxation, and if this is forced upon us, possibly by the Government of India, I think it will be necessary to consider whether increased taxation should not take place and the words of the Honourable Member will be quite even though he is not in favour of having any additional taxation.

The amendment was put to the Council and lost.

Section 84.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to move in clause (3) be omitted the words “is not unlawful,” and be substituted in their place the words “in respect of which private rights have been lawfully acquired.” This amendment relates to section 98 of the Act. This is a verbal modification of the amendment proposed and if the Honourable Member in charge of the Bill will accept it, it will make the section plainer. Clause (3) of section 84 of the Bill to which this amendment refers is in these terms “(3) If such projection, encroachment or obstruction is unlawful, the Local Board concerned shall make reasonable compensation to the person who suffers damage by such removal or alteration.”

The amendment fell through for want of a seconder.

Section 97.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to move under section 97 of the Bill, in section 117-Q, after the words “particular area,” inserted the words “upon the recommendation of the District Board.” This amendment deals with section 117-Q of the Act as amended by the sub-committee. It runs thus: “The provisions of sections 98-B, 100-B, 100-C, 100-D, 100-E, 100-G, 100-H, 100-I, 100-J, 100-K, 117-L and 117-M shall, unless and until the Governor in Council shall otherwise direct as to any particular area, apply only to areas included in unions.” In the first instance these provisions apply to unions, but if the Governor in Council so directs, apply to other areas also. All that I want is that if a particular District Board wishes to have the provisions of this section applied to areas which are in non-unions, they may move in the matter and submit a recommendation to Government.

The Hon'ble M.R.Ry. P. Venkataratnam Pantulu Garu seconded the amendment.

The Hon'ble Mr. A. T. ARUNDEL:—There would be no objection to some of the sections referred to by the Honourable Member in the amendment he proposes. In regard to other sections it seems necessary that the Government should retain the power. On this ground the amendment must be opposed.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—If my amendment is accepted it does not follow that the Governor in Council is deprived of his power. It is open to a District Board to make a recommendation, and if it does not make a recommendation, the Governor in Council may proceed with the matter.

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The amendment was put to the Council and lost.

Between sections 99 and 100.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to move formally the next amendment which stands in my name.

After section 99 of the Bill, be inserted the following section as section 99A:—

Section 99A.—In section 121 of the Act, to alter the words “*may be*” into “*shall be*”.

In clause (i) to alter the words “*either wholly*” into “*partly*,” and the word “*or*” into “*and*”.

In clause (ii) to omit the words “*Partly so appointed and*”.

After clause (ii) to insert the following proviso:—

“Provided that no person who holds a salaried office under Government shall be eligible for election.”

This amendment relates to the election of the members of the union panchayats.

The Hon'ble Mr. A. T. ARUNDEL:—We have already discussed this subject in connection with Local Boards and District Boards; and in the case of union panchayats, the objection is still greater.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The substantial portion of my next amendment is the same as the previous amendment with slight variations. I do not think that the variations will help me much. I therefore withdraw the amendment.

With the permission of His Excellency the President the amendment was withdrawn.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—There is one thing about the election of the Chairmen of union panchayats which is distinct from the main portion of my amendment. I beg to move that after section 99 of the Bill the following section be added:—

“For section 123 the following shall be substituted: ‘Unless the Governor in Council, for reasons to be recorded, otherwise directs, the Chairman of the panchayat shall be appointed by election by its members from among their own number in accordance with such rules and conditions as may be prescribed by the Governor in Council.’” My whole amendment including the one which I withdrew relates to two things: firstly to the proportion of the elected members and secondly the election of Chairmen of the union panchayat. It is the amendment which relates to the second I now move.

His Excellency the PRESIDENT:—I understood you to say that you wished to withdraw it.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I wish to put it. I am sorry I was not specific in my statement. Next to the election of members this is somewhat important. As all the members are nominated, it would seem easy to allow these members to elect their own Chairman. This is in accordance with the

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principles of Local Self-Government as granted to municipalities and similar bodies. There can be no harm in permitting the members of union panchayats to elect their Chairman as a small beginning.

The Hon'ble M.R.Ry. P. Ratnasabhapatil Pillai Avargal seconded the amendment.

The Hon'ble Mr. A. T. ARUNDEL:—I must oppose the amendment.

The amendment was put to the Council and lost.

Section 100.

With the permission of His Excellency the President the Hon'ble M.R.Ry. P. Ratnasabhapatil Pillai Avargal withdrew the amendment of which he had given notice under this section, as being a consequential one.

Section 103.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I beg to move—

In section 103 of the Bill—

(a) the words “other than an *ex-officio* member”, in sub-clause (1) of clause (a) be omitted;

(b) for the words of clause (c) be substituted the words “clause (iii) of the same sub-section is hereby repealed.”

This relates to dismissals, suspensions and removal of members.

The amendment fell through for want of a seconder.

Section 104.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I move that, under section 104 of the Bill, in section 127-A, for the word “*temporary*” be substituted the word “*officiating*”.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

The Hon'ble Mr. A. T. ARUNDEL:—I discussed the matter with my Honourable colleague Sir V. Bhashyam Aiyangar, and I think that, on the whole, the existing wording is better than the one suggested.

The amendment was put to the Council and lost.

Section 108.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—I beg to move that, in section 108 of the Bill, the passage, “sub-section (2), the words ‘subject to the approval of the President of the Taluk Board’ shall be inserted at the beginning; the word ‘shall’ shall be inserted between the words ‘and’ and ‘pay’, and the words ‘such servants may be transferred by the President of the Taluk Board from one union to another under the same Taluk Board, whenever he considers such a course necessary’, shall be added at the end; and ‘in’ shall be omitted.” This amendment relates to section 134 of the Act. The section says:—

134. (1) The panchayat may at a meeting, subject to the approval of the President of the Taluk Board, from time to time, fix the number and salaries of the servants necessary for carrying out the purposes of this Act.

The amendment fell through for want of a seconder.

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Section 116.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to move that in section 116, clause (xv) of the Bill be omitted as it stands and the following be substituted:—

“(xv) As to the interpellation of the president of the local boards and chairmen of panchayats by the members thereof.”

This refers to section 144 of the Act. This is only a verbal modification and, if it is approved, may be accepted. Clause (xv) of section 144 relates to interpellations and says, “as to the interpellation by members of all or any of the local boards of the president; and”.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—I formally second this amendment. I doubt very much whether the members of the union panchayats are quite fit to exercise this privilege.

The Hon'ble Mr. A. T. ARUNDEL:—I object to the amendment on the ground that it is altogether much too wide to make an arrangement for interpellation of chairmen by village panchayats.

The amendment was put to the Council and lost.

Section 119.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—The next amendment which stands in my name is that section 119 of the Bill be omitted. Section 119 of the Bill says:—“In section 150, sub-section (1), the words ‘a statement’ shall be omitted”. No reasons are given by the Select Committee for this omission. It is better to give a statement apart from the figures. I therefore beg to move the amendment, the effect of which is to leave the law as it is.

The amendment fell through for want of a seconder.

Section 156.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg leave to drop the first clause of my next amendment.

With the permission of His Excellency the President, clause (a) of the amendment was withdrawn.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to move that in line 37, between the words “Local Board” and “on account” be inserted the words “or Chairman of a Panchayat.” This amendment relates to section 156 of the Act. Clause (4) of section 156 says:—

“(4) No action shall be brought against the president of a local board on account of any act done in pursuance or execution or intended execution of this Act or in respect of any alleged default on his part in the execution of this Act, if such act was done or if such default was made in good faith; but any such action shall, so far as it is maintainable in a Court, be brought against the local board, except when brought by the local board or the Secretary of State for India in Council under section 157 on account of anything done by the president himself.”

Any protection intended to be given to the president of a district board ought to be extended to the chairman of a panchayat. I believe this omission is due to an oversight, and if the Honourable Member could accept the amendment, I think it will improve the Bill.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

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The Hon'ble Mr. A. T. ARUNDEL:—I am ready to accept it if the Honourable Member is willing to insert at the end of the section between the word “President” and “himself” the words “or chairman.”

The Hon'ble M.R.Ry. P. Ratnasabhapatil Pillai agreeing to this, the amendment was put to the Council and agreed to.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to move that in line 29, after the words “such tender”, be inserted the following sentence:—

“In actions for the recovery of immoveable property or for a declaration of title thereto, if before action is commenced, such property is surrendered or the title thereto is admitted by the defendant, the suit shall be dismissed with all costs.”

This amendment relates to clause (2) of section 156. The Council will perceive that the whole of this section 150 deals with action against local boards. The actions contemplated under this section are actions not only for compensation of money but actions intended for the recovery of immoveable property or for the declaration of the title in regard to immoveable property. Clause (2) of the section goes upon the assumption that such actions are for compensation. It says:—

“(2) If the local board, or panchayat, or member or servant or other person to whom notice is given as provided in sub-section (1) shall, before action is commenced, tender sufficient amends to the plaintiff, such plaintiff shall not recover more than the amount so tendered. The plaintiff shall also pay all costs incurred by the defendant after such tender.”

Suppose it is an action for the recovery of immoveable property illegally taken possession of by a local board, I want to provide that, if the local board, after the receipt of the notice of the action surrenders the land unlawfully taken possession of, the suit should be dismissed with costs. Section 156 provides for actions for compensation of money. After the receipt of the notice, if the intended action is a proper action, the local fund board may tender sufficient amount of compensation and, in such case, the Court shall decide that the man shall not get more than what is tendered. In regard to immoveable property, there is no procedure laid down, and my amendment, if adopted, will meet the case. If a local board takes possession of a land unjustifiably, and if it receives 30 days' notice of the action, and if the local board surrenders the property, and if the man still insists and goes to the Court, then the provision is that his suit shall be non-suited with costs.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

The Hon'ble Mr. A. T. ARUNDEL:—I discussed the legal question with the Honourable the Advocate-General, and I agree with him that this amendment is needless, and I must therefore oppose the amendment.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—If the Honourable Member in charge of the Bill would state as to why there will be no difficulty with regard to actions for the recovery of the immoveable property and would state that the procedure I suggest is still open in spite of the provisions of the Bill as amended by the Select Committee, an explanation of that kind would be very satisfactory. I think it will be very desirable if the Honourable Member should make a statement that the procedure I indicate will still be open under the section as it has been amended.

The amendment was put to the Council and lost.

Section 127.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—I beg to move that, in section 127 of the Bill be added, the following words at the end :—

“ And the following words shall be added to the section as sub-section (3)—

(3) When, under the provisions of this Act or any rule made thereunder, an appeal is heard, or an order is revised by a local board, no president, vice-president, chairman or other person who passed the order, or who was party to the passing of the order, appealed against or revised, shall take part, directly or indirectly, in the discussion or decision of the appeal or revision proceedings.”

This amendment involves an important principle. I think it was conceded in this Council that it was an important principle that one and the same member who was once a party to an order or a resolution shall not again take part in it when it is reconsidered on appeal, no matter how arising. As regards this, the principle is easily and readily conceded both in the civil and in the criminal law. It is conceded in the criminal law that a Magistrate or a Judge who accords sanction for the prosecution of a man shall not have power to try the man for whose prosecution he has given sanction. It is also a right of the accused under the Criminal Procedure Code, that when a person has been tried and convicted by a Magistrate or a Judge, such Magistrate or Judge shall not take part in his appeal or revision. In civil proceedings we have corresponding provisions. Some five or six years ago when elected members came into this Council, there was once a proposal to include a provision in one of the enactments that the Members of the Board of Revenue, who decided certain questions as Collectors, should not take part in regard to appeal or revision in regard to those very questions if, in the meanwhile, they became Members of the Board. The reply of the late Mr. Grose was very indignant and he said that the traditions of Englishmen were quite sufficient to protect everybody against dangers of this kind and there might as well be an amendment to teach the members how to dress themselves. He said that their traditions were so great that no Englishman was likely to do it. I do not see any reason why a similar provision should not be included in this Bill as in the case of the Civil and Criminal Procedure Code. Unfortunately, in spite of the traditions, I now find from the rules published in the Local Fund Code that presidents of local fund boards, after dismissing or suspending their servants, can sit and take part in the decision of appeals from their own orders. How this practice has sprung up, in spite of the assurance of Government that it is against the traditions of Englishmen, I cannot understand. As a matter of fact, although they may be expected to be away while their orders are discussed and disposed of, not only are they not away but they are present and take a prominent part in the discussion and decision. Just now the Hon'ble Mr. Thomson said that he disposed of a case on appeal from his own order, but he was defeated by a slender majority of one. Of course I take it to mean that he also took part in the disposal of the case; and it is in the highest degree undesirable that persons who issued the original order should take part in the discussion of such order on appeal and use their influence, however legitimate they may think it to be. The advantage of giving a person the effect of a difference of view is greatly minimised and in some cases defeated by allowing persons whose orders are appealed against to take part in the appeal; and, in the present state of circumstances, I don't think I shall be considered to be in bad form if I allude to the fact that a vast majority of the members of district boards and taluk boards in the immediate presence of the divisional Collector, Sub-Collector, Deputy Collector and

Tahsildar would be afraid of voting against an order that is appealed against; and in the procedure laid down there is no voting by ballot. No doubt the president asks the members to raise up their hands, but it is seldom the hands are counted. Once upon a time two European gentlemen—a Zilla Surgeon and a Missionary, appointed to be members of a municipal council as well as of a district board—told me there was no such thing as exactly ascertaining the wishes of the members of the district board. If the president is a strong man, he goes on stating the grounds for sometime and asks “Is this carried?”, looking down and immediately writes down “Carried.” He does not take the trouble to see who are for and who are against a motion. In accordance with the spirit of the criminal and civil law, in accordance with the declaration made by Government in this Council that it is against the traditions of Englishmen that one and the same person should take part in the original order as well as in the appeal is repugnant, I bring forward this amendment. If the appeal is worth having, either give it *in toto* or I respectfully submit the right of hearing appeals may be taken away from local boards and given to the Board of Revenue or Government. If the persons affected are to have the right of appeal let them have the reality of it, let the appeals be conducted with the fullest freedom. I submit that the fullest freedom cannot be had in the discussion and final disposal of appeal as if the same gentlemen as passed the original order—they may happen to be high authorities—are allowed to take part in the appeals. I conclude by again calling your attention to the clear intention of Government that such things shall not take place.

The amendment fell through for want of a seconder.

Section 130.

His Excellency the PRESIDENT, indicating the Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal when rising to move an amendment that section 130 of the Bill should be omitted :—Are you aware whether you have a seconder? It will be a pity to take up the time of the Council with a motion for which you may have no seconder.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—I don't know, Sir, if I have one. I did not go about canvassing, Sir. Besides that, I was very short in moving my last amendment.

The amendment fell through for want of a seconder.

Section 131.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal :—I beg to move that section 131 of the Bill be omitted. This section deals with schedules (A) and (B). In all these matters the taxation has been raised from where it was. I think it is undesirable to raise the taxation, and I therefore beg to move it.

The Hon'ble M.R.Ry. G. VENKATARAMAN PANTULU Garu :—I beg to second this amendment. If there is any amendment on the agenda on which I feel strongly, it is this. Honourable Members are aware that house-tax came into existence under the Local Fund Act IV of 1871. Under that Act, the house-tax was not to be imposed generally, but only in villages or groups of villages in which a grant-in-aid school already existed or in which the inhabitants were prepared to establish a school under the grant-in-aid rules or in which the Government might determine to establish

schools. Government soon found that the collection of the tax was attended with great unpopularity. The tax was held in abeyance from 1873—1874 and the Government then made a grant of Rs. 67,000 from Provincial funds and of Rs. 22,000 from the Village Service fund, with a view to obviate the necessity for closing the sanctioned union schools in consequence of the loss of income derived from the house-tax. This tax was again revived in Act V of 1884—revived in the face of the protests by the Madras Native Association that it should not be imposed. The tax was to be imposed not for education but for the sanitary conservancy of villages. In regard to the administration of this tax, my experience as the vice-president of a district board for five years and as a member of a district board for ten years convinces me that there is no more unpopular tax. The president of my district board characterised it as "legalised extortion" in one of his administration reports and the several instances that have come to my knowledge in regard to its levy only confirm me in the view that that remark is not unwarranted. Very lately an overzealous President of a local board enhanced this tax through the Chairman in the case of a certain union. Until the President, who is a 1st Class Magistrate, accompanied by the Tahsildar and the Police went to the village and threatened to use, as I was told, physical force, the tax could not be levied. The arbitrary revision of the tax has caused a good deal of discontent among the tax-payers. If they are not willing to pay the enhanced tax, they will go without the comforts which the enhanced tax will give them. Another fact to be remembered is, that every revision of assessment is attended with an increase of local taxation. With these remarks, I commend the amendment to the favourable consideration of Government.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I beg to support this amendment, as I have given notice of a similar amendment. The classification as it stands is given in the agenda. These houses in the villages do not yield a rent; they are merely huts covered with leaves. There is no justification for increasing the tax cent. per cent.

The Hon'ble Mr. A. T. ARUNDEL:—I am sorry I cannot accept the amendment though the arguments in favour of it have been extremely well put. The gentlemen who are in favour of it overlook the fact that the tax on houses is levied at a rate not exceeding the rate given in the schedule. There is no doubt that it is necessary to levy the tax with consideration whatever it may be. But the rates of the tax depend upon the character of the union. As soon as I began to examine this, the consideration at once came to my mind that in one town in the Kistna district, which was not a municipality, though it was almost fit to be one, and was only a union, there were the Taluk cutcherry, the District Munsif's court, the Deputy Collector's cutcherry and also a very large zamindar's mansion. It is preposterous to say that a tax of Rs. 10 is too much for any of these buildings. In many other places there are one or two large buildings which can well afford to pay the higher rate of tax. I think it depends upon the union what the rate of tax should be. In some of the unions that I am acquainted with, the rates entered in the revised schedule are not at all excessive. For these reasons I am obliged to oppose the amendment.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—In reply I simply wish to say that these are no doubt maximum rates and I have not overlooked that fact. I have not also overlooked the reviews from year to year from which I find that once the power is taken, the taxes are raised to the maximum point possible. Forgetting these reviews I submit that the maximum rate will not prevent the

poor houses from being over-assessed. It is conceded that the levy of these full rates may work hardship. It is impossible for Government to supervise the cases of abuse of authority in these matters, and I therefore respectfully submit that seeing that in unions we have given no rights to residents and tax-payers, it is better to levy the tax at the rate to which they have been accustomed hitherto, and not to raise it in the hope that because it is a maximum it would not be levied.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—The next amendment is similar to the one I just lost. I therefore beg to withdraw it.

With the permission of His Excellency the President, the amendment was withdrawn.

The Hon'ble Mr. A. T. ARUNDEL:—I beg leave to move that the Bill, as amended by the Select Committee and as further amended by the Council, be passed into law at once.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—Your Excellency, in seconding this motion, I offer my congratulations to the Honourable Member in charge of the Bill on having framed a measure, which removes some of the administrative difficulties which have cropped up during these fifteen years, though I am sorry to observe that it does not add to any of the privileges of local boards. I only hope that the elastic provisions of the Act will be worked in future in a more sympathetic spirit than has been the case till now.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—While regretting that many of the amendments brought forward by non-official members have been vetoed, I cannot but offer my hearty congratulations to the Honourable Member in charge of the Bill, on whom a very heavy labour devolved in getting this measure through the Council.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—It is always a matter of considerable difficulty for one to conduct oneself under such circumstances as the present. On the one hand, there have been congratulations when I thought that there should have been condolences. The gist of the remarks made in this connection is that the members of the Select Committee and others have undergone a very great labour. If one's pains and labours would entitle one to congratulations, I believe that the Hon'ble Mr. Ratnasabhapaty Pillai and the Hon'ble Mr. Venkataratnam Pantulu are perfectly right in congratulating Government on this measure, but there is another side to the question. Local self government, or by whatever name you may call it, has been extended from the wrong end. You have placed the residents of union panchayats in the hands of the redoubtable Chairman, the village munsif, who in various ways is subordinate now to the head constable, another time to the Tahsildar and then to the Revenue Inspector, and to everybody else that goes to or near his village and who is also the purveyor to every official that has occasion to visit or pass his village. Under this law, the poor people have not only their taxes raised, but are to be prosecuted before Magistrates in case of default of payment; and the Magistrate adjudges not only the payment of the tax, but also the costs, and also a fine which is twice the amount of the tax. One other section for an amendment of which I have not had the honour of a seconder from the elected members nor, of course, from among other Honourable Members provides for imprisonment if the defaulter does not pay the tax. I am exceedingly sorry that I am ordinarily obli-

**BILL FURTHER TO AMEND THE MADRAS
LOCAL BOARDS ACT, 1884.**

to differ from so many gentlemen whether on this side of the table or on that side. I strongly deprecate any extension of local self-government from the wrong end. It is unjust to the people and this is not the way to make it popular. The Hon'ble Mr. Arundel told us somewhat unwittingly that there are certain places in the Kistna district which are nearly fit to be municipalities. If they are nearly fit to be municipalities then when they are three years old as municipalities they will be entrusted with the privilege of election, but when I asked the Honourable Member to give some portion of the privilege of election to the very same men, he said that they were unfit for it. If they are very nearly fit to be members of municipalities and are entitled to elect members, why do you say that as members of union panchayats or taluk boards they are unfit to have the right of election? I do not know if the Honourable Member will reconcile this portion with the other portion of the statement which he made in the course of the debate to-day. In these circumstances, it seems to me that the effect of this Bill will be, as I said on a former occasion, in the case of the District Municipalities Bill, that the department will work more smoothly. There is no doubt that under the present system more money will be exacted, but more tears will be shed and more oppression will be practised. I therefore submit that I decline to take part in these congratulations and to vote for this motion.

The Hon'ble Mr. A. T. ARUNDEL:—Before the motion is put to the vote, I should like to say one word to express my thanks to the two non-official members of the Select Committee, the Hon'ble Mr. Ratnasabhupati Pillai and the Hon'ble Mr. Jambulingam Mudaliyar, for the very great assistance which they gave to the Committee throughout its sittings.

The motion was put to the Council and agreed to.

His Excellency the PRESIDENT:—At this late hour of the evening I think it would be for the convenience of Honourable Members of the Council that we should adjourn for the consideration of the Financial Statement which still appears on the business paper. The Council will therefore adjourn to Friday next at noon.

The Council accordingly adjourned.

H. TREMENHEERE,
Secretary to Government.

*Proceedings of an Adjourned Meeting of the Council of the Governor of Fort
St. George assembled for the purpose of making Laws and Regulations
under the provisions of the Acts of Parliament, 24 and 25 Victoria,
Cap. 67, and 55 and 56 Victoria, Cap. 14.*

The Council met at the Council Chamber in Fort St. George at 12 noon on Friday the 6th day of April 1900.

P R E S E N T :

His Excellency The GOVERNOR OF MADRAS, G.C.M.G., G.C.I.E.,—*Presiding.*
The Hon'ble Mr. A. T. ARUNDEL, C.S.I.
The Hon'ble Mr. H. M. WINTERBOTHAM.
The Hon'ble The RAJA OF BOBBILL, K.C.I.E.
The Hon'ble Mr. G. STOKES.
The Hon'ble Mr. G. S. FORBES.
The Hon'ble Lieut.-Colonel Sir GEORGE MOORE, *Kt.*, C.I.E.
The Hon'ble Mr. J. THOMSON.
The Hon'ble Mr. F. A. NICHOLSON, C.I.E.
The Hon'ble Mr. EARDLEY NORTON.
The Hon'ble M.R.Ry. P. RAJARATNA MUDALIYAR AVARGAL, Diwan Bahadur.
The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR AVARGAL, B.A.
The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI AVARGAL, B.A.
The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU GARU.
The Hon'ble Mr. G. H. STUART, M.A.
The Hon'ble Mr. F. J. E. SPRING, C.I.E.
The Hon'ble Mr. G. G. ARBUTHNOT.
The Hon'ble The Rev. W. MILLER, M.A., LL.D., D.D., C.I.E.
The Hon'ble Nawab SAIYID MUHAMMAD SAHIB Bahadur.
The Hon'ble Mr. G. L. ACWORTH.
The Hon'ble Mr. W. J. H. LEFANU.

FINANCIAL STATEMENT.

His Excellency the PRESIDENT:—I will ask the Hon'ble Mr. Arundel to present his explanation on the budget.

The Hon'ble Mr. A. T. ARUNDEL in explaining the annual Financial Statement for the year 1900-1901 said:—

INTRODUCTORY REMARKS.

The Financial Statement which I have the honour to present on this occasion is not of an encouraging character, and contains few features of novel interest. (I) On the accounts of 1898-99 I find nothing to remark. (II) As to the REVISED ESTIMATE of 1899-1900, the Council will be interested to know that the annual cost of the four important schemes referred to on page 371 of the Financial Statement will be as follows:—

	RS.
Improvement of Taluk establishments	1,04,000
Establishments of four Munsifs' Courts	36,000
The Railway Police scheme	24,000
The re-organization of the Registration department	21,000

As the schemes were not introduced at the beginning of the year, the actual cost of all four was Rs. 1,08,000. The lump provision of 8·73 lakhs in the budget for re-appropriation (page 371, Financial Statement) enabled Government, as stated, to assist Local Boards and Municipal Councils to meet the heavy strain on their resources on account of plague. The allotments were as follows:—

District Boards.			Municipal Councils.		
		Grant. RS.			Grant. RS.
Anantapur		20,000	Bellary		6,000
North Arcot		25,000	Kurnool		5,000
South Arcot		15,000	Cuddapah		1,900
Bellary		50,000	Cuddalore		1,000
Chingleput		12,000	Coonoor		1,800
Cuddapah		12,000	Ootacamund		10,000
Gódvári		15,000	Gudiyáttam		1,200
Kistna		12,000	Tirupati		2,700
Kurnool		25,000	Vellore		19,000
Salem		13,000	Berhampur		1,000
Tanjore		20,000	Cocanada		4,600
Vizagapatam		15,000	Trichinopoly		4,500
			Calicut		1,600
			Tiruppattúr		20,000
Total		2,34,000	Total		80,300
Grand Total		3,14,300			

I see that a misapprehension exists in some quarters that this sum of 8·73 (*vide* figures on page 393 under 45. *Buildings and Roads*) was surrendered. The allotment was utilized for the purposes named, among others, and the allotment under Public Works was increased from 22·16 to 23·80; or by 1·64.

As to Plague expenditure the Government of India agreed to bear the actual cost to Provincial. This was originally estimated at 6·41, but the revised estimate is 3·05 and the contribution from Imperial is entered at this sum. The figures under 24. *Medical* on page 391 were therefore reduced and the figure under *Adjustments* (page 390) was correspondingly reduced.

The Government of India has also agreed to bear the cost of direct famine expenditure in 1899-1900. The revised estimate under this head is 2·15, but the actual expenditure will probably be less. The sum of 2·15, however, has been added to the amount under *Adjustments*.

Under the head of *ADJUSTMENTS* the fixed assignment made to us by Imperial in the present contract to make up the deficiency in the normal expenditure is 16·46. In the revised estimate, however, we have 21·52. The difference of 5·06 is made up as follows:—

	LAKHS.
Add—	
Special grant by Imperial	1·00
Recovery under Medical: training of hospital assistants for Burma ..	·17
Grant for plague	3·05
Do. famine	2·15
Costs in Jagga Rao Observatory suit	·07
	6·44

Deduct—	
Repayment of contribution for the purchase of cinchona bark ..	1·02
Certain charges under Salt	·13
Do. under Observatories	·23
	1·38
	5·06

Somewhat similar arrangements account for the figure under *Adjustments* for 1900-1901 which stands at 16·27.

Fixed assignment	LAKHS. 16·46
Add—	
Recovery under Medical: training of hospital assistants for Burma ..	·17
	16·63
Deduct—	
Contribution on account of certain charges under Salt	·13
Do. do. do. under Observatories	·23
	·36
Net transfers to Provincial	16·27

Under Expenditure, I may explain that the costs under civil suits referred to in the Financial Statement (page 373) were Rs. 1,750 in the Parlákimedi Maliah suit and Rs. 7,400 in the Kondagai registration suit in Madura.

Under 19-A. Law and Justice (page 378, Financial Statement), the expenditure has largely increased owing to the necessity for appointing Additional Sessions Judges to try the cases arising out of the Maravar-Shanar disturbances in Tinnevely. But for this cause the revised estimate would have fallen considerably below the budget estimate, and a larger sum would have been available for other expenditure. The public thus suffers for the misdeeds of a section of the community in a single district.

On page 393 it will be seen that the closing balance is expected to be 11·60 or 8·40 less than the 20 lakhs which the Government of India consider should be the minimum balance of this Government. It is of course quite impossible for this Government to make up the amount. That could only be done by a grant from Imperial. ¹⁵₁₄₅

BUDGET ESTIMATE FOR 1900-1901.

The year opens with a balance of 11·60 or 8·40 less than the 20 lakhs which we ought to have as a minimum. The closing balance is estimated at 6·60 or 13·40 less than the 20 lakhs which we ought to have as a minimum. Omitting the balances and comparing receipts with expenditure, the latter exceeds the former by 5 lakhs—the amount of deficit. In our budget as originally prepared the deficit stood at 9·50 and the closing balance at 5·37, but this did not include any expenditure on famine. Under instructions from the Government of India we have cut down our proposed expenditure from 334·89 to 329·51, inclusive of 3·05 lakhs for famine. Our anticipated expenditure under Famine in 1900-1901 is 10·25; and the Government of India will meet any expenditure in excess of the 3·05 lakhs entered in our budget.

On page 373 it will be seen that the Government of India has refused to meet charges on account of plague in 1900-1901. This decision bears the more heavily on Provincial funds, because the prevention of plague is admittedly an Imperial interest in view of the external trade of the country, and has been strongly pressed upon us not alone as a matter of self-preservation. If plague continues to abate in this Presidency, it may be possible for Provincial funds to meet the debit now thrown upon them, but should it unfortunately increase, the finances of this Government will become more impoverished than they are at present.

On page 385 will be found an estimate under Miscellaneous for considerable receipts on account of Pearl Fishery. I have learned to-day to my regret that the fishery is a failure.

On page 392 under Contributions from Local Funds: Māvaram-Mutupet Railway: will be found an entry of 46. It is probable that this sum will not be realized. It represents this Government's share of the net receipts of that railway, payable on account of the joint ownership of the railway by Government and the District Board. The amount which Government originally advanced out of Provincial to assist the District Board to construct the line was 12·35 lakhs or approximately one-half. The District Board now proposes to extend the line and to obtain the necessary capital by raising debentures in the open market on the security of the existing railway. This, however, may be difficult to do, so long as Government is joint proprietor. The Government has therefore declared the District Board to be sole owner with effect from 1st January 1900 and the District Board will thus be enabled to raise by debentures a sufficient sum to pay back the 12·35 to this Government and to complete the proposed extension of the railway. It will be anticipated by the Council that the budget should show an enhanced receipt of 12·35 which would go far to raise our balance to the prescribed minimum of 20 lakhs. As the amount was originally paid out of Provincial, to Provincial it may be expected to return. The Government of India however takes a different view and has directed that the payment by the Tanjore Board when it is made is to be treated as an Imperial receipt. The Government of India states that under the system of Provincial settlements this Government does not acquire any separate proprietary right in any work on which it spends Provincial revenues: it merely acquires for the period of each settlement an enlarged control over a certain part of the general revenues for special objects; and it is forbidden to invest any of the Provincial revenues. When special permission is given to spend money on the construction of railways, such expenditure must be regarded as final expenditure and not as an investment.

The net result therefore to this Government of the repayment by the District Board of Tanjore of the 12·35 advanced out of Provincial funds will be that unless this Government obtains a special compensating assignment from the Government of India during the present contract period, it will lose the amount hitherto received as its share of the net receipts—a sum which this year is estimated at 46.

THE CONTRACT.

A few remarks on the working of the current contract may be of interest to the Council. We have now just entered its fourth year. Last year I explained how the assignment of Provincial funds was fixed at the beginning of the term of contract. Our normal expenditure is taken and a revenue is assigned to meet it. Any additional money that may be required for the development of the Presidency must come out of the fractional share we retain out of increases of revenue during the term. Except under Public Works almost the whole of our revenue is required to meet the fixed charges of administration under Establishment, &c., in the various departments. Under Public Works there is entered a lump sum for expenditure on works, and this is almost the only allotment that can be drawn upon to meet unforeseen necessities. The result of diminishing the allotment for our public works is not only that the works, many of them necessary for the orderly development of the country, are starved, but that the cost of supervision for the remainder becomes inordinately enhanced; for we cannot dismiss our permanent Engineers and their staff when there is not enough work for them to do.

It is a condition of the Provincial contract that the Imperial Government reserves its claim, at the expiry of a term of contract, to such share as the circumstances of the time make necessary, in the increases of revenues which have accrued to the province during the term of contract but which were reserved to the Provincial Government during such term. In other words, the Supreme Government is at liberty to resume, at the end of each contract period, the entire amount which is represented by the excess of the Provincial revenues over the Provincial expenditure calculated at the standard attained at the time of the settlement of a new contract. In this manner resump-tions of 17·44, 10·38, and 13·00 lakhs have been made by the Government of India on the settlement of the last three contracts. It is also a theory of the Provincial contract that we should start with a minimum balance of 20 lakhs to meet the necessities of famine, and that this balance should be restored when by reason of necessity it has to be drawn upon. We, however, virtually commenced the present contract period with a balance of 10 lakhs instead of 20 lakhs; and this was still further reduced by such fraction of 5 lakhs more as we were not able to recover from local boards. Beginning in this impoverished way our progress through the current contract has been anything but encouraging. At present the result of the three years just over and the anticipated result of the fourth on which we have just entered, as compared with the figures of the present contract, are, after excluding extraordinary items such as special contributions from Imperial and Famine and Plague Charges covered by contributions from Imperial, as follows:—

		Receipts.	Charges.
		LAKHS.	LAKHS.
1897-98 (Actuals)		5·58	+ 21·35
1898-99 (")		6·79	+ 5·76
1899-1900 (Revised estimate)		1·51	+ 10·14
1900-1901 (Budget ")		11·13	+ 16·13
Total	.. +	25·01	+ 53·38
Deficit	.. —	28·37	

Our difficulties have been further increased by another factor.

I have mentioned above that under the contract our only prospect of additional funds for the development of the Presidency lies in the fraction we are allowed to retain of the increases of revenue: for instance, one-fourth of the increases in Land Revenue and Excise, three-fourths of the increase in Stamps, one-half of the increases in Income-tax and Forest, and so forth. But this proceeds on the assumption that the revenue will always increase.

Unfortunately this is not always the case. The Land Revenue diminishes during famine and there has for several years been a serious decline under Excise. In such a case it may become impossible for us to meet the normal expenditure of the year without serious inroads on the Public Works grant, and when famine intervenes, or when, as during the current contract, an entirely new burden is thrown upon us in the form of Plague charges which were not taken into consideration when the contract was settled, our finances become disorganized, and we are reduced to administer this Presidency by the supplementary help of such grants as we are able to obtain from the Government of India.

It is hardly necessary to say that the revenues of this Presidency are more than sufficient for its needs, but the fraction of them assigned for our use by the Government of India is inadequate to save us from the difficulties I have mentioned.

So far as we can ascertain, the percentage of our revenues assigned for Provincial purposes compares with other Presidencies as follows:—

Central Provinces	..	..	..	..	..	..	..	52.12
Punjab	..	..	..	..	..	..	..	46.02
Bombay	..	..	..	..	..	..	..	44.14
Bengal	..	..	..	..	..	..	..	40.26
North-Western Provinces and Oudh	..	..	..	..	..	..	..	30.83
Madras	..	..	..	..	..	..	..	28.60

The following are some of the developments and improvements that are awaiting the advent of funds.

Roads are urgently required in the Agency tracts and in the ghât portions of the districts—roads which it is utterly impossible for local boards ever to supply—*e.g.*, the Anamalai Ghât, the Lower Palni Ghât, Kodaikānal Ghât, the roads in the Rumpā country, the roads in Jeypore connecting the Central Provinces with the sea coast.

The provision of primary education is cramped and stunted for want of money. The whole primary education of the Presidency is imposed on local bodies supplemented by grants-in-aid from Government. The sum spent in 1898-99 amounted to Rs. 9,03,799 or $4\frac{7}{8}$ pies per head of the population, the Provincial share of this expenditure coming to $\frac{43}{14}$ ths of a pie per head of the population. Of the total sum, Rs. 98,868 was devoted to the education of the Pariahs, one of the most backward classes in the Presidency, who number nearly six millions. To further Muhammadan education in Madras, about one-and-a-half lakhs of rupees are required to purchase a building in which to locate a suitable school, but this excellent scheme cannot be carried through for want of funds.

It has been urged that a large, properly and sufficiently equipped hospital should be established in the northern part of the City of Madras convenient to the densely populated part of Black Town, and I am informed that private subscriptions would be forthcoming in aid of the proposal. Nothing can be done towards this object owing want of funds.

Again in the general administration of the Presidency it is universally admitted that many districts are inadequately officered to stand any strain, but the proposal to appoint a Deputy Collector in each district for the very important work of maintaining land records and assisting in the general administration is impracticable at present from want of funds.

An improvement in the status of the subordinate officers of the mufassal Police—the raising of the pay of the rank and file—and the augmentation of the City Police are matters urgently called for, but indefinitely postponed for want of money.

In regard to irrigation works, the improvement of drainage in the Tanjore district is a work of great importance and a work which ought to be carried out as a whole, and for the Gôdāvari and Kistna systems alone large sums are required for the same purpose.

The better sanitation of the larger towns and the improvement of the water-supply of such towns make scant progress owing to the limited grants-in-aid available for the municipalities in the Presidency, whose funds are of themselves utterly insufficient to meet extraordinary expenditure of this description.

The establishment of model farms and veterinary hospitals; the provision of proper accommodation for the public offices in the Presidency town, notably for the Secretariat and the Government records, for the Accountant-General, for the invaluable survey records and maps, for the Sanitary Engineer and the Sanitary Commissioner, are other pressing needs.

It is hoped that when the time comes for arranging the next Provincial contract our deficit, if any, may not be left to hang like a millstone round our necks, and that such increase of revenue as may have accrued, if any there be, may be left to meet the great needs of the future.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—Your Excellency,—I cannot start this debate in better language than in the eloquent words of that illustrious statesman who, at present, rules over the destinies of this vast continent. In closing the debate on the Financial Statement in the Imperial Council the other day, His Excellency the Viceroy said:—

“There are two great duties of Imperial statesmanship in India. The first is to make all these millions of people, if possible, happier, more contented, and more prosperous. The second is to keep them and their property safe. We are not going, for the sake of the one duty, to neglect the other. We would prefer to discharge our responsibility—and it is no light one—in respect of both.”

Noble words are these, and they have been nobly spoken. When I read these words, nothing came so painfully to my mind as the debates we had in this Council Chamber last week in connection with the new Irrigation Cess Law. May I ask the Honourable the Senior Member of the Council in charge of the Financial Statement to say whether this new law is calculated to make the people “happier, more contented, and more prosperous,” in the words of Lord Curzon? May I also ask the Honourable Member to say if he has budgeted for the increase of revenue likely to accrue to Government in consequence of this new law, which is to operate retrospectively from the 1st of July 1899? The information would be interesting, and I trust it would be furnished before the debate comes to a close. I would again apply His Excellency the Viceroy's words to the land revenue policy of the Government of Madras. Is that policy calculated to make the people happier, more contented, and more prosperous? Non-official minds have but one answer to this question, and that is, that the land policy of the Government of Madras is calculated to have the very reverse effect.

Instead of making the people happier, more contented, and more prosperous, the land policy has made them less happy, less contented, and less prosperous. Or else, what is the explanation of the oft-recurring famines, with all their concomitant miseries, distress and suffering? At each succeeding famine, the staying power of the people is diminished, and they are becoming more and more helpless. The first failure of the seasonal rains throws the people upon the charity of the State, charity of the public, charity of the people of England, and upon the charity of foreign nations. The proximate and the immediate cause of famines is no doubt failure of the seasonal rains, which is, of course, beyond the control of Government. But the causes behind the proximate cause are not beyond the control of Government. If there is a failure of seasonal rains in one part of the country, there is plenty of it in the other parts of the country and in other countries. If there is no food in one place, there is plenty of it in other places. Our famines are not famines of food, but they are only famines of money—of the means and the wherewithal for the people to purchase their food. Why, if the land policy of the Government is so shaped as to leave a margin of surplus each year in the hands of the people, famines would be seldom heard of. How is it, I ask, that famines do not occur in the Province of Bengal? It is because the land assessment in that province is permanently settled. It is because, in Bengal, the average rent paid by the tenants to the zamindar does not exceed 15 per cent. of the gross produce, while the assessment paid by the zamindar is about 5 per cent. of the gross produce. Madras is most unfortunate in this respect. The average rate of assessment in Madras is Rs. 2-3-2 per acre. In Bombay it is Rs. 1-3-0 per acre and in the North-Western Provinces and Oudh it is Rs. 1-12-0 per acre. The land policy of the Government of Madras in the early fifties was more sound and generous. As late as 1855-56, the official report on the Madras Administration said on the ryotwari system: "Under the ryotwari system, every registered holder of land is recognized as its proprietor and pays direct to Government. He is at liberty to sublet his property or to transfer it by gift, sale or mortgage. He cannot be ejected by Government so long as he pays the fixed assessment . . . The ryot under this system is virtually a proprietor on a simple and perfect title, and has all the benefits of a perpetual lease." And in 1857 the Madras Board of Revenue, in a report submitted to Government on the survey and settlement then proposed to be introduced, thus described the ryotwari tenure: "A general opinion prevails in England that the Bombay settlement for thirty years secures a far greater permanency of tenure to the landholder than the present ryotwari tenure of Madras. This is altogether an error, for a Madras ryot is able to retain his land perpetually without any increase of assessment as long as he continues to fulfil his engagements." This was the policy which obtained with the Madras Government in the early fifties. About 1870 during the viceroyalty of Lord Mayo, a slight change came over the policy of the Government of Madras. On this question, Lord Mayo's opinion was that when once the quality of the soil and the quantity in the produce was determined, there should be no further enhancement of assessment except on the ground of rise in prices. This was a slight modification from the sound and liberal policy that obtained in the fifties. During the viceroyalty of Lord Mayo, the only element of modification introduced was that, when once the classification of soil was adopted, and once the grain valuation was also fixed, there could be no further modification or enhancement except when the prices rose; and then the Government reserved to itself the settlement of prices. This policy was followed by Lord Northbrook; and during the viceroyalty of Lord Lytton in 1877 when there was the greatest famine in the Presidency of Madras at which no less than five millions of people were carried off, the same principle was enunciated and that was again followed up by a despatch,

dated the 17th October 1882, by Lord Ripon; and then the same principle was reiterated with greater force and it was said that local Governments were not at liberty, when once the grain value was settled and when once the classification of soils was adopted, to raise the assessment except on the ground of rise in prices of grain. This was in 1882 and with the departure from these shores of Lord Ripon a change for the worse came over the policy connected with land assessment. The Secretary of State in his despatch of 1885 reversed the whole of this policy—a policy that was so very beneficial.

His Excellency the PRESIDENT:—I must ask the Honourable Member to confine his remarks to a discussion on the branches of revenue and expenditure under the control of the Local Government. His present observations seem to me to include a general criticism of the policy, not only of the local Government but of the Government of India, and for that reason they are inadmissible. I must insist upon the observance of the regulations in this respect based upon the statute which provides that regulations may be made for discussions on occasions such as this of the Financial Statement and nothing more.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I bow to your Excellency's ruling on the subject and I shall proceed. Looking to the figures in the Financial Statement it would be seen that during the short space of six years the land revenue in this Presidency has increased by 30 per cent. From 431.25 lakhs in 1891-92, it has increased to 551.27 lakhs in 1899-1900, which gives an increase of 120 lakhs. The Hon'ble Mr. Rees, the representative of the Madras Government in the Imperial Council, said in the course of the budget debate last week: "There is room for general enlightenment when a journal like the *Times* of London enquires whether the Government of India, in restricting landlords in respect of raising their rent, has laid down upon itself a self-denying ordinance of equal obligation." In the same connection the Hon'ble Mr. Ananda Charlu, the representative of this Honourable Council in the Supreme Council, recommended the improvement of minor irrigation works, tanks and wells, and laid considerable stress on the fact that while large schemes of irrigation received considerable attention at the hands of Government, the minor irrigation works, tanks and wells do not receive so much attention, and it seems to me that every village irrigated by rivers and channels should be provided with a reservoir containing one month's storage of water at least to be utilized during periods of drought or short failure of rains. Harsh and oppressive as the policy is, it has been rendered harsher and more oppressive by the system obtaining in the matter of the revenue collections. I refer to the kistbandi. Formerly it was eight instalments. Then it was six and now it is four beginning from January. No doubt the four quarterly instalments now enforced have been introduced for the sake of administrative convenience. The main crop is not forthcoming till the middle of February, and if the old kistbandi of eight or six instalments cannot be reverted to, there ought to be at least five instalments beginning from February. While on the subject of land assessment, I cannot but invite your Excellency's attention to the rules on the subject of granting remissions. According to the latest orders of the Board of Revenue, no remission can be granted if the crop exceeds one anna. Let us take an average acre of wet land in Tanjore. Its yield is 20 kalamas of paddy and its assessment is Rs. 7. One-anna crop on that is $1\frac{1}{4}$ quarter kalamas, and if the land yields only 2 kalamas, which commuted into the average price means Rs. 2-8-0, the full assessment of Rs. 7 ought to be paid. Seed required for an average acre of wet land is 2 kalamas, and one anna does not even repay the seed expended upon the land. As if the land assessment and the percolation water-rates were not sufficient, Government has resolved to increase the villa¹⁵

service cess from 8 pies to 9 pies in the rupee of land assessment from 1st July next to meet the extra cost of the enormous increases made in the village establishments. It was only the other day that my Honourable Colleague Mr. Nawab Saiyid Muhammad interpellated the Government on the feeling of extreme dissatisfaction prevailing in the district of Tanjore on this excessive increase in the village establishment. The Revenue Secretary to Government said that, although representations against these large increases had been received by Government, there was no such feeling of dissatisfaction as was implied in the Honourable Member's question. I am a native of Tanjore and I am able to assure the Government that the question put by my Honourable Colleague was a perfectly proper question. He reflected the feelings of the people of Tanjore quite properly. I am only sorry that the Government is not in possession of full information on this aspect of the question. While on the subject of land revenue I would ask your Excellency's permission to make a reference to land assignments made by Government in favour of temples and religious institutions and devastanams. Considerable grants have been made by old Rajas and the generous British Government has ratified these grants; and to this day the religious temples are in receipt of considerable sums of revenue in the shape of land revenue. Such being the case, the Government is directly interested in seeing that the temple funds and affairs are properly administered. Your Excellency's Government put forward proposals to the Government of India on this very important question which was brought to your Excellency's notice with pointed force in almost every one of the addresses that was presented to your Excellency in your recent tours. It is a grave misfortune to us to find that these proposals, which were exceedingly statesman-like and of a satisfactory character, have not commended themselves to the Government of India.

His Excellency the PRESIDENT:—The Honourable Member is again diverging from the business before us.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—My object is to request your Excellency to press this matter again in the interests of Government revenue which is largely assigned in favour of temples. Proposals may be again made to the Supreme Government.

His Excellency the PRESIDENT:—It is hardly right for the Honourable Member to press a matter of this kind or make remarks rather verging on the criticisms of the policy of the Government of India which cannot be admitted on the present occasion.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I was only going to say that the Government of India was not in possession of sufficient information. I ask your Excellency's permission to refer to the general feeling throughout the country on this matter.

His Excellency the PRESIDENT:—That has no immediate connection with the items of finance.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal:—I would next invite your Excellency's attention to the administration of the income-tax assessment. It is a long standing complaint that the administration of income-tax in the mufassal is attended with heart-burning and great dissatisfaction. The objections are that the assessments are haphazard and capricious, made generally with an eye to increase of revenue and that the onus of proof was thrown upon the assesses to prove that the assessments by Government officers were wrong. Objection petitions fare no better.

Even wedding presents are treated as assessable incomes. To quote one illustration, among many, I would refer to the pensioners of Native States residing in British India, whose pensions are assessed, though they are neither earned nor derived in British India. When these pensioners proceed to the Native States in person, draw their pensions and bring them to British India, they do not seem to be taxed, but, when the same persons employ authorized agents in Native States, who draw their pension and remit the same to British India to their principals, the assessment is levied. I desire to know how this distinction is made. The next subject to which I desire to advert is the rules framed recently by Government for the tapping of sweet-toddy. Restrictive rules were introduced from last October in the city of Madras, Malabar, and South Canara. Similar rules have been introduced in Tinnevely and Gódvári in January last. Complaints have been made from Gódvári and Tinnevely. In Tinnevely there is a general strike among the sweet-toddy tappers. On the occasion of the current season, the resulting loss is calculated to amount to 80 to 100 lakhs worth of jaggery. Under the rules four licenses seem to be required—one for the tapper, one for the seller of the sweet-toddy, one for the owner of trees, and one for the manufacturer of jaggery. Among other restrictions, there is one which stands above the rest in its oppressive nature. One of the rules lays down that owners of palmyra trees must give the first refusal to fermented toddy drawers. This is virtually, Sir, confiscation of private property. If I have a tope of 500 trees, I am not entitled to draw jaggery toddy. I can do so only if they are not required for fermented toddy. In the recent strike in Tinnevely, according to my information, no less than 100,000 tappers of sweet-toddy and 200,000 of other hands assisting in the business have been thrown out of employ. Large numbers of tappers have already emigrated to Ceylon. On this question of emigration, Government replied in answer to a question of mine last week that it had no information. The answer of the Honourable the Revenue Secretary to Government in its concluding paragraph is hopeful and sympathetic, and I trust that the operation of these new rules will be carefully watched, and all restrictions in the manufacture of jaggery, which is a very important industry in this country, removed. Another subject which has been kept before Government from 1896 is the question of equalization of process fees in the sub-court and district courts with the rates obtaining in the courts of the District Munsifs. Though the same process agency is employed in all the courts, the rates obtaining in the former courts are double those obtaining in the latter. The Law College in Madras has been a source of constant irritation and complaint during the past few months. The Principal of the Law College, who gets a handsome salary, has been allowed the privilege of private practice at the bar, contrary, it would appear, to the original contract. When a question was asked in the Legislative Council, it was said that the matter was under the consideration of Government. I venture to hope that before this debate comes to a close we will be told as to whether any conclusion or decision has been arrived at. It is only proper that the college should be made a whole-time institution, and its Principal a full-time officer. If this arrangement were made, the present three years' law course could, with great advantage to students, be reduced to two. While on the subject of education, I have to suggest that Government may be pleased to establish a School of Commerce on the East Coast similar to the one now working at Calicut. In the addresses presented to your Excellency on your visit to Negapatam it was prayed that a school of the kind maintained at Calicut might, with great advantage, be opened at Negapatam or at some other equally commercial place, because there is a large scope in the students seeking commercial education. While on this subject I would refer to the subject of "aided schools and politics."

In this connection I feel bound to express on behalf of myself and the general public our gratitude for the modification recently introduced in the stringency of the rules promulgated some time ago. While expressing our thanks I would take the liberty of pointing out that the rules modified as they are, are perfectly uncalled for and unnecessary, because there are provisions of even more stringent character than in section 124-A of the Indian Penal Code.

His Excellency the PRESIDENT:—The Honourable Member is again commencing a criticism on measures of Government which are in no way connected with the items of revenue and expenditure which are now laid before the Council.

The Hon'ble M.R. Ry. P. RATNASABHAPATI PILLAI Avargal:—With reference to the question of Police reform adverted to by the Honourable Member in charge of the Financial Statement, I think, Sir, that considerable improvement can be effected at once without additional expenditure. The moral tone of the subordinate force may be improved by drafting largely into it the under-graduates and graduates on very much the same salary as is now paid to head constables, provided that a more dignified designation is adopted to designate the offices. The head constables in charge of stations may be designated as Sub-Inspector, a class of officers known in the City Police. The Honourable Member in charge of the Financial Statement refers to the plague charges, and I must take this opportunity of offering my congratulations to your Excellency's Government, the Sanitary Commissioner and the District officers who have achieved a marvellous success in keeping the disease under complete check. The epidemic has been shut completely out of the City of Madras, though such places as Vellore, Tirupattūr and Vániyambādi had been affected. The plague regulations have been worked with great sympathy and moderation, and the success achieved is almost phenomenal. In conclusion I hope that the discussions on the budget will not be treated as merely academical. I earnestly and very respectfully request that these my humble representations—I will not call them criticisms—will be taken into the favourable consideration of Government.

The Hon'ble NAWAB SAIYID MUHAMMAD SAHIB Bahadur:—With Your Excellency's permission I beg to make a few observations. The sincere thanks of this Council are due to the Honourable Mr. Arundel for the lucid exposition of a very complicated subject. I am sure that this Government would have allotted larger amounts for general and technical education, irrigation, sanitation, &c., but for the provincial contract which is exacting and inequitable. I am sorry to find that the past official year was not one of agricultural prosperity in the greater portion of this Presidency especially in Tanjore. Numerous and loud have been the complaints against the failure of the last monsoon rainfall, and the havoc played by the hurricane in the sea coast portion of the Tanjore district, and although famine was not officially declared, food-grains were sold at famine prices. And the district, which has already been overburdened with taxation, is in a state of calamity, and the hardships of the ryots in finding funds for the payment of the land-tax, the purchase of seed grains, &c., are indescribable. This is just the time when Government should come to the rescue of the ryots, by remitting and postponing the collection of the land-tax according to the necessities of individual cases. But unfortunately low-paid village munsifs have been recently armed with the power of distraint for non-payment of the land-tax, who, as in duty bound, would exercise this new authority relentlessly to the great annoyance and hardship of the ryots. A remission of at least 12 lakhs of rupees for the whole district for the last official year would, in my humble opinion, be the minimum generosity that the Government can show in the matter. As regards the increase in the revenue on account of the "punitive police tax" in Tinnevely, I

eg to submit that, in my opinion, it does not seem to be equitable that the Muhammadans who were in no way connected with the riots should also be taxed. The reason that is probably put forward is, that they did not prevent the riots, but this attributing to them, powers which they did not possess and I respectfully submit that the decision of the Government be reconsidered. The Muhammadans of Madras are eagerly awaiting the decision of the question of providing the Madrasa-i-'Azam with a suitable building, which has been under the consideration of Government for very long time. An extensive site should, it is submitted, be either granted or purchased by Government and all Muhammadan institutions located in it by having suitable buildings constructed, leaving room for development by private munificence also, and I am sorry to see that no adequate provision has been made in the budget, though I welcome the announcement that this scheme is awaiting the advent of funds to enable the Government to put it into execution; and I am perfectly sure that this announcement would cause a feeling of great satisfaction among the Muhammadans of Madras, who are second to none in their loyalty to the Crown. In conclusion, I venture to express the hope that Government will soon give full effect to the resolution by which the appointment of four District and Sessions Judges and other appointments were left open to the Members of the Provincial Civil Service.

The Hon'ble Mr. G. G. ARBUTHNOT:—Your Excellency, the discussion of the budget is an occasion which has come to be considered as a sort of gala day for non-official members who are given this opportunity of trotting out their respective favourite hobbies and are allowed considerable latitude in — if I may be permitted to use the expression—blowing off steam with regard to their pet grievances. Sometimes I must confess that they are inclined to take undue advantage of the latitude given to them, and I hope this will not be the case with me. Well, my special hobby, after a two years' rest, is now feeling strong and vigorous, and requires a little exercise, so I hope that I may be allowed to trot him out—which means that I wish to say a few words about our Provincial contract allotment and its grievous inadequacy. After listening to the statement of the Hon'ble Mr. Arundel, we must admit that this is not a mere hobby of a single private member, but it is a matter of the most urgent and vital importance. That we have a real and a serious grievance is, I think, generally admitted, although those provinces whose push or perseverance has obtained for themselves more generous treatment may perhaps sometimes be tempted to endeavour to deny it. Until the last contract we had the melancholy satisfaction of having a companion in misfortune in the North-West Provinces, but now they have been exalted and we have been abased, and we stand in the proud position of contributing a distinctly larger portion of our revenue to the insatiable claims of the Imperial purse than any other province. I am well aware, Sir, that in you Madras is fortunate enough to possess a doughty champion of her cause, nor have I, nor am I sure any of those who were present, forgotten the weighty words spoken by you in this Council Chamber three years ago. Our hopes then ran high that during your Excellency's term of office our wrongs would be set right, and we thought that, as I venture to put it two years ago, our Madras Cinderella had found her Fairy Prince at last. Well, if these hopes are doomed — as, alas, I begin to fear they are — to disappointment, and if the good seed sown by you, Sir, still seems for the time to lie unfruitful in the ground, yet Madras will not be ungrateful to the sower. But in this matter I feel sure that the Madras Government will never prevail unless it is seen to be supported by the full force of strong public opinion, and therefore it is that I hold it to be our duty, and especially that of the press to whom in this matter we have already good cause to be grateful, to be persistent in importunity—in season and out of season.

remember the old lines. I believe I have quoted them before, but they are very *à propos* :

" 'Tis a very good world that we live in,
To lend, or to spend, or to give in ;
But to beg, or to borrow, or ask for your own.
'Tis the very worst world that ever was known."

We are asking for our own, but though it may be a bad world in which to ask for it, still it is only if we ask, ask, ask continually that we are ever likely to receive. Before sitting down I should like to say one word with regard to the curious anomaly of our all assembling here to gravely discuss a budget which in point of fact has already been definitely decided upon beyond the possibility of alteration or amendment as regards one single word or one figure. In view of the permanent Government majority I cannot see why non-official members should not be allowed the harmless amusement and gratification of offering criticisms or suggesting improvements whilst, in theory at all events, their doing so might be of some practical value. If this is not done it really seems to me that it would be better to discuss this year's budget in next November, when criticism and advice might be of some use in suggesting improvements in the framing of the budget for the coming year.

The Hon'ble the Rev. Dr. MILLER :—Your Excellency, perhaps I may be permitted to trot out my hobby, as the Hon'ble Mr. Arbuthnot has trotted out his on a matter which I consider to be of some importance, although I shall not, I hope, trespass unduly upon the time of the Council in speaking of it. The Hon'ble Mr. Arbuthnot has just spoken as to the desirability of introducing the budget at a time when some effective criticism might be made on it. On that I think non-official members are tolerably certain to agree with him. But there are many points in the budget—and there is one to which I wish to draw attention—on which future budgets may perhaps be affected by the remarks made in the discussion of the one which is practically settled. I have some general remarks and then some special remarks to make on the papers before us. The general remark is that I would ask the Honourable Member in charge of the Financial Statement to explain why it is that now-a-days so much less information seems to be afforded in the statement than used to be afforded some years ago when I formerly had the honour of being a member of this Council. Then we got pretty detailed information as to the various items which made up the totals. Now under each particular head we simply have totalled results of receipts and expenditure. It is the same under all the heads. I have some old statements with me of former years in which under each particular head there is a detailed statement and a total at the bottom. But in the papers furnished to us this year—I do not know for how many years it has been so—that practice has not been followed and the details are entirely left out of account. This interferes very considerably with anything like an effective criticism on the papers laid before us, whether that criticism is to affect the present year or the years that are still to come. There may be—I have no doubt there is—a reason for the change. But I should like to be informed as to what the reason is. I dare say that the various points on which I desire to speak might have been elucidated for me if I had made an application for the detailed information. I did not do so; first, because I had no wish to give unnecessary trouble, and, secondly, because the points to which I wish to direct your attention may be practically discussed by reference to the appendix with which I have been favoured containing the final accounts of the Provincial service for 1898–99. When in regard to some things it is much better to deal with the actual figures which one year old than with the budget estimates and revised estimates which are

somewhat newer. The particular point to which I would invite your Excellency's attention is in regard to the education budget and especially with regard to one point in it. It is the very largely increasing outlay that is made upon colleges that are directly under Government or departmental control, and the very far from commensurate increase made in the provision for those institutions which are under private management. I see in the accounts of 1898–99 that Government colleges for general education are set down as costing Rs. 2,30,000; those for professional education as costing Rs. 1,98,000. Referring back to the accounts of 1893–94, I find that the corresponding sums were Rs. 2,00,000 and Rs. 1,69,000. Taking these two classes of institutions together, I find that there is now being spent on them Rs. 4,28,000 per annum as against Rs. 3,69,000 six years ago. This shows that the increased outlay of public money upon these institutions, if you take the two classes together, is 16 per cent., or if you take Government colleges for general education alone, 15 per cent. In the provision that is made for the support or for the aid of institutions under private management, I am glad to find that there is some increase. In 1893–94, Rs. 5,06,000 was spent on them. But in the year to which I am referring and for which we have the accounts before us the expenditure is Rs. 5,52,000, or an increase of 9 per cent. One class of institution, with which the department is immediately concerned, has the outlay on it increased in these years by 16 or 15 per cent., whichever you like to reckon it, and on the other the increase is only 9 per cent. Considering the policy which has been laid down for the guidance of all subordinate governments in India with regard to education, I do not think that this state of affairs is at all satisfactory. I think the difference in percentage of increase even by itself is significant. But I have three reasons to lay before you, Sir, why that difference does not give a fair account of what really exists. Six years ago these Government colleges, on which the outlay has increased so much, were magnificently equipped, so equipped in fact that most of us concerned with education should be inclined to say that further outlay was entirely unnecessary. The institutions under the other head were most of them poverty-stricken and very far from being what they ought to be, and it would seem to an impartial judge that the increased expenditure was not at all needed in the one case, but was greatly needed in the other. Thus I think that even the statement of percentages does not give a fair means of judging the actual state of the case. The second reason is that the increase in work done by institutions under private management is so very great that practically 9 per cent. increase in the outlay is really a very considerable diminution in the amount of support they receive from public funds. Thirdly—this is of great importance in any right judgment of educational affairs—the outlay of which I have spoken upon Government institutions is not by any means the whole amount of outlay from public funds. There are other outlays upon these institutions which come from public funds though they never appear in the educational account. I suppose that this does not apply to exchange compensation matters; I do not know if that item of expense does or does not appear in the educational accounts; but it certainly applies to pensions. That means—so it was regarded in the Education Commission when the matter was carefully gone into—an increase of 10 per cent. at least on actual outlay. The sum of Rs. 2,30,000 spent on Government colleges for general education really would be Rs. 2,53,000 or more. Then again the outlay on buildings for these institutions does not come from educational funds, and is not included even in the large sum to which I have directed attention. I see evidence, even in the comparative meagre statement that has been placed in our hands, of this. Of course it is perfectly well known. I find in the accounts for the year 1898–99, and in the statement to which our attention is being directed just now, reference to sums 115

this: Rs. 16,500 spent on buildings and furniture of the Presidency College in 1897-98 and Rs. 14,000 in 1898-99 spent also on the Presidency College, taken however not from educational funds. Members will see in the notes appended to the various statements various references to expenditure incurred on a building at the Rajahmundry College, and so on. Then we have such great outlays for the benefit of the Government colleges as those that have been recently incurred for hostels. That I suppose does not appear in the educational part of the budget. I do not know what sum has been spent, but I should certainly imagine that it is considerably over a lakh under this head wholly for the benefit of these favoured institutions. At the same time if anything has been given for these most necessary purposes to any other institution, I cannot very accurately say; but I am quite sure of this that not a single rupee has come from public funds towards the help of this great object in connection with that college where it was set agoing and which has had to expend much money and much trouble in being the pioneer of a system which, I trust, will be of great blessing to Southern India in the long run. If considerations like this are fully weighed and if the expenditure on these particular classes of institutions from other than educational funds be added, it will be seen how vast the increase has been and how much greater than the mere percentage to which I have referred is the rate at which that increased outlay has been proceeding; and yet all the time the vast proportion of education in this country is carried on by means of that private effort which gets such extremely little aid. The fact is that when a Government institution is in need of anything to increase its efficiency some way is always found by which its needs are provided for. I do not grudge it—far from it; but I wish to see all institutions for education thoroughly efficient and I think that equal consideration should be given to those institutions which are in the hands of private managers—equal at least, if not more. I find even in the document before us a nice little illustration which to me is somewhat amusing. It is mentioned there that increased receipts under the head of education are expected from the re-opening of a moral philosophy class in the Kumbakonam College. Though mention is made of the receipts, no allusion is made at all to the probable increase of expenditure which, if I know anything about such things, is likely to be three times as great if not four or five times as the increased receipts from this source. I do not grudge this increased efficiency to the Kumbakonam College. I am glad of it in itself, but I would say that there are far more important things that are being starved—things more important for the welfare of the whole community which receive no help because they are not immediately under the control of the department. I wish, Sir, that this is all that I had to say in connection with this matter, but I can hardly help referring to the further fact that it is not only by the refusal of aid, but by injurious provisions also that it is shown how largely the interests of institutions under private managers are overlooked or neglected. You will find an admission in the last report of the late head of the Education department of how the measures introduced by Government against the advice and the opinion and the remonstrances of those most closely interested, against the almost unanimous advice of the Conference called to consider the question—how the measures that were thus introduced resulted last year in colleges under private managers being led to throw away the large sum of Rs. 59,000 which ought legitimately to have come to them. I say they are to be blamed undoubtedly, but the loss was mainly due to the ill-considered and ill-advised action of the Government. This sum of Rs. 59,000 is more than half the sum that received by all these institutions put together from the public funds. By that loss they are weakened and their efficiency destroyed. I think it is time, Sir, to consider

the policy which has had such effects as this—a policy which results in the depression of one class of institutions and the growth of a particular class of institutions which are unduly favoured, a policy which has raised the expenditure upon them within the last six years by so much as 15 per cent. I should like, if I may be permitted, to say why it is that I have compared the last available statements of actual accounts with that for the year 1893-94. It is because at that time I had some hopes that there might be a change in the policy of Government in this respect. At the corresponding budget discussion six years ago your Excellency's predecessor described in a speech to which attention has recently been emphatically directed, the policy which actuated the Government in this matter of the distribution of public funds between the Government's own institutions and those under private managers. Your Excellency's predecessor then said, in reply to certain observations which I had the honour of making, that Government regarded institutions under private managers as strangers, and institutions under its own management as its own particular children. After the discussion closed, I had the honour of approaching His Excellency Lord Wenlock, and I was accompanied by the gentleman who was then acting as the head of the Educational department. We both laid before His Excellency a statement which showed that the policy of Government which he had enunciated did not agree with the statement of policy that had been laid down by the Government of India for the guidance of local Governments. I pointed out to His Excellency that it was exactly the opposite, and that according to the policy which he was expected to follow, it was the institutions under private managers that were to be regarded as Government's special children; and if any one was to be regarded as a stranger, it was those that were managed by the department. I said this then, and I repeat it now, that the policy laid down by the Government of India is undoubtedly the proper method of regarding those institutions, especially those institutions that are engaged in higher education. To this Lord Wenlock was good enough to reply to me, exactly in the place where I happen to be sitting now, that the description of the policy given was the result of all that had been said to him by those who advised him in educational matters and that the counter-statement which I had made before him was a thing entirely new to him; and he added that with regard to higher education at all events the one thing that had been pressed upon him continually since the time he had come to Madras was that the only thing necessary for the welfare of higher education was to promote and develop and extend the Presidency College in every way possible. I tried then, and in subsequent conversations with which I was honoured by His Lordship, to point out how entirely contrary to the views of the Government of India such a line of action was. I fear from the fact that I have pointed out, and from the increase to which I have drawn attention, that very little effect was produced by this remonstrance; and yet, perhaps, I do not know. I dare say, very likely, that the remonstrance that I had the honour to make may have had its effect. It is possible that if this remonstrance had not been made, we should now find that there had been no increase to the amount provided for grants-in-aid and that the increased outlay upon the other class of institutions was not 15 per cent. but possibly much more. What I had the honour on that occasion to say may perhaps not have been altogether without effect, but it is manifest from the statement I have made that it has not had the effect which I hoped and almost expected that it might have. I trust, however, that a brighter day is dawning in this matter and that we shall find hereafter that the wants of institutions under private managers are considered at least as much

better days in this respect are about to dawn. The first, Sir, is that your Excellency's Government has acted of late in such a sympathetic way towards those who are engaged in privately managed education as to show that the Government have begun to awake to the necessities of the case. By what ill-judged if not ill-disposed advice I know not, but somehow, lately your Excellency's Government seemed disposed to aim what might have been a death-blow at independent education in Southern India by rules which would have tended to drive from it every man who retained any independence of character or self-respect. I have to acknowledge how generously and how handsomely your Excellency's Government has acted in regard to this matter. I think I may venture, as one of those who took some part in laying a remonstrance before your Excellency, to say, in the name of the representatives of independent education throughout the country, how heartily we thank your Excellency's Government for that modification of the proposed rules which has recently been published and which, to my mind, at least so far as I have been able yet to understand it, is entirely satisfactory. I regard this as cause of hope of a brighter future for aided education. Secondly, I have hope because there is now at the head of the department a new gentleman who is at all events not trammelled by the ideas and prejudices that have prevailed for the past ten or twelve years. Thirdly, I have hope, because once more the Government of India has reiterated the fundamental principle of its policy in this respect, and I am sure that your Excellency, with your well known liberality of view will, in this respect, not be behind the Government of India in seeking to encourage those who, with unselfish ends and very little to reward them, are labouring in the educational field for the highest welfare of the country. For reasons like these, I venture to hope that the day may come when the extension and improvement and efficiency of institutions under private management will become, as it has so often been declared that it ought to become, the particular care of the department.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu:—Your Excellency, I congratulate the Honourable Member in charge of the Finance department upon having presented such a budget as the one which has now been laid before us in a year like this of financial depression. I am one of those who do not look upon the increases obtained in "land revenue" by periodical revisions as healthy. I notice that such increases have been estimated in the budget for 1900-1901 from the re-settlement of the Gódvári and Kistna districts. The policy by which these increases are obtained has been criticised by my distinguished predecessor in this office and by other Honourable Members and I do not wish to traverse the same ground. My firm conviction is that, unless the policy regulating the revision settlements undergoes a radical change, there can be no hope of any improvement in the material condition of the ryot, and the longer that condition remains unameliorated, famines will more and more tax the energies and resources of the State. Your Excellency is aware that my friend, Mr. Subba Row, has often pressed on the attention of the Government the importance of effecting improvements to the Kolair lake. I should like to know the effect of the outlay on the said improvements in 1896-97 and 1897-98 and the measures since adopted towards the completion of the project. In view of the very great importance of the project, as affecting the well-being and prosperity of the tract in and around the lake, independent of its profitable character, I hope that your Excellency's Government will see its way to make provision for its early completion. I should like to know also whether any provision has been made in the budget for carrying out the long-promised reform of delta superintendents. It would be some satisfaction for the people of the Kistna and Gódvári to know that a portion

of the re-settlement increases will be spent on improving the efficiency of irrigation and drainage of the deltas.

The Hon'ble Mr. EARDLEY NORTON:—The point which struck me in the remarks made in connection with the statement which accompanied the budget as being a most important matter as to the future is the announcement made by the Honourable gentleman that the Presidency of Madras is permitted to draw only 28 per cent. of the revenues which it collects inside its own limits. I am perfectly well aware that no resolution that we can pass will have any weight or effect. The question is one which is of an Imperial character and which is entirely within the discretion of the Viceroy in Calcutta, but I cannot help joining my voice in addition to the voice of the Hon'ble Mr. Arbuthnot in asking your Excellency not to give way from the attitude which your Excellency has adopted but to proceed in that good agitation with the object—I believe the object can be accomplished—of inducing the Imperial Government to give way in a matter which is of prime and essential importance to ourselves. We know ourselves *gutta cavat lapidem non vi, sed sæpe cadendo*. We do believe that if your Excellency would go on knocking at the Imperial door, it must in time be opened. The reason why I lay stress is: it is obvious that so long as we are starved provincially and our revenues taken away for Imperial concerns, our needs upon which the provincial revenues must be expended are gradually decaying from want of nutrition. I will not trot out my hobby, because my stable is so full that it would take more time than we have at our disposal to view the performance. I feel perfectly sure that while your Excellency remains as the Governor of Madras, your Excellency will not recede from the position which you have taken up in regard to the question of the quantum of the funds which we are entitled to administer inside our own provinces. I also trust that when your Excellency leaves us, your Excellency will give us the benefit of your assistance and the weight of your influence at home by approaching the Secretary of State in England. I should like to suggest what seems to me impossible to suggest in the present state of our finances. I should like to suggest, if we had more funds at our disposal, that the salaries of native magistrates ought to be very much enhanced. I cannot help thinking that to invest great criminal powers to second and third class magistrates with the pay which these gentlemen receive is to put—I make no accusation against anybody—in their hands the greatest possible amount of temptation. They have to deal with crimes of a high character accompanied by a punishment of a serious nature; and when we recollect that these third class magistrates are persons drawing no more than Rs. 60 or 70, it is not necessary for me to enlarge upon the great danger which accompanies the creation of magistrates who are so lowly paid, but who are still invested with powers of such magnitude. One other point I would ask your Excellency to dispose of—if it is in our power to make that request to you—is one which has been repeatedly admitted to be a desirable one, namely, the separation of the executive from the judicial functions. That policy has received more than once in high quarters its full compliment. We have been repeatedly told that although that suggestion was good, yet it could not be acceded to because we had no funds. If we have funds, one of the matters which would no doubt occupy the earnest attention of this Government would be what has long been recognised in high quarters as a legitimate grievance, namely, the separation of the executive from judicial functions. I feel that to ask with the present aspect of our finances for an appropriation of money by way of expenditure for purposes of this nature would be to ask you to do that which is physically impossible to do. One word with reference to the question of the Law College—a point raised by the Hon'ble Mr. Ratnasabhapati Pillai—I feel that it is a legitimate grievance and feel that if

were here with effective powers such as those granted to Members of Parliament at home, if we had the effective control over salaries, I would move for the reduction of the salary of the Principal of the Law College on the ground that either he must be a full-time professor or he must have a smaller salary. My reasons for this are: first, that the Principal of the Law College should be a full-time official, and, secondly, it is not fair—I am speaking for myself and the junior members of the bar—that a highly subsidised gentleman should be brought out into this country and let loose upon other gentlemen who are not so subsidised. The answer to that by way of illustration would be the learned Advocate-General. My reply would be that a subsidised Advocate-General is a necessary evil, but a subsidised Principal of the Law College is not. I trust that your Excellency will give attention to this matter. I know that this has created a considerable amount of irritation which I consider should not be allowed to continue if it can be remedied by attention to these facts. Sitting here as I do for the municipality, I desire to say one word with reference to the question of plague charges. I would call your Excellency's attention—I have to thank my Honourable friend, Colonel Moore, for the details—I would call your Excellency's attention to this fact that whereas provision is made in the budget for the mufassal Municipalities to the extent of Rs. 3.16 lakhs, no provision has been made for the immense expenditure incurred by the Madras Municipality on the measures adopted for the prevention of plague. I entirely endorse the statement of the Hon'ble Mr. Arundel when he said that the prevention of plague is an Imperial matter and not a Provincial matter. He was right: his grievance is well founded when he said that this being an Imperial matter, the Imperial Government should give us funds. Precisely the same argument applies with just as much force to the Madras Municipality. With reference to the mufassal Municipalities, the prevention of plague is considered a matter of Imperial concern, and how can the treatment given to the Madras Municipality, as compared to that accorded to mufassal Municipalities, be justified. If it is an Imperial matter, the Madras Municipality also should be put on the same basis. If the mufassal Municipalities are to receive aid for the effectual expulsion of plague, I think the Madras Municipality is entitled to a similar consideration. Your Excellency is perfectly well aware of the poverty-stricken nature of the Madras Municipality; we are a poor Municipality and we have constantly to go to the public for loans for the purpose of having the prime and essential improvements carried out. With regard to this matter, I should like to quote figures showing to what extent the Madras Municipality has been called upon to incur expenditure on plague measures and see whether or not the Madras Municipality has a just grievance upon this score. Since October 1896 up to yesterday, we have spent Rs. 3,37,803 on matters connected with plague. That sum had to be met, not from current expenditure, because we have not got enough, but out of loans, one of which has actually been floated and the other one is not yet floated but is under contemplation. We have had to go to the public for a loan of 2 lakhs at 4 per cent., and we are on our hook's end for the other one lakh. I would ask your Excellency's attention to our monthly expenditure in regard to this question of plague. We pay Rs. 1,900 a month for the upkeep of our establishment for the prevention of plague. That does not include the actual expenditure on hospitals, segregation camps and various other things in connection with plague. These are etceteras for which we have to find funds as best we can. In addition to this Rs. 1,900 that we pay, the Government pays Rs. 927 towards the upkeep of the establishment connected with the plague. I believe that your Excellency's Government does contemplate making some grant at some future time, when circumstances permit, to the Municipality of Madras. When

turn to page 388 of this official statement and read under the head of Contribution

in the second part of the expenditure section, I find that the budget estimate for 1899-1900 is 2.11 lakhs. I admit I do not quite understand what it means. Whatever it means, for purposes of comparison it is sufficiently clear. Whereas the budget estimate for 1899-1900 is 2.11 lakhs, the revised estimate for 1899-1900 is 5.17 lakhs, and the budget estimate for the present year is 2.90 lakhs. If, as a matter of fact, the original estimate of 1899-1900 was exceeded and was increased to the extent of 5.17 lakhs, and if that 5.17 lakhs is now reduced to 2.90 lakhs, how can we expect to get any contribution from the funds set aside under this head for plague purposes? I suppose when the time comes when your Excellency feels that your hands are more free and your financial exigencies are not so great, then you can make some contribution to the Municipality, though not from any sums set aside for plague, but from general or any other sources with which we are not acquainted. I would earnestly ask your Excellency's Government to turn your attention to the state of our finances—the municipal finances. There is very little doubt that we are in a perilous position: we have all sorts of schemes of reform to deal with, we have absolutely no funds, and we are going constantly to the public for fresh loans. Year after year our expenditure becomes greater and greater while our revenue is not increasing by leaps and bounds, with the result that we have to make constant appeals to the public for loans. If one of the elements of sound legislation, whether it be financial or otherwise, should apply to us, then the question of the attainment of prosperity by the people is an element which the Government should take into consideration. I think it is upon arguments such as these we are entitled to a financial consideration at the hands of Government. You have decided to assist the mufassal Municipalities, and there is no reason why financial help should not be given us. I do not know if there is anything further for me to say on questions connected with the municipality, but there is one matter on which I feel bound to say a word. Your Excellency is aware that within the last few weeks a suggestion to impose an addition to the house-tax has evoked a storm of opposition throughout the town which is pitiful, and it is not pleasant for me to deal with the question, considering that I happen to possess a house and live in my own house. Things such as these press us very much, and the Madras Municipality is so embarrassed by want of funds, I trust that your Excellency will take the very earliest opportunity of coming to our assistance by giving us a substantial and handsome contribution towards the purpose on which we have incurred a large expenditure and are still incurring a large expenditure monthly, and, I believe, wisely. These measures we have taken up, not for private or selfish purposes, but for purposes of attacking a "*hostis communis*" which would have affected not only people living inside the Presidency but the whole of India.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal:—When I read the Financial Statement which has been circulated, I thought there was very little to interest the non-official members of Council; and, supplemented as it is by the Hon'ble Mr. Arundel's statement made here this morning, the only thing that is of most interest is the treatment accorded to us by the Government of India in the matter of adjustment of revenue. I fear that is the only common ground on which the Government and non-official members meet now as they have done so in former years. This is the only place where they could meet and voice a joint protest. The Hon'ble Mr. Arbutnot said that the Government would do well not to fight single-handed, but to take the public into its confidence. I entirely concur and hope the public is to include other bodies than the Chamber of Commerce, and the public press that he alluded to will include other papers than the *Madras Mail*. I have nothing more to say on the subject, it is a sacred ground and I shall not tread on it any further.

A brilliant indictment has been laid against this Government by one of the greatest educationists of Southern India, the Hon'ble the Rev. Dr. Miller. I do join in the prayer of the Hon'ble Mr. Winterbotham made the other day in wishing him a long life, for Southern India has never had a kindlier and greater friend than the Hon'ble the Rev. Dr. Miller; but at the same time the Government, before entertaining the suggestions that he has so brilliantly made in view to a change of its educational policy, will do well to consider the other side of the question as well and to listen to any representations that the advocates of the other side may make to it. The Hon'ble the Rev. Dr. Miller has confessed that Lord Wenlock told him that his counter-statement was quite new to him. I confess that it is equally new to me with my ideas of the policy enunciated by the Education Commission. It is all very well to speak of independent private institutions in this country; but I ask the Government to take facts as they are and not to be deceived by words. We have no private independent institutions in this country developed to such an extent as to be capable of maintaining their position to a degree desirable alike in the interests of Government and the people. Be it remembered that as yet the victories achieved by the British Government in India are, in my humble opinion and in the opinion of those who are competent to judge, confined to two things, namely, the preservation of the country from foreign wars and internal disorders and the glorious achievements in the Educational department. In no other department have you succeeded yet in winning the affection of the people. In many departments you have managed to wean away their affections. I do hope that in regard to the Educational department, the only department in which the Government has endeared itself to the people, you will pause before taking into consideration the recommendation made by the Hon'ble the Rev. Dr. Miller. I must confess I could not quite understand how he is entitled to ask for equal treatment as regards institutions which he at the same time designates as independent, with those which are under the direct management of Government. It is not necessary for me to state here that innumerable are the reasons why private institutions in Southern India, as they now are, cannot displace Government institutions. In fact, people cannot reconcile themselves to any such policy as has been ingeniously suggested to-day for adoption by Government. In the first place, even in minor matters—in the matter of principles which obtain in the appointment of teachers in private institutions and which govern the granting of scholarships and holidays to boys—in such institutions, the people of this country are not satisfied. Nor are they satisfied as to the spirit and kind of instruction imparted there. Let it not be supposed that I am not grateful to the manifold blessings conferred upon the people by missionary and other private efforts in the cause of education; but it is because of the absence of Government institutions, because of cheaper education given by these private institutions and a few other circumstances which need not be related here, these institutions have been so far successful; but so long as these independent private institutions remain in the hands of foreign agencies mainly as they do now, it would be a grave mistake on the part of Government to change its policy as regards its treatment of Government institutions. Already every one, including the late Sir T. Muttuswami Aiyar, has been suspecting that higher education has been having fewer and fewer advocates among those who are powerful and influential with the Government of Madras, with the Government of India and the Secretary of State. Years ago—it was in 1882—the late Sir T. Muttuswami Aiyar alluded to this uneasy feeling in his Convocation address. Somehow he had his suspicions. His Excellency Sir M. E. Grant Duff was pleased to observe that he saw no reason why Sir T. Muttuswami Aiyar thought it necessary

to enter into a defence of higher education in this country as it had no enemies. But somehow or other that astute statesman began to suspect that higher education in this country was having diminished friends. I am somewhat surprised to-day that so ingenious an indictment has been placed against this Government in the matter of the use of public funds. Let it be remembered what public funds mean in this country. The vast majority of the people are Muhammadans and Hindus and nearly the whole of the public funds are their money: and it would be all wrong to be deceived by the statement that public funds should be utilised for supporting private institutions of this kind. If he will consult the wishes and the feelings of the people, Dr. Miller will hardly find that any true exponent of the feelings of the people and any true interpreter of what is going on in the feelings and ideas of people would agree with the recommendations made by him. I do not mean to go into details. Of course he was pleased to allude to a small item in regard to the appointment of a professor at the Kumbakonam College and also to the extension of buildings in the Presidency College. His memory did not help him as to the extraordinary help the Government gave to the Y. M. C. A. of Madras. I only allude to the circumstance to show that there is absolutely not an iota of ground to be discontented with the assistance he has got from Government. I may say that if a comparison of the funds given to Pachaiyappa's College and to the Free Church Institution could be obtained and laid on the table, that will yield results by no means likely to be corroborative of the statements made by the Hon'ble the Rev. Dr. Miller to-day. I will only add one little circumstance. These private institutions are managed by foreign agency with the double object of spreading their religion, making conversions and also of making lay education subordinate to these ends. If I am not mistaken, Dr. Miller once said: We do not care for University examinations, we do not care for success in lay examinations, our primary and chief object is the moral education of students." I take that to be a euphemism for the spread of religion. I venture to say that the Government would be doing an injury, in fact misappropriating public funds, if it encouraged private institutions—taking private institutions as they are—and in the way his indictment to-day suggests. If the Government means further to extend its assistance towards private institutions, it must insist upon the conscience clause being observed not only among the various sects of Christians but also among Heathens. While natives of India other than Christians are compelled to undergo religious instruction in Christianity, I fail to see how these institutions could be called lay institutions. Suppose a Hindu or a Muhammadan institution under private management compels the European and Eurasian boys to bow before the idol of Krishna, would you be justified in maintaining an institution of that kind? Would not the Government be misappropriating people's funds if it assisted a private institution which compelled Eurasian and European Christian students to bow before the idol of Rama or the Goddess of Cholera? I should take exactly the same position with regard to a Muhammadan religious institution or a Hindu religious institution as I do with regard to Christian institutions. I hope my missionary friends will understand me when I say that I am against compulsory religious education in any school, no matter whether that religious education relates to Muhammadanism, Christianity, Hinduism or Zoroastrianism. The Government is pledged by all its traditions to devote its funds to lay education, and therefore I emphatically protest against consideration being given to statements so cleverly and brilliantly made by the Hon'ble the Rev. Dr. Miller.

The Hon'ble the Rev. Dr. MILLER:—Your Excellency, I may be permitted to explain that I spoke, not in favour of any change of policy, but in favour of carrying out fully a policy that has been long in existence.

The Hon'ble M.R. Ry. C. VIJAYARAGHAVACHARIAR Avargal:—Quite so, I understand that policy is not the policy enunciated by Dr. Miller. I would refer to the evidence given by Dr. Duncan before the Education Commission. It cannot be said that Dr. Duncan was in any way prejudiced against mission institutions, nor was he in any way prejudiced unduly in favour of other institutions. He tells exactly what private efforts meant and in what way private efforts ought to be understood by Government. To corroborate my statement, I would refer Government to Dr. Duncan's statement. Even if the policy be as stated by Dr. Miller—which I deny—I would ask the Government to alter that policy, to get rid of the policy in the light of facts. It has got rid of a Resolution of Parliament in the light of the facts in the East; it has got rid of the resolution about the simultaneous examinations in the light of the facts in the East. I would call upon you to get rid of the proposed policy of education in the light of the facts in the East, to understand the sentiments, feelings and wishes of the people in the East. Don't get rid of those resolutions and policies only when they are in your favour in the light of the facts in the East, but also when they are against you. I say that that policy of education should be worked in the light of hard and actual facts. Those hard and actual facts have not found a place in the statement which Dr. Miller has placed before Government to-day. If the people are given the option, they would not have instruction in Christianity unless they are compelled to have it. If Hindus and Muhammadans send their children to mission schools—these form a vast majority of private institutions—and if their children submit to such religious instruction, it is because there are no Government institutions at the same place or within easy reach and cost. I respectfully submit that the representations that I have humbly made will receive due consideration. I do not blame anybody, but I venture to state that everywhere, in the Senate and in the Syndicate, the friends of the people, the friends of education, are diminishing in numbers. This is a sad feature, and the Government should look into this aspect of the case. I now desire to say one or two words about the translation and printing charges in the High Court. I would ask your Excellency to consult the High Court whether the printing charges in regard to criminal cases might not be done away with. In civil cases it may be right that a party should pay the charges, because the successful man gets his cost and whatever charges he pays he gets from his opponents; but in criminal cases most innocent men might have been prosecuted most unwittingly—I mean in Government prosecutions—and absolutely there is no remedy for damages incurred. In these circumstances it is hard to compel the man to pay the cost of printing. It has often been said that this heavy cost makes justice prohibitive. It makes justice a luxury of the rich; it places it beyond the reach of the poor man. The only question is whether, seeing the enormous sum that the administration of justice gets, it is not desirable that in the interests of the poor—your Excellency's heart, the most tender part of it, belongs to the poor—to do away with this taxation of criminal justice. It must be admitted, Sir, that with the best of intentions the administration of criminal law in this country is not all that the well-wishers of the people and the Government could desire. There is no compensation awarded to any man who may have been prosecuted even on false testimony or malicious charges in Government prosecutions. He has no statutory right to demand compensation. I know of no case in which the Government, as a matter of mercy and concession, awarded compensation except to some of its own subordinates. In the case of private persons it has awarded no compensation whatever. In these circumstances I leave it to your Excellency, in conjunction with the High Court, to consider whether it is not time to do away with the charges for printing got from accused persons. As regards the Abkari policy of Government, I have one or two words to say. I do find that there is every indication of a change in

the policy—in the rules applicable to the working of the excise system. It is a difficult subject, and on reading it very carefully I do find that I cannot make suggestions except with diffidence, and therefore it is with diffidence I make my suggestions. The mere theoretical policy of the excise administration I find has been declared in two or three words—maximum of revenue with minimum of consumption. It is a paradox and it is calculated to mislead ordinary readers. It is explained by the statement of a Committee of 1883 or 1884 appointed by this Government, whose recommendation this Government accepted in its integrity, and whose recommendation was also forwarded to the Secretary of State, when a general enquiry was made throughout the country in consequence of certain resolutions passed in the House of Commons. That Committee say: "It should always be borne in mind in connection with the taxation derived from the sale of intoxicating liquor that it is imposed primarily in order to restrain the consumption of such liquors and not for the purpose of making money out of their sale, and that the fact of the revenue so derived being large is merely an incident." Then I think the Government of India say: "It may be conceded that however small the rate of consumption may be, any increase is equally to be deprecated." I read this statement to show that while on the one hand the Government is not prepared to take measures to prohibit the sale of liquors in the country, its policy, on the other hand, is to reduce it as much as possible and after that reduction to derive the maximum revenue. There are three items to be taken into account—toddy, country spirits and foreign spirits. I concede that no measures which this Government can take in the matter of excise will affect the higher orders of India either way. If the higher orders do take to drinking, I believe it must be owing to the existence of factors over which the Government has little or no control. I therefore leave the higher orders alone. I am happy, however, to be able to say that amongst the educated men, among the higher orders, there is a re-action; owing to the spread of university and scientific education and owing to the revival of religious influence there is a less tendency to rush to these forbidden liquors. I submit that the lower orders are in the hands of Government. You should exercise the highest amount of beneficent care in dealing with the excise policy so far as it affects the prosperity and even the life of the lower orders. I will take in order toddy, country spirits and foreign liquor. I am told that foreign spirits which find their way to rural parts are generally inferior in quality and are very deleterious, and that their consumption in the place of country spirits would do more harm to the people. I would therefore deprecate any policy which would make it easier for the poorer classes to obtain foreign spirits than to obtain country spirits. At the same time I find from the figures placed before us that the consumption of the country spirits has been going down, while there has been no increase in the consumption of foreign spirits in the country. The only inference is that the fall in the consumption of country spirits is independent of any consumption of foreign spirits, and that the foreign spirits have not found their way into the rural parts to any appreciable degree. As to the question of the Government regulating the prices, according to law Government has no power to compel sellers to sell below any maximum prices. That is my humble view of the law. Whatever be the law, if the law needs amendment, I dare say the Government can amend it. Apart from the question of law, it is undesirable to place maximum prices upon country spirits. The answer of the Government is: That is the only way to prevent the illicit manufacture of liquor. I submit that on going through the reports I find there is absolutely no evidence of illicit manufacture. On looking at the result of the abkari prosecutions, I find in the administration report that a vast majority of prosecutions for illicit manufacture has been for the illicit manufacture of toddy; and

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I do not see any person prosecuted for illicit manufacture of country liquor. Leaving these apart, my humble suggestion is that you must reduce the tree-tax, so that the poorer classes of people may take more to toddy and less to country spirits. I beg to state that fermented toddy is much less injurious than country spirits. It contains some elements of food; nextly, it is difficult to cure the labourers and the extremely poorer classes of their habits of drinking toddy. If we place a restriction upon the sellers of the country spirits and compel them to reduce the prices upon them, the result will be that people who drink toddy will take to spirits, because they are stronger and much more intoxicating but they are several times more injurious. In these circumstances, in introducing any change in the excise policy, which, I believe, is in the contemplation of Government, the facts which I would desire to place before Government are that there should be a reduction of tree-tax, so that there may be an increased consumption of toddy so far as poorer classes are concerned; you should keep up the high price of country spirits so that it may not be within the reach of the poor people, but low enough so that people might not take to foreign spirits. Going over the rest of the Financial Statement, I find nothing striking in it. Last year your Excellency most gracefully said that you were pleased with the remarks of the non-official member on the Financial Statement. Your Excellency's words were: "I recognise the moderation with which the members have criticised the budget and I thank them for the many useful and weighty suggestions that they have made." If their criticisms last year could be taken as a fair sample of criticisms which the Honourable Members have been placing before this Council for the past six years and more, I am somewhat pained to find that there is absolutely no evidence that any of the suggestions had influenced the policy of Government or the expenditure of Government as placed before us. I know that between the graceful statement of His Excellency and the actual preparation of this budget there was very little time. Though this is the last meeting at which we discuss the budget under your Excellency's worthy guidance, yet the next budget will be prepared under your Excellency's administration, and I do beg and pray you Excellency, whose name is a household word and dear as a household deity among the people of Ceylon, that the next budget will show that the tender feeling to which I have alluded has played a most prominent and conspicuous part in the next ten or twelve months that remain of your reign over us.

His Excellency the PRESIDENT:—Honourable Members will agree with me that it would be convenient at this stage to adjourn for a short time. The Council will adjourn till 3 o'clock.

The Council re-assembled at 3 P.M.

The Hon'ble Mr. G. H. STUART:—Your Excellency,—I have a very few remarks to make with reference to what has fallen from the Honourable Members on the subject of the educational policy of Government. The Hon'ble Mr. Ratnasabhapatil Pillai and the Hon'ble Mr. Norton referred to the case of the Law College, and stated that it should either be a full-time college or the salary of the Principal reduced. In respect of that, I have to say that the whole question will have to be re-considered upon the expiry of the second period of 5 years for which the present Principal was appointed, and the opportunity will probably be taken at that time to consider the question. With reference to the School of Commerce at Calicut, the Hon'ble Mr. Ratnasabhapatil Pillai expressed a wish that a similar school might be opened at Negapatam. There are no High School commercial classes in connection with various educational institutions throughout the Presidency and the department assists these classes by means of scholarships or grants. I have no doubt that if the Hon'ble Mr. Ratnasabhapatil Pillai thinks it

or is able to open a similar school in the town of Negapatam, it would be possible to give it assistance. I am not prepared to make a definite promise, but this much I can say, that I will do my best in the Educational Department to assist any school or class of that description in Negapatam. With reference to the remarks that fell from the Hon'ble Dr. Miller, the Honourable gentleman made a comparison between the expenditure incurred on Government colleges and the expenditure incurred on aided colleges in the years 1893-94 and 1898-99. I am sorry that the Honourable and Reverend gentleman did not communicate to me what he was going to say, because, to some extent, I am unable to reply, because I have not had the opportunity of examining the figures which he quoted. If he had done so, I would have been in a better position to answer his remarks. I have another comparison that I can give him. It is difficult, of course, to draw any conclusion from the figures of two years selected for a particular purpose. But the years for which I have figures show conclusions exactly opposite to those at which the Hon'ble and Rev. Dr. Miller has arrived. I take the years at the interval of ten years, that is 1886-87 and 1896-97. In 1886-87 the expenditure on colleges under public management was Rs. 1,57,481. Ten years afterwards the expenditure was Rs. 1,50,960, that is, a reduction of 4 per cent. The expenditure on aided colleges in the first of these years was Rs. 54,640, and after ten years the corresponding expenditure was Rs. 92,844, which is an increase of about 70 per cent. These figures do not seem to bear out the conclusions which the Honourable and Reverend gentleman tried to support. Dr. Miller also said that that was not the whole expenditure on Government institutions. He referred to pensions, and stated that if you include pensions the expenditure amounts to Rs. 2,53,000 in the year 1898-99. I do not know from what source he gets this figure. I am not at all aware how he arrives at this figure. Apparently he has added 10 per cent. to the actual expenditure on Government colleges, but I am not sure about this. I cannot follow his reasoning, and therefore I am not able to say anything about it. I do not know myself what the additional expense on account of pensions is in the Educational Department. It is not the peculiarity of the Educational Department to exclude pensions; it is equally the case with all departments of Government service. The Honourable gentleman further drew upon his imagination in the case of hostels. The Hon'ble Dr. Miller said that he imagined that the expenses incurred on hostels in the case of Government institutions could not be less than a lakh of rupees. Again I cannot follow him and I do not know where he gets his figures from. He has also stated that these institutions are exclusively for the benefit of Government colleges. In stating this I presume he refers to the Victoria Hostel, which was lately opened in the Chepāk Park. The Honourable and Reverend gentleman has evidently forgotten the circumstances under which it was started. I know, as a matter of fact, there was the other day at least one student coming from the college over which the Honourable gentleman presides for boarding in that hostel. It is open to a student of any college in Madras to enter there, so that it is certainly not exclusively for the benefit of those who study in Government colleges. Dr. Miller has further referred to the loss of fees in aided colleges in this Presidency. He said that it was stated in the last educational report, which was issued by my predecessor, that an income of Rs. 59,000 from fees was practically thrown away by managers of aided institutions refusing to charge fees which they might charge. I am not responsible for the statement. I do not think I should have made it myself. The Honourable gentleman is aware that on the occasion of the last revision of the fee notification, the matter of charging fees was entirely left to the discretion of managers of colleges and schools concerned, and it is a mistake to say that although there is a standard fee put down for the purposes

the Educational Department, the colleges are presumed to charge that fee. It is entirely a fictitious fee. It is a mistake to say that aided institutions throw away that fee, because it is open to any college or school to charge any fee; it may charge no fee or charge less than what is laid down, or charge as much or more. The Honourable gentleman said that this determination of Government at the time of the last revision of the fee notification, that is in 1893, not to enforce any particular fees was carried out in opposition to the views of the conference assembled to discuss the whole question. I am not in agreement with what the Honourable gentleman said. I think what took place was this: that at the very first meeting of the conference there was a strong feeling that there should be no compulsory fee notification. It was recognised that it was a clumsy way of enforcing discipline in schools and colleges; and it was only as the result of a compromise that it was resolved that for the present—the words “for the present” were purposely put in—the fee notification might be continued. It was objected to; and the wish of the majority of the members at the conference at the time was that there should ultimately be no such fee notification, and many members of that conference said so clearly in minutes of dissent. The Honourable gentleman has further said, in reference to what has been said in a recent proceedings of the Government of India, that the Government of Madras regards its own institutions as its own pet children and others as strangers. All I have to say in regard to that is, if the Honourable gentleman would point out any responsible body with proper funds which is willing to take charge of any of these institutions which the Government looks after, Government is ready and willing to hand over its children to them. This has been said on many occasions, and the Honourable gentleman is perfectly aware that Government is ready to act in the manner I indicate in any case in which there is a guarantee that the institutions now belonging to Government would be continued on a proper basis and on a proper footing. In its treatment of its own institutions he states that Government violates the recommendations of the Education Commission which the Honourable and Reverend gentleman has so often quoted. That Commission said that Government should gradually withdraw from actual participation in higher education, but that it should not resign any of its institutions into the hands of a body such as that to which the Honourable gentleman belongs, but into the hands of native bodies who are prepared to maintain them with efficiency. It is perhaps not to the credit of the inhabitants of this country that no such bodies have yet come forward. They are content to rely, as the Hon’ble Mr. Vijayaraghavachariar said, upon foreign agencies instead of coming forward to bear the burden of education for themselves. If they ever do come forward, Government, I have no doubt, is fully prepared to hand over its institutions to any such agency. The Honourable gentleman said that it appeared that the object of Government in the matter of education was merely to promote and extend the Presidency College of Madras. Of course it is the Presidency College of Madras that he is most concerned with, because he imagines it is in competition with the institution over which he presides. All I can say is I do not think any such feeling of competition exists in the minds of Government. There is no intention to extend the operations of the Presidency College, at all events as regards the number of students. As regards the number of students, Government has passed orders on more occasions than one that operations should not be extended in that way. The Education Commission reported that there must be one institution as a model to others, and it should be maintained in full and complete efficiency; and complete efficiency cannot be secured without the expenditure of funds; and that partly accounts for the expenditure to which the Honourable gentleman has alluded. All the expenditure upon institutions like the

Presidency College has to be recorded in black and white, and it is open to everybody to criticise it. But the expenditure of other institutions is not subjected to the same detailed scrutiny. If I understand the Honourable and Reverend gentleman right, there is a more fundamental difference between him and me than is involved in these considerations of detail. The Honourable gentleman and those who agree with him are accustomed to quote the despatch of the Secretary of State of 1854, and it is quoted as though it laid down the policy of Government, and it is spoken of as the charter of aided education. They speak of it as though the Secretary of State, having considered the relative advantages of education conducted by the State and education conducted by private agencies, had come to the deliberate conclusion that education conducted by private agencies was better than that conducted by the State, and therefore more deserving of support. I have read this despatch very carefully, and that is not the meaning I attach to it. It is perfectly plain there was no consideration of that kind in the mind of the Secretary of State. What was considered at the time was that as considerations of expense prevented Government from bearing the whole burden of education themselves, they welcomed the assistance of private agencies. It was merely a matter of expense. If at any time it did happen—it could scarcely happen—that State education became cheaper than education conducted by means of private agency, it would be in accordance with the principle of that despatch if the State were to undertake the whole of the education of the country itself. It was not a question of policy, but merely a question of expenditure. But in the case of professional colleges, to which the Honourable gentleman has alluded, and in the case of a model college like the Presidency College, it is still necessary that the operations of the State should continue; and if the institutions are to continue, it is necessary that they should continue in complete efficiency, and we cannot have complete efficiency without expenditure of money. Supposing that Rs. 2,30,000—I have not verified these figures—which the Honourable gentleman states has been spent on Government colleges is cut down by one-fourth, it would render the Government colleges entirely inefficient, as the Honourable and Reverend gentleman is aware. If this amount were distributed among the aided colleges, the effect of it would be very little. If any alteration is to be made in the distribution of funds, the recent despatches and recent orders by the Government of India point to this: that money will have to be withdrawn from higher education, both Government and aided, and spent, to a much larger extent than has hitherto been the case, upon primary education. That is the real concern of the government of the country. In our own country, as Dr. Miller knows, higher education is not the concern of the State. It is to the benefactions of the wealthy of former days that we are to a very large extent indebted for the education that we have received at the Universities in England and Scotland. The wealthy of this country have not yet seen fit to spend their superfluous funds on this worthy object. But I hope that the time may come when that will be the case here as it has been in European countries.

The Hon’ble Mr. J. Thomson:—Your Excellency, I do not intend taking more than a minute or two in reply to the observations made by Honourable Members. I express my obligation to the gentlemen who have had anything to say in regard to the department which I have the honour to administer, which is certainly a vulnerable department, and my thankfulness to the Hon’ble Mr. P. Ratnasabhapatil Pillai and the Hon’ble Mr. Vijayaraghavachariar that they had so little fault to find with it. I take the latter gentleman, the Hon’ble Mr. Vijayaraghavachariar, first. He said that with regard to abkari administration there has been an indication of a change in policy, the policy hitherto being the maximum of revenue and the minimum of consumption.

cannot say that I am aware of any intention to change this particular policy. I do not know of any reason why it should be changed. He also says that any increase of revenue is to be deprecated, and I thought he was quoting from some despatch to that effect. No doubt an increase of revenue is not to be sought for, but if it comes in the way of ordinary and accepted and proper administration I do not see any reason why it should be thrown away. It ought not to be thrown away and cannot be thrown away. He has also said that Government orders in abkari matters cannot affect the higher classes so as to influence their conduct, and he says further that he sees signs of improvement in their conduct. I am glad to hear the assurance that there are signs of a return to wisdom on their part. He goes on to say that the lower orders are in the hands of Government and advises the Government to take steps to prevent these people from using foreign liquors in preference to country stuff. With regard to foreign spirits, they cannot generally be classed as deleterious. No doubt some of the cheap foreign spirits are so, but the ordinary foreign spirits with which some of us entertain ourselves are not at all deleterious. The Honourable Member is not aware what amount of money the foreign spirits have to pay before coming into this country from outside. They are subjected to an import duty of the Government of India, besides bearing their actual cost. There is one sort of foreign spirit which perhaps the Honourable Member has in view, the foreign spirit manufactured in the country, which is practically the country arrack but flavoured to suit the palates of particular individuals. There is nothing deleterious about the manufactured country spirits. The Honourable Member objects to the putting of a maximum price upon country spirits, on a question of legality. I do not think there is any doubt about the legality of our putting a maximum price upon them. I have no doubt about it in my mind; and, as a practical administrator, I have no hesitation in saying that it is absolutely necessary for Government to put a maximum price upon country spirits; otherwise, it is in the power of any supplier to put up the prices to such a high rate that it would lead to illicit distillation. With regard to illicit distillation, I do not know if the Honourable Council is aware what the process is. There is very little trouble in manufacturing country spirits and the spirits produced by illicit manufacture can be sold at 2 annas a bottle. If the rates for licit liquor are very high, then the people will be ready to take to illicit manufacture. The Honourable Member's final proposal is to reduce the tree-tax in order that people may take to toddy in preference to spirits. I am not able to shadow forth the opinions of Government on this particular point. But speaking from the point of view of my department, there is certainly a general impression that the price of toddy is already too cheap; and if the Honourable gentleman had ever been where I have been and found himself in the middle of a village full drunk with toddy at 9 o'clock in the morning and been invited—sociably certainly—to take a seat on the ground beside the drunken headman, he would feel less satisfied as to the desirability of reducing the cost of toddy, and he would have a different opinion as to the possibility of getting drunk upon toddy and with regard to the desirability of making fermented toddy very cheap. I think I have answered the Hon'ble Mr. Vijayaraghavachariar's remarks and will now pass on to the remarks of the Hon'ble Mr. Ratnasabhapatil Pillai. He has a perpetual hobby horse in the Income-tax Act or in its administration. He says that it causes heart-burning and dissatisfaction. That I entirely admit; it is a great source of heart-burning to me to pay so many rupees every month and it must be so to every one. But the tax has been ordered by the Supreme Government and we have to levy it and we endeavour to levy it in the best fashion we can. The Honourable Member says that the onus of proof is thrown upon the assessee. I ask upon whom can it be thrown?

Who knows better than the individual himself how much he has to pay? The Government can only indefinitely fish about as to what the income of a man is and the Government is not to be blamed if it finds considerable difficulty or causes trouble in doing its duty. If the individual will not help the Government who is to be blamed? Certainly the individual. With regard to the whole subject of the income-tax administration, I may say that during the last two months I have examined the registers of three Collectors, three Deputy Collectors and four Tahsildars. The latter have to deal with the lowest grade of assessee and I have been struck with the absolute care with which they have applied the Act and the personal attention which they have given to the numerous cases that came before them and the amount of trouble they have taken in deciding those cases. The Hon'ble Mr. Ratnasabhapatil Pillai has also complained of the trouble imposed upon assessee who are pensioners of Native States. It is stated that the pensioners of Native States suffer in having to pay this tax though their income is drawn from Native States. This is a case which has been before Government and therefore the facts are perfectly well known. I would ask with what object has the income-tax been instituted? It is for the purpose of making a man pay for the privilege of being well governed. Suppose a man living in Tanjore receives his pension from Travancore, should he not pay for the privilege of being governed in Tanjore? That is the sole point. The Hon'ble Mr. Ratnasabhapatil Pillai has also referred to the rules with regard to tapping for sweet-toddy and says that a great deal of hardship has been caused by them. With regard to the whole of this matter, I may say that the answers given by Government in this Council some days ago bearing on the whole sweet-toddy question have been so full and complete, that they ought to have satisfied any one prepared to regard with sympathy the efforts of Government to improve administration and to remove difficulties felt by private persons in the advancement of general and particular wealth. The whole matter lies in a nut shell. Government, years ago, settled to alter the toddy administration from rent areas, generally large areas, to taxation on individual trees and rentals of single shops. The same tree will yield fermented toddy or sweet-toddy according to the manner in which the toddy is treated after it falls from the spathe into the toddy pot. Some lime added to the pot will check fermentation and keep it sweet for conversion by boiling into jaggery. But it is entirely a question of the amount of lime added and the length of time the toddy is within the pot. Now of late years there has been a great expansion of the demand for jaggery, a consequent expansion of sweet tapping and, note, a consequent expanded risk of professedly sweet-toddy being added in the tope to fermented toddy, the latter being subject to taxation, the former being exempt from it. Therefore trouble to the sweet-toddy industry was bound to increase and has increased by virtue of the necessity on the part of Government to protect its revenue from frequent inspections of toddy in the pot; and in consequence complaints of such interference have been increasing. It is perfectly natural it should be so. The Government revenue is increasing, and the use of toddy trees for yielding jaggery is also increasing. The two being alongside each other, the sweet-toddy tapping spreading indefinitely, the Government must protect itself, and the more it protects itself, the more it interferes with sweet-toddy drawing. As an amelioration of the difficulties—which to me I confess seem almost insuperable—one firm largely engaged in the jaggery industry suggested local separation of the one industry from the other. This has some promise of good in it, and we are endeavouring to carry it out. The objections in Tinnevely have proceeded, I must say, largely from ignorance of the intentions of Government, and there has been also the usual stock objection wh con-

tappers are asked to take out licenses in order that we may know with whom we are dealing, "Valakam illai," that it is not the custom. I am glad to say that up to the present we have received applications in Tinnevely for about 800,000 trees for tapping sweet-toddy which may be converted into jaggery. I am not aware of the ground upon which the Hon'ble Mr. Ratnasabhupati Pillai has estimated the loss from jaggery in Tinnevely at 80 to 100 lakhs. The yield of these eight lakhs of trees, taking the yield of each tree to be $1\frac{1}{2}$ maunds of jaggery, will amount to twelve lakhs of maunds, and that, calculated at Rs. 18 per candy, will amount to Rs. 34.56 lakhs. There is no doubt that the number of trees that will be taken up for jaggery will be very much larger than the eight lakhs to which we have approached. As the Government have stated, they are perfectly willing to afford all reasonable facilities for the development of the jaggery industry and to do all that lies in their power accordingly. Rules have been framed with this object and will be revised, if necessary, after fair trial. I may fairly ask this Council to remember that we have framed these rules for trial, and the Government have no desire to limit sweet-toddy tapping, but to protect themselves and to advance sweet-toddy tapping or the jaggery industry.

The Hon'ble Mr. W. J. H. LEFANU:—Your Excellency, when I had the honour of addressing this Council last year, I suggested that some steps might be taken to introduce expert assistance in the matter of mining in the Madras Presidency. But I observe from the budget statement that the allotment for the exploration of petroleum and other minerals has lapsed. I am inclined to think, from the papers placed before us, that no steps have been taken in the direction I have pointed out. I would most respectfully urge upon Government that the difference between a geologist and a mining engineer ought to be recognised, and that the assistance which the infant industry requires should be recognised and given to it. There is another matter—I do not know whether I ought to refer to it—namely, the criticisms upon settlement and the attacks which our friends the Honourable Members for delta districts have made on it. The facts connected with them are so very generally known that I somewhat hesitate to take up the time of the Council in discussing them. There is, however, one matter on which I should like to speak. They attribute generally—and the committee in London which is in communication with these gentlemen attribute—to the general re-assessment, to a general mismanagement and tyranny of Government, the recurring distress which unfortunately exists in this country. Gentlemen who have spoken to-day, including the Muhammadan member, have spoken for the delta districts. I was not aware that that gentleman was connected with Tanjore and he spoke for Tanjore. The Hon'ble Mr. Ratnasabhupati Pillai also spoke for Tanjore and the Hon'ble Mr. Ganjam Venkataratnam for Gódvári. My experience of Gódvári is that these gentlemen have been speaking very much for themselves and not for the population. What I observe is that when gentlemen earn money in this country the first thing that they do is to invest it on land, because, I presume, the land pays them. They invest money on lands in the deltas, because the land pays them the best in the deltas. Having done that they find to their surprise that they do not get quite as much from what they invested as they expected. The settlement does not profess to find a place for the middleman. So the only way to get the income expected is to get something out of the Government share, and they agitate against Government whenever there is a re-assessment. So far as the Gódvári district is concerned, I have reason to believe that upwards of six millions have been absorbed in the form of gold in that delta within the last forty years from one single source; that is, absorbed in the form of ornaments by people who, the Honourable Member would have us to believe, are in great distress. The great cause of this recurring distress is a fact

which has not been sufficiently recognised and which I think requires sufficient investigation, namely, why there has been extraordinary and, as far as my small experience goes, unprecedented recurrence of distress. Save the small distress of 1866 there was no general famine till 1877-78 and then we were left in very great peace till 1888. Then there was a slight appearance of trouble in 1889, and there was the famine of 1890-91. Then we had not very many years left, as again we had bad years in 1896-97. Now we are facing one of the biggest famines of the century. Your Excellency, it is not in accordance with recorded official experience in reference to rainfall and seasons that we should have such recurring series of scarcity and of bad seasons as we have had during the last twelve years. I think it is possible that it is due to causes which have not been ascertained, and to ascertain which no attempt whatsoever has been made. The world has changed very much during the last 20 or 30 years. Most of us here at this table remember when the first Atlantic cable was laid, and since then a dozen submarine cables have been laid; we have laid rails across the continent of America, and from St. Petersburg to Vladivostok; 22,000 miles of railway have been laid in India; Africa is being gradually brought under the influence of the steam engine, and practically the lines of iron are traversing the globe almost everywhere. We have similarly spread the telegraph wire, we have substituted wooden posts for iron posts. Whether all this may or may not have influence on terrestrial electricity has not been discussed. That rain is connected with electrical phenomena has been stated. Possibly a disturbance of electrical phenomena might influence rainfall. I have never seen any intelligent discussion as to the possible causes of this distress. It was a recognised fact some thirty years ago that sunspot periods had influence upon the weather of the world, notably upon the weather of India. The variation was supposed to have been in accordance with sunspot maxima and minima. These again were said to be influenced by the planet Jupiter. If this is so, there may be something more than mere superstition in the native belief which associates a particular position of several planets with bad fortune in the cycle year Vikari. It has occurred to me that possibly there may be some influence, electric or otherwise, which has not been properly worked out. If so, it ought to be investigated. In what we are pleased to term the lower animals, instinct is supposed to be the result of accumulated and hereditary experience. When we find that this country, which established its calendar centuries ago, has a certain superstition as to the present year which to our great surprise turned out to be partly correct, we might see whether it is not the accumulated experience of their race which has led them to forebode some bad fortune in connection with the particular year which is named Vikari. It may or may not have nothing to do with the combination of planets. It may be synchronous with something else. When, however, we have gone so far as to surmise that the Sun and Jupiter, which is not a dead planet, have some influence on our seasons, it is not pandering to astrological superstitions to suppose that possibly the position of other planets may have some similar influence. I would strongly suggest that an enquiry should be made whether a bureau should not be established which would bring together and link into one all the meteorological observatories of the world. We have had in 1896-97 the most tremendous droughts in America, in Africa, in India and even in Burma and Australia. That is a very unusual thing. There was such a wave of heat in January last that people were dying by hundreds in Rio Janeiro. The summer heat in Europe in 1899 was very unusual. Large variations over large areas must be due to some cause, and the astronomer, the meteorologist and the electrical esoteric ought to be brought together to investigate the laws which govern such variations. If these are once known, we can, if not prevent, at least

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foretell distress. I would ask the Government whether it could not arrange that such an enquiry should be made, and that all the meteorological bureaux of the world should be brought into communication with each other and the present system of administering the work of meteorology in India expanded.

The Hon'ble Mr. H. M. WINTERBOTHAM :—I am afraid I cannot avoid inflicting a few remarks on the Council with reference to some observations that have fallen from Honourable Members on certain subjects with which I am more directly concerned. The Hon'ble Mr. Ratnasabhapatil Pillai trotted out a hobby which I imagined had been flogged to death, namely, that this Government must hold itself directly responsible for the recurrence of famine because of the exorbitance of its land assessments. It is almost useless to remind the Honourable Member that the history of India is a history of famine from the time of the Mahabharata downward. You may all have read the tale in the Mahabharata which relates how the holy rishi Viswamitra during twelve years of famine, in order to save himself from death by starvation, was forced to steal dog's flesh from the hut of a Pariah, and was fain to fill his belly therewith after offering portions of it piously to the gods and pitris. The Honourable Member remarked that the average rate of assessment in Madras is far higher than it is in Bombay, and I think, he said in the North-West Provinces and Oudh and some other portions of India. He has been repeatedly informed of the reason for that. The reason is that in Madras the area of irrigated land is far greater than that in the provinces to which he refers. Of course when land is supplied with water it will easily pay higher assessment than mere dry land. It is the great extent of irrigated land in this Presidency, coupled with the fact that the charge for water is consolidated with the land assessment, that accounts for the higher average rate of assessment. He says that if the assessment were permanent, the ryots would flourish and famine would disappear. In reply I may point to two zamindari taluks in one corner of this Presidency, that is Darsi and Podili in the north of Nellore, and enquire how it is that they are so constantly afflicted by famine notwithstanding that they enjoy a permanent assessment. I think I may also point out that the areas most affected by famine are those in which the land assessment is the lightest. I do not know what inference the Honourable Member would draw from this undoubted fact. Throughout a large part of the Deccan, which suffers most from famine, the assessment is only two annas an acre. If you go to our deltas where the land assessment is heavy, you find an almost complete absence of famine. So untrue is it that famine has anything to do with the exorbitance of our land assessment! With reference to kistbandi, he made it a grievance that the ryots had now to pay their kists in four instalments, and he proposes a reversion to the old plan under which they had a larger number of instalments. In Tanjore, for instance, there was one set of instalments for dry crops, another for early crops and a third set for the late wet crops; and the result of it was that it used to be said in Tanjore that the only person who could tell the ryot when his instalment was due, or what his instalment was, was the karnam of the village. He used to make it very much what he liked. The Honourable Member said that if Government could not go back to the former system, it might allow five instalments starting from February, because no crops were harvested before the middle of February. He made that as a general statement applicable to the whole of the Presidency. But apparently he is quite unaware that the wet harvest in Godavari and Kistna is all over in December. The Government have bestowed immense attention upon this subject and the present kistbandi is in my opinion as good and suitable a one as any that can be devised. It may perhaps be desirable in some cases to postpone the first kist to the month of February, but then come all sorts of difficulties about the financial year and the

dislocation of the budget. That is one reason why we are prevented from postponing the kists to as late a date as the Honourable Member suggests. Whether that difficulty will ever be surmounted or not I cannot say. He next complained of the unnecessary increase of the village service cess in the Tanjore district and represented that the establishment is being increased in an unnecessary manner, which would cause hardship. The village service cess was 8 pies in the rupee but now it has been raised to 9 pies. The object of this increase is as follows :—At present in Tanjore village there is only a single menial village servant called the Vicharippukaran who gets the munificent pay of Rs. 3. We are now going to give to each village a vetti and a talayari, and the larger villages will have more than one talayari up to the maximum of four and these necessary menial servants will receive the munificent pay of Rs. 4 per month each. There is an enormous amount of revenue and police duty to be performed, and it is absolutely essential that Tanjore should be furnished with the same establishment as the villages in the other districts have. I will now make a few remarks with regard to what fell from the Hon'ble Nawab Saiyid Muhammad Sahib Bahadur. Unfortunately I did not catch fully what the Honourable Member said but I understood him to urge the desirability of being liberal in seasons like the present with the grant of seasonal remissions. I may just mention to the Council that in the last two years 1896-97 and 1897-98, the total amount of remissions granted by Government amounted to 42½ lakhs. I think if every landlord would emulate Government in this liberality of remissions, it would be well for the cultivators. During the present season the estimate of the remissions which will probably have to be granted even exceeds the figure I just mentioned. The jamabandi has not yet taken place and the exact amount cannot be estimated. I may remark that if the Honourable Member's proposals were accepted and if the Government could live like a chameleon on air and forego all its land revenue in favour of the pattadars, the only result would be a huge increase in the number of small proprietors who would subsist on the rents of their land. Tanjore is a signal example of this. A great majority of the pattadars sublet their lands to tenants. The tenant has to supply the plough cattle and the seed-grains and he has to render up to the pattadar in many cases 80 per cent. of the gross produce. The pattadar out of this has of course to pay the Government revenue which I admit in some cases might amount to 30 per cent. of the gross produce, but it is plain from the example of Tanjore that a light assessment may be of no benefit to the actual cultivator. As regards what the Hon'ble Mr. Saiyid Muhammad has said on the subject of exempting Mussalmans from contributing to the cost of the special police force in Tinnevely, if there were any satisfactory means of distinguishing those persons who were altogether unconcerned in the dispute, and who were in no way accessories to the disturbance, I suppose there would be no doubt that all such persons should be exempted. Even amongst the Maravars and Shanars themselves there must doubtless have been many thousands who (whatever their sympathies) took no part whatever in the riots. But the truth is that there is no way of thus distinguishing the innocent from the guilty when the whole population of a large area is concerned. We know that when once the example of looting had been set at Sivakasi, great crowds, numbering in the aggregate several thousands of persons, took part in plundering and looting the Shanars, and in extorting blackmail from them. Out of those thousands a few scores were identified, accused and arrested; but the character of oral testimony in the district and the suspicion with which it is regarded is such that even in the case of these few it has been impossible to prove the complicity of more than a small fraction. As regards Muhammadans it has been reported from the first that some of

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joined in the looting, and, in one or two cases, took a leading part in it. This involves no imputation against the Mussalmans as a body. There are, of course, budmashes in every religion and sect, and probably there is no religion or sect existing in Tinnevely of which it could be said that none of its adherents took part in the riots. As rivals in trade, a good deal of jealousy between the Mussalmans and Shanars existed, and the Mussalmans are said to have greatly benefited by the attempted boycott of the Shanars, and to have done their best in a quiet way to foment the ill-feeling between them and the other Hindus. Not one of the Mussalmans, so far as has been heard, anywhere raised a finger on the side of law and order, or gave any assistance either in preserving the peace or in bringing the guilty to punishment. In certain parts of the disturbed area the Mussalmans offered protection to the Shanars if they would embrace the Muhammadan religion, and many Shanars thus purchased protection. That advantage should thus be taken of the disturbances to obtain converts was not unlawful: indeed the desire was natural enough; but it shows that the Mussalmans were treating the disturbances as an opportunity for promoting their own objects, and that they withheld the protection which they were in a position to afford, unless it was purchased at the price they asked. After giving the subject due consideration the Government was, and remains, of opinion that it is inexpedient that any class of persons in the disturbed area should be exempted from contributing to the special police force. For the satisfaction of those who do not share this opinion I may perhaps say that the tax, when distributed amongst so many, becomes but a small burden, varying from a few annas in the case of the poor, to a few rupees in the case of the well-to-do.

The Hon'ble Mr. A. T. ARUNDEL:—Your Excellency, I feel very thankful that it is not my duty to answer all the criticisms and discuss all the matters that have been raised in the course of the debate. It began with criticisms on the part of the Hon'ble Mr. Ratnasabhapatil Pillai on the assessment of land revenue in India, and at the other end I was startled by finding my attention drawn by the Hon'ble Mr. LeFanu to a proposal to establish a meteorological bureau of the world to ascertain the effect produced by innumerable lines of railway and electric telegraph on the climatic conditions of the globe. To return therefore to more practical matters in which I feel myself concerned, I would begin by noting one or two points in the Hon'ble Mr. Ratnasabhapatil Pillai's speech. First of all he asked whether the Irrigation Cess law would make the people happier. In regard to this question, I would say "No". As was explained during the discussion, the Act has been introduced with a view to prevent loss of revenue, not with a view to make people happy, but to prevent them from taking away what is due to Government. He next referred to minor irrigation works, which seemed to the Hon'ble Mr. Anandachari as not receiving adequate consideration. We have a special establishment in this Presidency whose particular care is to look after irrigation and minor irrigation works. Unless financial necessity requires us to cut down our public works allotment, I am in hopes that attention will be given to the minor irrigation works as has been the case hitherto, and they will be rapidly brought into a condition of efficiency. Important schemes are taken up by Engineers as funds are available. As regards the income-tax the Hon'ble Mr. Thomson has answered the remarks of the Hon'ble Mr. Ratnasabhapatil Pillai. I will draw the Honourable Member's attention to the fact that in England we have precisely the same system going on—people pay income-tax on money which they have earned in the shape of pensions or otherwise in the countries other than England. If he is a reader of newspapers, he will probably have seen an account of an American who was born in England, who had made a fortune in America, and who must have been

paying income-tax during his residence in England to a very large extent on the fortune he made in America: his estate paid death duties to the extent of £900,000. The Hon'ble Mr. Thomson has discussed the toddy rules, and I do not think I need add to what he has said. The Hon'ble Mr. Thomson has told us that a frequent reply given when people were asked to take out licenses was that it was not the custom. I was not long ago, I remember, discussing this matter among other things with the owner of a good many trees, and he told me that one reason why toddy-drawers objected to taking out licenses was that for many generations they exercised the profession without taking out a license. That is a purely sentimental objection. I do not say it is not a natural one, but still we cannot regard it as showing that there is an intrinsic hardship in the rule itself. I am in hopes, as the Hon'ble Mr. Thomson said, that the rules will be found to work smoothly in course of time, and he will no doubt take into consideration any serious inconvenience that may arise in the course of their working. With regard to the Law College, remarks have been made by the Hon'ble Mr. Ratnasabhapatil Pillai and the Hon'ble Mr. Norton. The Hon'ble Mr. Stuart has commented upon this subject and I do not think I need say anything much upon it, but I would only remark as to the question of the Principal engaging in private practice: he was permitted to do so under the terms of his present agreement with Government. The Government saw no reason to prohibit it, provided it did not interfere with the discharge of his immediate duties in the college. As to whether the college can be made a full-time one or not, that is a question the consideration of which will have to be postponed until the close of the present term for which the Principal has been engaged. I think I am correct in saying that the term expires next year. With regard to the police force, the Hon'ble Mr. Ratnasabhapatil Pillai suggests that their status could be raised without any cost by employing graduates and under-graduates, if a more dignified appellation were given to the police officers. I am afraid I cannot agree with him on that point. One thing that we want to do, as soon as funds are available, is to raise the pay of the rank and file of the police. When a constable gets the sum of Rs. 7 per month, one feels, considering his responsibilities and the temptations that are put in his way, that is not at all sufficient. With regard to what the Hon'ble Mr. Saiyid Muhammad said, I think I have mentioned in my introductory remarks that the Government was anxious to purchase a building on large grounds for the school for Muhammadans, but unfortunately financial difficulties stood in the way and we were obliged to let the opportunity go by. We hope that when our financial stress is lightened, we may be able to take up the project and carry out the scheme. The Hon'ble Mr. Arbuthnot spoke of the provincial contract. I must say I sympathise with him in the limitations of present conditions. The only thing I can say is that next time we meet here I hope that instead of a dirge of lamentation we may have a psalm of victory to raise over the fact that the Government of India, when it has passed through the period of famine and when it is in a more flourishing condition, has been able to place us in the position we desire to be in. There is one remark made by the Hon'ble Mr. Arbuthnot and repeated by the Hon'ble the Revd. Dr. Miller, that the discussion of the budget might be taken up at an early stage. This was put before the Government of India in 1893 when it was said that the discussions held at an earlier stage would be more convenient. The Government of India then said:

"It is stated that a discussion held at an earlier stage will be more convenient to the local Government and of greater practical use than one held after the budget has been passed by the Government of India."

"In reply, I am to say that, after giving full consideration to the arguments advanced in your letter, the Governor-General in Council adheres to the view that the Financial Statement should not be presented to, or discussed by, the local Legislative Council until it has received the sanction of the Government of India. Although in practice the Government of India interfere as little as possible with the local budgets, they retain the right to do so, and, this being so, it seems to be clearly undesirable that the discussion in Council should take place while the budget is still under their consideration. It will, moreover, not be possible to compile the estimates in the month of January with sufficient accuracy for the purposes of a public discussion. For these reasons the Governor-General in Council regrets that he is unable to modify the orders contained in paragraph 3 of my letter of the 27th October 1892."

The Hon'ble the Revd. Dr. Miller seems to be under the impression that less information is given in connection with the Financial Statement than was formerly the case. This may perhaps be so, but it does not follow that the information is not placed at the disposal of the press. All the budgets as they are passed are placed on the Editors' Table. There is the civil budget estimates for 1900-1901 in which details of every description are given. The only thing is that they are subject to correction when the final estimates come out in June. I think if on the next occasion he will make enquiries he will be able to obtain almost any information he wants.

The Hon'ble the Revd. Dr. MILLER:—Cannot this be sent round to members?

The Hon'ble Mr. A. T. ARUNDEL:—I am afraid we cannot send them. If you seek for information I have no doubt the Chief Secretary will oblige you with what you want. With regard to the expenditure on hostels, I find on enquiry that in the years 1898-99 and 1899-1900 sums of Rs. 25,000 and Rs. 12,000 respectively were expended on the Victoria Students' Hostel and Rs. 3,000 on the Teachers' College Hostel at Saidapet in 1896-97 and 1897-98. There was Rs. 30,000 allotted in 1899 but the greater part of it has lapsed and nothing has been provided in the present year owing to our financial necessities. I ought to say, with reference to one remark of Dr. Miller, that the outlay on hostels cannot be found in previous years, because it is, in itself, a novelty and the system began in the year 1898. The Honourable gentlemen referred to the loss in fees of Rs. 59,000 owing to the abandonment of the fee notification. I should say with all respect to the Honourable gentleman that his opinions are not invariably held by educational experts. It is no breach of confidence when I say that I have received from the Principal of the St. Joseph's College, the Revd. J. W. Sewell, a memorandum bristling with most cogent arguments opposed to the view taken by the Hon'ble the Revd. Dr. Miller. On that matter, I have not come to any final conclusion. But I am bound to say that the arguments set forth therein are of a powerful character. I only lay stress upon this point to show that the views which the Honourable and Reverend gentleman has put before us are not necessarily shared by other gentlemen of educational experience in the Presidency. The Hon'ble Mr. Venkataratnam Pantulu made some remarks about the Kolair lake and asked what progress had been made in improvements there. I am sorry to say I have no information. If he had asked for it before, I might perhaps have been able to get it for him. If he is interested in it, perhaps he will put a question at the next meeting. As to the question of delta superintendents, I am sorry to say that it is still under discussion. This is a matter in which I myself felt very much interested: Mr. Subba Rao Pantulu, the Hon'ble Mr. Venkataratnam

Pantulu's predecessor, and I occasionally talked over it. I very much regret that we have not been able to come to any determination as yet. On the question raised by the Hon'ble Mr. Norton that the salary of native Magistrates should be increased mentioning that some of them are still on Rs. 60 or 70—I believe there are only very few on that salary. There are a number of Magistrates called the stationary sub-magistrates who receive salaries from Rs. 100 to 120. It will be obvious to the Council that it is quite impossible to entertain any proposal to raise salaries until our financial condition is entirely different from what it is at present. The Hon'ble Mr. Norton also made some remarks upon the fact that the Municipality of Madras has spent 3 lakhs on plague and no assistance has been given to it by Government. I do not see the Honourable gentleman in his place. However I may say that the Hon'ble the President of the Municipality has received a Government Order that owing to our financial difficulty, we are unable to make the advance which we hoped to make during the year just ended and that as soon as our financial condition is more favourable we hope to reconsider the matter. The Hon'ble Mr. Vijayaraghavachariar made some general remarks on the question of Education and also upon Excise. With regard to the first part he entered into a matter which I need not discuss. With regard to Excise, the matter has been discussed by the Hon'ble Mr. Thomson who is in charge of that department. I do not think I have anything to add to what he said.

His Excellency the PRESIDENT, in closing the debate on the budget, said:—Honourable gentlemen, our budget for this year has not afforded us an inspiring theme for consideration. Our work has mainly consisted of a painful effort to make both ends meet. The severe financial pressure felt by the Government of India on account of the widespread famine that now exists may be accepted as some reason for restriction upon our expenditure during the present financial year. But as has been fully and ably stated by my Honourable colleague, it is not only in special years such as the present, but in ordinary years and every year, that we feel that the allotment granted to us is not sufficient to enable the Government of Madras to carry out its duties towards its nearly 40 millions of inhabitants, in the way of providing them with proper equipment in the matters of education, of medical aid, communications and many other things of the sort. My views with regard to the contract system have more than once been plainly expressed in the Council, and I will not therefore repeat them. Only I will say that they remain unchanged. All I can further say on this subject is that I believe some modification of the financial contract system in the direction of decentralisation is still under the consideration of the Government of India and of Her Majesty's Government. I venture before dissolving the Council to make a few general remarks. We had, during the series of sittings that have taken place since November last, passed several measures of considerable importance; of these I take it that the most important and the most far-reaching is the Gains of Learning Bill. For nine years this measure was before the public. But I am not aware that during that time there were any strong representations put forward, but now that the Bill has been passed a considerable opposition has somehow been engendered and criticism of various kinds has been raised, public meetings have been held on the subject, memorials have been addressed to the Government, and the Press has been full of letters with regard to the Bill. I can assure the Council and the public that these representations will receive the very serious consideration of the Government. Another Bill of great importance that we have lately passed is the Irrigation Cess Bill. And I must confess that I am unable to grasp the reasons for the unpopularity which appears to exist with regard to it, and for the opposi-

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which was shown to it in this Council. I understand the Bill simply to be, as has been explained over and over again, a mere measure of protection to prevent the public revenues from suffering. When I came to the Council I was persuaded that the interest of public revenues made such a Bill highly desirable. By the time the Bill was passed I was fully convinced that such a measure of protection was absolutely indispensable. I feel confident that when the public have really learnt the actual intention and scope of that Bill, the apprehension which they seem to feel with respect to it will be allayed. The Local Boards Bill also produced considerable discussion in this Council, and I will observe in connection with this Bill as with others also, that at the last stage when the motion is made that the Bill and the report of the Select Committee be taken into consideration at once, there seems to have been an increasing tendency on the part of certain of those members of this Council who are appointed by the Government on the recommendation of District Boards and Municipal Councils and other bodies and inaccurately described as elected members, to discuss, at great length, by way of amendments not only the principle of the Bill but its details also. I venture to think that there is some little inconvenience in this course. With regard to the discussion of the principle of the Bill at that stage, one of our regulations, No. 47, lays down that the discussion upon a motion under this rule that the Bill be taken into consideration shall not extend to the principle of the Bill. So far as concerns the principle of the Bill. Then as regards the details, I understand that when a Bill is referred by the Council to the Select Committee, which is always a very comprehensively chosen body, every detail of it is fully and exhaustively discussed and settled, and that when the Bill emerges from the hands of the Select Committee it is generally considered to have advanced almost to the stage of completion and perfection. Of course it is possible that there may be members outside the Select Committee who may have suggestions to make or objections to offer on points in the Bill. I would venture to suggest—I do this in this spirit, merely of suggestion and hope that it will not give offence—that a good deal of the inconvenience that I refer to would be met if Honourable Members, though they may not be in the Select Committee, would communicate their wishes and views to their friends and colleagues who may be in the Select Committee, and even then at a further stage if Honourable Members who may have important amendments to suggest to the Bill would seek a discussion with the Member in charge, or, if necessary, with the Governor, I think it probable that a great number of amendments that they wish to make would be disposed of before we meet in Council. In this way I venture to say that a good deal of valuable time might be saved, and, what is perhaps more important, a certain feeling of irritation and impatience which I think is sometimes engendered would be avoided; and lastly the somewhat undesirable spectacle of a long series of amendments being consigned one after another to the limbo of the lost would be spared to us. I hope, gentlemen, you will accept my suggestions in the spirit in which they are made. I am happy to say with regard to one of the scourges with which this country is at present visited, namely the plague, we in the Madras Presidency are at present in a situation which is, as compared with other provinces, very favourable. During the last six weeks the deaths from plague in the whole of Madras Presidency have been as follows week by week—29, 35, 28, 6, 10 and 10. For the corresponding weeks of last year the deaths were 151, 125, 100, 66, 46 and 59. Thus it appears that the disease is in the Madras Presidency less virulent than it was during the corresponding time last year, and moreover that as the hot weather advances, as in last year so in the present year, the disease becomes less fatal from week to week. As regards our famine prospects, things, as far as I can judge, seem

to be in rather a stationary condition. In the five districts in which test relief-works have been opened we have at present considerably under 10,000 people seeking relief. And during the last week the number has fallen off slightly as compared with the number in the previous week. We have now entered upon the second quarter of the year, and things being in this stage, remaining, as I have said, almost stationary, there seems to me some hope that we may be spared anything in the shape of a very serious visitation. Of course it is too soon to flatter ourselves that we are out of the wood, but our position seems to be fairly hopeful. Now, gentlemen, with the earnest hope that during the financial year upon which we have just entered, the terrible visitations which at present visit this country will have disappeared or become modified, I beg to declare this Council dissolved.

The Council was then dissolved.

H. TREMENHEERE,
Secretary to Government.

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ANNEXURE.

MEMORANDUM TO ACCOMPANY THE FINANCIAL STATEMENT OF
THE GOVERNMENT OF MADRAS FOR THE YEAR 1900-1901.

The transactions with which this statement deals are those which, under the Provincial contract, have been placed under the control of this Government. Appendix A exhibits the actuals under Provincial funds for 1898-99, the budget and revised estimates for 1899-1900 and the budget estimates for 1900-1901. The following paragraphs deal with the figures of these three years. Amounts are expressed throughout this statement in lakhs of rupees.

I.—Accounts, 1898-99.

A complete review of the transactions of the year has already been published in the Accountant-General's appropriation report recorded in the Proceedings of Government, No. 169, Financial, dated the 20th February 1900, which were placed on the Editors' Table. It is unnecessary, therefore, to do more here than to summarise the principal facts.

The only change in classification was the transfer of the detailed heads "Freight and other charges for Export and Import of Salt," and "Conveying Salt to the French Government and for fish-curing purposes" from the divided minor head SALARIES, ESTABLISHMENTS AND CONTINGENCIES to SALT PURCHASE AND FREIGHT, a wholly Imperial head.

Although the re-appearance of famine was anticipated and provision was made in the budget estimates to meet it, the year under review proved to be one of fair agricultural prosperity. The funds thus set free were available to meet demands on account of plague. The prevalence of plague in the vicinity of Madras and the importation of cases into the Deccan districts of the Presidency led the Government to take precautions to prevent the spread of the disease, and large expenditure on Plague preventive measures was sanctioned.

The total revenues amounted to 338.97 against 328.03 in the budget estimate and 341.82 in the revised estimate. The excess over the budget estimate was mainly due to large contributions from Imperial as explained last year. The fall in the actuals, as compared with the revised estimate, was due to a decline under almost all the principal heads of revenue during the latter portion of the year.

The actual expenditure amounted to 322.90 against a budget grant of 331.95 and a revised estimate of 320.97. The expenditure during the year fell short of that of the previous year by 12.02; but the figures of both years include unusual charges relating to famine and plague. The charges of 1898-99 include 1.19 and 3.77 on account of direct charges for famine and plague, respectively, against 15.97 and 2.22 in 1897-98. Eliminating these unusual items of expenditure, the expenditure in 1897-98 and 1898-99 stands at 318.73 and 318.94, respectively, thus reducing the difference between the two years to 21 only.

The Provincial Services Account opened with a balance of 7.18 on the 1st April 8 and closed with 23.25 on the 31st March 1899.

II.—Revised Estimate, 1899-1900.

The opening balance of the year 1899-1900 was 23.25, or nearly 5 lakhs less than was anticipated; the receipts in the revised have been placed at 319.97, or 12 below the original expectation, while the expenditure is estimated at 331.62 or nearly 11 below the budget estimate. The deficit on the year's transactions has thus been raised from 10 in the budget estimate to 12 in the revised estimate. The closing balance of the revised is taken at 11.60.

The fall in revenue occurs mainly under LAND REVENUE, STAMPS, EXCISE, FOREST, and LAW AND JUSTICE. The reasons for the decrease in each case are set forth in detail under the respective heads in the following section. The decline under LAND REVENUE is attributed to the increase in season remissions and to postponements and slackness of collections in consequence of the failure of the north-east monsoon, as well as to a smaller contribution required from Imperial on account of expenditure on plague preventive measures; that under STAMPS to the budget having over-estimated the receipts with reference to the exceptional revenue realized in the previous year; that under EXCISE to the continued downward tendency in the consumption of spirits since 1897-98; that under FOREST to oversanguine estimating; and that under LAW AND JUSTICE to fluctuations in receipts from "Magisterial Fines" and "Printing and Translation executed by the High Court."

The decrease in expenditure is due chiefly to savings expected in the charges on plague preventive measures and to short expenditure under SURVEY AND SETTLEMENT, SALT, STAMPS, COURTS OF LAW, JAILS and POLICE. The causes for the variations under these heads are explained in detail in the following section.

During the year the following important schemes were introduced:—(1) the improvement of Taluk establishments; (2) the establishment of four new Munsifs' Courts; (3) the railway Police scheme; and (4) the reorganization of the Registration department.

The Government of India entered a lump provision of 8.73 in the budget for re-appropriation as was found necessary by this Government or for building up the balance which had fallen below the minimum. The local Government was thus enabled to increase the grants for MINOR WORKS AND NAVIGATION and CIVIL WORKS, to assist by grants-in-aid such Municipalities and District Boards as were seriously affected by plague, and to allot a lakh to the Ootacamund Municipality to enable it to acquire the lands forming the catchment area of the Marlimund reservoir.

III.—Budget Estimate, 1900-1901.

The year 1900-1901 is expected to open with a balance of 11.60. The receipts are estimated at 324.51 and the charges at 329.51, leaving a closing balance of 6.60. The following statement shows the general result as compared with the revised estimates for the year 1899-1900:—

	Revised, 1899-1900.	Budget, 1900-1901.	Difference.
Opening balance	23.25	11.60	— 11.65
Revenue	319.97	324.51	+ 4.54
Expenditure	331.62	329.51	— 2.11
Deficit (—) or surplus (+)	— 11.65	— 5.00	+ 6.65
Closing balance	11.60	6.60	— 5.00

The rate of exchange compensation allowance, which affects the expenditure under almost every head, has been placed in the budget estimates at ls. 4d. or $6\frac{1}{4}$ per cent., as against ls. 3 $\frac{1}{4}$ d. or 7 $\frac{1}{4}$ per cent. in 1899-1900.

REFUNDS AND DRAWBACKS *—1.

	—	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
					1898-99.	1897-98.	1896-97.
<i>Provincial share.</i>							
Land Revenue (one-fourth)	...	·28	·25	·28	·31	·34	·31
Stamps (three-fourths)		·84	·78	·78	·83	·78	·75
Excise (one-fourth)		·05	·04	·05	·10	·06	·04
Assessed taxes (one-half)		·11	·11	·12	·10	·09	·11
Forest (one-half)		·04	·05	·04	·06	·04	·21
Registration (one-half)		·02	·02	·02	·02	·01	·01
Total	...	1·34	1·25	1·29	1·42	1·32	1·43

* Drawbacks occur only under Customs and are wholly Imperial.

These charges vary considerably from year to year and are not liable to any departmental control.

I.—LAND REVENUE—3.

		Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
					1898-99.	1897-98.	1896-97.
<i>Shared.</i>							
Revenue—							
Ordinary Revenue		563·95	532·53	551·27	553·16	536·00	500·40
Sale of Government Estates		...	...	...	...	·24	·29
Sale-proceeds of Waste Lands and redemption of Land-tax		·16	·14	2·77	·13	1·48	·20
Rents, &c., of Fisheries		...	...	...	...	...	·16
Miscellaneous		·46	·86	·47	·78	·69	·60
Total ...		564·55	533·53	554·51	554·07	538·41	501·65
Provincial share (one-fourth)...		141·14	133·38	138·63	138·52	+ 150·92	125·41
Adjustments		16·27	21·52	22·89	35·52	— ·63	32·94
Total ...		157·41	154·90	161·52	174·04	150·29	158·35
<i>Provincial.</i>							
Expenditure—							
Charges of District Administration.		41·43	40·30	40·73	39·61	43·17	39·97
Charges on account of Fishery Collections		...	...	...	...	...	·04
Survey and Settlement		6·94	4·46	5·39	4·23	6·02	6·80
Land Records and Agriculture ...		3·63	5·21	5·22	5·28	5·37	5·55
Inam Commissioner		·07	·07	·08	·05	·05	·06
Total ...		52·07	50·04	51·42	49·17	54·61	52·42

† For 1897-98 a lump assignment was made.

Revenue—LAND REVENUE—PROPER.—Owing partly to the character of the season and partly to the prevalence of plague in 1898-99, the arrear balance at the beginning of 1899-1900 was larger than was anticipated when the estimate for the year was originally framed. The greater portion of this uncollected balance was realized before October 1899; but owing to the remissions and suspensions of revenue necessitated by the failure of the north-east monsoon, the revised estimate is now expected to fall short of the budget figure by a large amount. Further decreases are anticipated owing to the non-realization of the receipts originally expected from the extension of irrigation in the Gó dávari district, and to a falling off in the sale-proceeds of waste lands, chiefly in the Madura district. The sales of waste land commanded by the Periyár project, which were stopped in September 1898, have been re-commenced in February 1900 only.

The excess in the budget estimate for 1900-1901, as compared with the budget and revised estimates for 1899-1900, is due chiefly to (1) an increase in the opening balance due to postponements and slackness of collection in 1899-1900, (2) a decrease in the advance collections to be adjusted, (3) an anticipated realization of 2·25 from the sale of waste and tank-bed lands in Madura and Ganjám, and (4) the accrual in 1900-1901 of the greater portion of the re-settlement increases in Gó dávari and Kistna.

ADJUSTMENT.—As explained last year, the budget estimate figure for 1899-1900 contained, in addition to the fixed assignment (16·46) to Provincial under the contract, three special assignments to Provincial and two special contributions from Provincial to Imperial. The decrease in the revised estimate under this head is due to the fact that the expenditure upon plague preventive measures has not reached the figure anticipated in the budget. The contribution from Imperial to Provincial has therefore been correspondingly reduced. On the other hand, the revised estimate takes into account a contribution from Imperial equivalent in amount to the expenditure upon famine relief in 1899-1900.

The Government of India has refused to re-imburse Provincial funds on account of plague expenditure in 1900-1901. This fact, the absence of the special assignments referred to above and an assignment of ·23 from Provincial to Imperial on account of the charges connected with Public Observatories and rain-gauges maintained by the Meteorological department, which were formerly Provincial and are now Imperial, account for the altered figure under this head in the budget estimate for 1900-1901.

Expenditure.—Under CHARGES OF DISTRICT ADMINISTRATION the revised estimate would have shown larger savings but for heavy expenditure incurred on account of costs in civil suits decreed against Government. The existing decrease occurs chiefly under "Sub-Divisional Establishment", under which head the budget provided for the introduction of the scheme for the improvement of taluk establishments with effect from the 1st July 1899; but the scheme was not given effect to fully in the year.

The short expenditure anticipated in the revised estimate under SURVEY AND SETTLEMENT is chiefly due to the obstruction to work caused by the lack of trained surveyors; and to savings in Settlement parties arising from unfilled vacancies in the grades of Deputy Commissioners and the reduced strength of some of the parties.

The increase in the budget estimate for 1900-1901 over the revised estimate of 1899-1900 under CHARGES OF DISTRICT ADMINISTRATION is almost entirely under "Sub-Divisional Establishment" and is consequent on provisions having been made for the revised scale of taluk establishments for the full year, for larger expenditure on temporary establishments including those for famine and *Supplies and Services*, and Petty Construction and Repairs and for the formation of a taluk office at Cocanada.

The variations under SURVEY AND SETTLEMENT and LAND RECORDS AND AGRICULTURE are due to the fact that it is proposed to relieve the Survey Department to a large extent of maintenance work and to employ the officers in charge of maintenance duties on regular survey duties in an extended area. A grant has also been entered for the employment of a Special Settlement Officer in Malabar. This appointment has been held in abeyance for some time pending the progress of janmam registration as an essential preliminary to the introduction of the settlement. The registration is, however, now sufficiently far advanced to permit of the probable introduction of the settlement at an early date into at least two taluks of the district.

III.—SALT—5.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue	·88	·88	1·14	·85	·77	1·34
Expenditure	4·19	4·13	4·49	3·96	3·94	* 6·06

* This figure includes the proportionate cost on account of Orissa salt transferred to Bengal from 1897-98 and the provincial share of SALT PURCHASE AND FREIGHT made wholly Imperial from 1897-98.

Revenue.—The decrease in the revised as compared with the budget estimate for 1899-1900 occurs principally under "Fees and Cesses," the receipts under which vary with the expenditure on works incurred by Government on behalf of licensees in excise factories and with the sale of excise salt, by a cess on which the expenditure is recouped. An increase is anticipated in the sales of Government salt and a consequent fall in sales of excise salt.

Expenditure.—The decrease in the revised estimate, as compared with the budget estimate for 1899-1900, occurs mainly under *Establishments* and *Supplies and Services*. The fall in the former case is due chiefly to a decrease in the circle and factory establishments consequent on the re-arrangement of the circles of the Cuddapah district, the re-distribution of the establishments of the north Chingleput factories and the abolition of the Aska and Cochin frontier circles. The fall in the latter case is due to estimated lapses in the grants for *Rewards, Purchase, Repair and Carriage of Tents and Excise Licensees' Works*. The budget estimate for 1900-1901 is based upon the revised.

IV.—STAMPS—6.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue	62·25	61·50	63·38	62·00	63·15	59·56
Expenditure	2·36	2·17	2·61	2·42	2·57	2·41

Revenue.—The fall in the revised, as compared with the budget estimate for 1899-1900, occurs principally under "Sale of General Stamps," and is due to the budget estimate having been based on the actuals of 1897-98, the receipts in which year were exceptionally heavy owing to the famine. The budget estimate for 1900-1901 is based upon the revised.

Expenditure.—The decrease in the revised estimate is mainly noticeable under "Charges for the sale of General Stamps" and "Stamp paper supplied from Central Stores," and corresponds to the decrease in the receipts. The budget estimate for 1899-1900 anticipated the realization of a sum of Rs. 9,000 from the sale of water-marked paper; but there is no demand for this paper now. Further reductions in the revised estimate are due to fluctuations in exchange.

The increase in the budget estimate for 1900-1901, as compared with the revised estimate for 1899-1900, follows on the increased sale of general stamps which is anticipated. Decreased expenditure is budgeted for under "Stamp paper supplied from Central Stores," owing partly to the more favourable rates of exchange, but chiefly to smaller sales.

V.—EXCISE—7.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue	32·34	33·50	35·50	34·20	36·55	37·24
Expenditure	2·56	2·54	2·61	2·48	2·48	1·77

Revenue.—The decline in the receipts under this head since 1897-98, which is expected to continue, is due chiefly to the continued falling off in the consumption of country spirits, owing to high selling prices of arrack, bad season, dearth of money, the prevalence of plague in certain parts of the Presidency and the restriction caused by it on traffic, and to the unsatisfactory results of auction sales. The continuing downward tendency in the consumption of spirits will be accelerated by the failure of the north-east monsoon and high prices, and with the present outlook there is no room to expect any improvement.

Expenditure.—Two-fifths of the entire charges of the combined department of SALT and EXCISE except those relating to "Salt Purchase and Freight," which are wholly Imperial, and "Excise Licensees' works," which are wholly Provincial, are debitable to this head. The explanations given under 5. SALT therefore apply here also.

VII.—CUSTOMS—9.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue	·76	·71	·75	·75	·70	·68
Expenditure	2·55	2·50	2·51	2·42	2·35	2·33

Godown rents payable to the Harbour Trust Board, which hitherto appeared under both Revenue and Expenditure have now, by a change in classification, been shown by deduction from receipts.

The revised estimate under expenditure includes an allotment for personal allowances to be granted in arrears to Sea Customs Superintendents in lieu of a moiety of overtime fees credited to Government.

Provision has been made in the estimate for 1900-1901 for the scheme for the amalgamation of the Customs with the Salt and Abkari establishments.

VIII.—ASSESSED TAXES—10.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue (Income-tax)	13.75	14.00	13.25	12.99	12.37	12.30
Expenditure (Collection of Income tax)	.15	.15	.15	.14	.14	.13

Revenue.—The improvement in the actuals and in the revised estimate is attributed partly to prompter collections.

Expenditure.—The increase in charges is due to the entertainment of additional establishments.

IX.—FOREST—11.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue	11.13	11.05	11.65	10.55	10.68	11.52
Expenditure	8.55	8.15	8.40	7.97	7.87	7.67

Revenue.—The original estimate for 1899-1900 was oversanguine and the large increase then expected from the sale of railway sleepers, especially in the Southern Circle, is not likely to be realized. The past drought and threatening scarcity have affected the receipts under "Firewood", "Grazing" and "Minor produce." Tangedu (*Cassia auriculata*) bark has fallen in price, and the stoppage of the sale of further leases of lands on the Anamalais for coffee cultivation has also affected the revenue.

The enhanced revenue in 1900-1901 is expected from the contemplated supply of sleepers to railway companies, from the increased sale of firewood especially in the Central Circle, and from the general extension of forest operations.

Expenditure.—In the revised estimate for 1899-1900 reductions have been made for "Conservancy and Works," mainly with reference to the decrease expected

under the corresponding heads of receipts. The charges under "Roads and Bridges" and "Demarcation" were overestimated in the budget estimate for 1899-1900. The expenditure on forest surveys carried out by the Survey of India parties in this Presidency has also been less than was anticipated.

Increased expenditure is contemplated in 1900-1901 on account of the extraction of timber (principally railway sleepers), firewood and sandalwood, following on the increases under the corresponding items of receipts. Provision has also been made for new roads required for the transport of forest produce; for promotions in the subordinate executive staff under the recent re-organization scheme; for the improvement of the office establishments of Conservators; and for the deputation of a larger number of stipendiary students to Dehra Dun.

X.—REGISTRATION—12.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue	6.15	6.10	6.55	6.46	7.65	6.06
Expenditure	4.40	4.25	4.22	4.21	4.15	4.06

Revenue.—The unusually large receipts in 1897-98 were due to heavy collections on account of search fees in connection with the grants of loans to agriculturists in the districts affected by famine. During 1899-1900 there has been a decline both in the number of documents registered and in the fees collected, which is attributed to the fall in the prices of food-grains, to the prevalence of cholera, and the plague scare in some districts, to the anti-Shanar riots in Tinnevely and Madura, and to the stringency of the money-market.

The budget estimate for 1900-1901 has been fixed on the assumption that the year will be normal. It is probable that the estimate may be exceeded, but the operations of the department are affected by various causes which cannot be foreseen.

Expenditure.—The increase in the revised over the budget estimate for 1899-1900 is due to the introduction of the new scheme of grading Registrars and Sub-Registrars with effect from the 1st September 1899.

The budget estimate for 1900-1901 provides for the new scheme for a whole year, for enhanced expenditure on travelling allowances, and for the payment of supplemental commission to registering officers on the remittances made by them during 1899-1900 before the introduction of the new scheme.

XII.—INTEREST—13.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue	2.26	2.47	2.51	2.59	1.73	1.59
Expenditure	1.86	1.90	2.08	2.04	1.86	1.70

The interest at $3\frac{1}{2}$ per cent. which the Local Government has to pay to Imperial funds is calculated on the mean outstanding balance of the Provincial Loans and Advance account at the beginning and at the end of each year. Appendix E contains the details of the amounts advanced under the several classes of loans; while Detailed Account No. 13-A in the Civil Estimates furnishes full information regarding the rates of interest charged.

POST OFFICE—15.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Expenditure	1.08	1.03	1.08	1.04	1.08	1.01

The saving in the revised estimate for 1899-1900 is due to the transfer of remunerative District Post establishments to the Imperial Post and to the grant for plague establishments not having been fully utilized.

In the estimate for 1900-1901 provision is made for further revisions of, and additions to, establishments.

GENERAL ADMINISTRATION—18.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Expenditure	9.82	9.82	9.76	9.97	10.07	9.92

The excess in the revised estimate for 1899-1900 over the budget grant is due to the extra cost involved by the grant of privilege leave to the Secretary, Local and Municipal Department, and to the amalgamation of the Plague Commissioner's office with the Local and Municipal Department of the Secretariat. The latter cause has also raised the budget estimate for 1900-1901.

XVI-A.—LAW AND JUSTICE—COURTS OF LAW—19-A.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue	8.06	7.50	8.04	7.99	8.04	6.96
Expenditure	46.60	46.26	46.79	46.13	46.25	45.94

Revenue.—The variations are due to fluctuations in the receipts from “Magisterial Fines” and “Printing and Translation executed by the High Court,” the actuals under which fell in the earlier months of 1899-1900. Pledership Examination fees and Fees realized for Petroleum licenses, on the other hand, show an increase.

Expenditure.—Notwithstanding the increased rate of salary sanctioned for the Judges of the High Court, the budget has been reduced in the revised estimate for 1899-1900 owing to vacancies in the office of two Puisne Judges not having been for a time filled; to the absence of the Government Pleader and of the Clerk of the Crown on leave out of India; to the transfer of certain clerks hitherto borne on the establishment of the High Court to the establishment of the Accountant-General; to fluctuations in expenditure under “Printing and Translation executed on behalf of suitors”; to the appointment of two Sub-Judges as acting District Judges; to the non-appointment of a Civilian Sub-Judge; and to the fact that the Officiating Chief Judge of the Court of Small Causes drew a lower rate of salary than the permanent incumbent during the absence of the latter on other duty. There has, however, been increased expenditure in consequence of Additional Sessions Judges employed in Tinnevely, of fees sanctioned for conducting prosecutions in connection with the recent disturbances in that district, and of the payment to the late Sheriff of the difference between the cost of his establishment as it actually stood and its cost according to the future scale.

The budget estimate for 1900-1901 provides for the increased rate of salary for the Puisne Judges of the High Court and for higher expenditure than in the current year for “Printing and Translation executed on behalf of suitors.” The decreased provision, as compared with that for 1899-1900, is due to reduced allotments on account of fees to pleaders in civil and criminal cases and in pauper suits; to the fact that the provisions in previous years for the salaries of District and Sessions Judges did not take sufficiently into account the probable savings arising from the absence of permanent officers on furlough; to the omission of the provision for the appointment of a Civilian Sub-Judge; and to the reduction of the allotment for petty works of construction in Mufassal Civil and Sessions Courts. On the other hand the proportion of charge transferred to this head from 3. Land Revenue—CHARGES OF DISTRICT ADMINISTRATION is higher for the reasons given in the explanations under that head.

XVI-B.—LAW AND JUSTICE—JAILS—19-B.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue	4.45	4.35	4.55	4.21	4.50	4.28
Expenditure	11.31	11.11	11.58	11.88	11.58	10.65

Revenue.—In 1898-99 manufacturing operations in jails were retarded by the employment of a large number of convicts on jail buildings and by the outbreak of a severe epidemic of sickness in the Rajahmundry Central Jail. These causes have partly operated in 1899-1900. The Palamcottah District Jail has also

hampered, as a result of the Tinnevely riots, by a large under-trial population, from whom no labour could be extracted.

The budget estimate for 1900-1901 has been framed with reference to the average actuals of the past five years and in the expectation that the disturbing causes mentioned above will disappear.

Expenditure.—The expenditure in 1897-1898 and 1898-99 was swelled by an increase in the jail population and a rise in the prices of food-grains; that in 1898-99 being heavier also on account of the construction of cells in the Vellore Central Jail and additions and alterations to the Rajahmundry Central Jail. The short expenditure in the revised estimate, as compared with the budget estimate for 1899-1900, occurs under almost every head. Savings have accrued in consequence of the appointment of Inspector-General being held by an acting officer for a greater portion of the year, of the absence of two Superintendents, one on furlough and the other on leave without allowances, and of decreased hospital charges. Reduced expenditure under manufactures has followed as a necessary consequence of the reduced scale of manufacturing operations referred to above.

In the budget estimate for 1900-1901 the allotment for "Petty Construction and Repairs" has been raised in consequence of the policy of gradually extending the cellular accommodation of jails, and that under "Jail manufactures" has been based on past actuals and on the continuance of the three-year contract made with the Ordnance Department for the supply of tents.

XVII.—POLICE—20.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue	5.24	4.89	4.47	4.50	4.43	4.50
Expenditure	47.30	46.76	47.72	45.48	46.62	46.48

Revenue.—The increases in the revised estimate for 1899-1900 and in budget estimate for 1900-1901 are due to the recoveries on account of the punitive police in Tinnevely. Pound fund receipts show a falling off in 1899-1900, but are expected to recover.

Expenditure.—The revised and budget estimates are likewise swelled by the charges for the Tinnevely Punitive Police, but a saving is nevertheless expected in the revised estimate owing to the appointment of junior officers to officiate in the arrangements consequent on the absence on leave and other duty of the permanent Inspector-General; to temporary vacancies among Assistant Superintendents; to the employment of officers of inferior grades in Police hospitals; to savings in the allotment for travelling allowance consequent on a large number of police subdivisions being vacant and the discontinuance of weekly visits by the police to convicts in jails for the purpose of identifying old offenders; to the substitution of Cardigan jackets of local manufacture for those of blue woollen cloth imported from England; and to the fact that the Railway Police scheme having been introduced with effect in April 1899, only eleven months' payments will be recorded in the year. The

budget estimate for 1900-1901 is based on the revised estimate for the preceding year, and as originally passed by Government has been reduced under various heads in consequence of financial pressure.

MARINE—21.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Expenditure	14	13	14	08	08	1.18

As noticed in the memorandum last year, the charges on account of landing and shipping dues of all departments in the Presidency Town have been transferred to this head.

XIX.—EDUCATION—22.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue	1.75	1.68	1.92	1.81	1.79	1.98
Expenditure	17.60	17.63	17.43	18.05	17.47	16.75

Revenue.—The decrease in the revised, as compared with the budget estimate for 1899-1900, is due to the marked fall in the strength of the B.L. classes in the Law College in consequence of the restriction imposed in November 1898 debarring students who have not passed the First Examination in Law from continuing their studies for the B.L. Degree examination. The budget contemplated an improvement in Law College fees as compared with the realizations in 1898-99.

It is probable that, owing to the decision of the Syndicate of the University to hold a re-examination for Matriculation candidates, the revised estimate of fees in Government colleges will not be fully realised as the Junior F.A. classes cannot be formed in any of the colleges before the close of the year.

As compared with the revised estimate for 1899-1900 an increase is expected in 1900-1901 from higher fee receipts in the Kumbakonam College and in the College¹⁵ and School of Engineering in consequence in the first case of the re-opening of the Philosophy section of the B.A. class, and in the second of the growing popularity the institution as well as the enhancement of fees in the lower classes.

Expenditure.—The revised estimate is expected to exceed the budget estimate for 1899–1900 owing to the grant of privilege leave to the Director of Public Instruction ; to the deputation of Dr. Duncan to Simla in connection with the Research Institute ; to increased expenditure on postage ; to the payment of travelling allowances to the unofficial members attending the conferences held in the office of the Director of Public Instruction in December 1899 and January 1900 ; to the supply of special furniture for the Law College ; to charges incurred in the School of Arts in connection with articles manufactured for the Paris Exhibition ; to the appointment of a Vice-Principal in the College of Agriculture ; to the payment of arrears of remuneration due to the Board of Examiners, College of Engineering ; to the charges of the Teachers' College, Saidapet, and the Training College, Rajahmundry, having been placed too low in the budget ; to the payment of an unusually large number of building and furniture grants ; and to an increase in the number of scholarships. On the other hand, there have been savings owing to the absence of officers on leave out of India and to the non-utilization of the entire amount entered in the budget estimate for grants to Students' hostels.

The budget estimate for 1900–1901 is based mainly on the revised estimate for 1899–1900. Allotments were originally entered for a third Inspectress of Schools and establishment ; for two additional Sub-Assistant Inspectors ; for a Professor of Civil Engineering and a Mechanical Instructor in the Civil Engineering College ; for a Band class in the Reformatory school ; and for grants to Students' hostels : but as the Government of India, in view of the financial pressure caused by the prevalence of famine and plague, insisted upon reductions in expenditure, these items were subsequently eliminated.

XX.—MEDICAL—24.

	Budget estimate, 1900–1901.	Revised estimate, 1899–1900.	Budget estimate, 1899–1900.	Accounts.		
				1898–99.	1897–98.	1896–97.
Revenue	1·09	1·10	1·01	1·15	1·28	1·25
Expenditure	14·52	15·05	19·53	16·26	13·05	13·34

Revenue.—The revised estimate is better than the budget estimate of 1899–1900 owing to an improvement in the attendance at the Medical College and to enhanced receipts in hospitals and lunatic asylums. The budget estimate for 1900–1901 has been based on the revised.

Expenditure.—The large decrease in the revised, as compared with the budget estimate for 1899–1900, is due to expenditure on plague preventive measures happily not having reached so high a figure as was contemplated when the budget estimate was framed. The saving to Provincial funds is, however, nominal, as the assignment from Imperial funds in 1899–1900, which is credited under LAND REVENUE—ADJUSTMENTS, will be fixed with reference to the actual expenditure. The appointment from October 1899 of a Personal Assistant to the Surgeon-General in place of a Secretary and on lower pay ; the smaller amount of inspection work per-

formed by the Surgeon-General ; the absence on leave of several commissioned medical officers ; better supervision over the accounts and expenditure in hospitals ; a reduction in the attendance of patients ; the posting of temporary Civil Assistant Surgeons in lieu of Civil Apothecaries to the Government Maternity Hospital ; the absence on leave out of India and on deputation out of the Presidency of the officers in the Sanitary and Vaccination department ; decreased expenditure on diets in the Lunatic Asylums ; and the absence of the permanent Chemical Examiner on leave out of India have also contributed to a fall in expenditure. On the other hand, increased outlay has been incurred in the Medical College on the promotion of Military Assistant Surgeons, and the provision in the budget for RESERVE MEDICAL SUBORDINATES is likely to prove insufficient.

The decrease in the budget estimate for 1900–1901 is likewise mainly due to a smaller allotment for plague charges. Another cause for the diminished grant is to be found in the fact that the cost of the Sanitary Engineer and his establishment is now shown under 45. CIVIL WORKS—PUBLIC WORKS DEPARTMENT instead of under this head. The budget estimate under MEDICAL COLLEGE anticipates a saving in consequence of the absence of officers on leave out of India and makes a smaller grant for stipends of pupils, owing to the reduction in the number of pupils remaining in the college. The budget provides, however, for the increased rates of salary to be drawn by medical officers on promotion ; for increments and promotions and the re-organization of the Nursing Staff in the General Hospital at Madras ; for enhanced expenditure on diets and medicines in some of the Presidency institutions ; for a Lady Assistant Superintendent in the Government Maternity Hospital ; for larger contributions to private hospitals ; and for an increased rate of salary to the Chemical Examiner.

POLITICAL—25.

	Budget estimate, 1900–1901.	Revised estimate, 1899–1900.	Budget estimate, 1899–1900.	Accounts.		
				1898–99.	1897–98.	1896–97.
Expenditure	·75	·74	·75	·74	·85	·82

This head calls for no remarks.

XXI.—SCIENTIFIC AND OTHER MINOR DEPARTMENTS—26.

	Budget estimate, 1900–1901.	Revised estimate, 1899–1900.	Budget estimate, 1899–1900.	Accounts.		
				1898–99.	1897–98.	1896–97.
Revenue	5·67	3·70	3·35	2·78	2·28	2·21
Expenditure	7·92	5·92	6·10	5·75	4·28	3·81

The budget estimates for 1899-1900 and 1900-1901 and the revised estimate for the former year include receipts and charges on account of aluminium ware manufactured at the School of Arts.

Revenue.—The revenue from Examination fees has been swelled in 1899-1900 by an unexpectedly large increase in the number of private candidates for the Primary examination. The demands for quinine from the Provinces of Northern and Central India and increased sales at Post offices will, it is anticipated, cause an excess over the budget figure of receipts expected from Cinchona Plantations. On the other hand, the revenue from Emigration fees is expected to fall in consequence of the stoppage of emigration to Mauritius and of the fact that emigration to Natal has been obstructed by the prevalence of plague.

In 1900-1901 it is expected that the receipts from the sales of quinine and febrifuge will raise the revenue from Cinchona Plantations still higher. The budget estimate of Emigration fees for 1899-1900 has been repeated as there appears to be a great demand for emigrants in Natal and, unless unforeseen circumstances cause emigration to be suspended, there is every likelihood of the estimated receipts being realised. The estimate under Examination fees has been raised as these receipts now exhibit a progressive increase; and the realizations from the sale of aluminium ware manufactured at the School of Arts are expected to be higher with the correspondingly enhanced outlay which is exhibited on the expenditure side of this head.

Expenditure.—Various causes have contributed to savings in the budget estimate as shown in the figure adopted for the revised estimate for 1899-1900. The provision for the Exploration of Petroleum, Coal and Minerals has lapsed, as also has that for the revision of the establishment of the Archaeological Survey officer. The charges on account of Public Observatories have been transferred to Imperial in consequence of the recent re-organization scheme. Under Veterinary and Stallion Charges, purchases of horse and donkey stallions were not made, the charges for maintenance of stallions have been less than was originally anticipated and two posts of Stock Inspectors have been kept vacant. The transfer to Imperial and to the head LAND REVENUE of charges incurred by the Meteorological Department and Collectors, respectively, in connection with the maintenance of rain-gauges has also produced a saving; and the expenditure on the manufacture of aluminium ware will, it is expected, fall slightly short of the budget estimate. On the other hand, the estimate of the Government Botanist has been exceeded owing to increased expenditure on tents, on tour charges and on furniture; the rise in the price of cinchona bark, the annual increment to the salary of the Director and the charges in connection with his deputation to Java have caused an excess over the budget estimate for Cinchona Plantations; and rewards to examiners in connection with Technical examinations have risen with the enhanced receipts credited *per contra* and in consequence of arrears due for 1898-99 having been paid in 1899-1900.

The budget estimate for 1900-1901 makes a larger allotment on account of *Supplies and Services* and *Contingencies* of the Archaeological Survey office, and for the pay and allowances of the Government Epigraphist, who is expected to return from furlough in September 1900. The estimated expenditure on Cinchona Plantations is lower than in the revised estimate for 1899-1900, mainly owing to reduced expenditure on new machinery; but provision has been made for higher manufacturing charges than in the budget estimate for 1899-1900. The estimate for 1900-1901 includes a lump provision on account of a Provincial Bacteriological laboratory for concentrating all the establishments engaged in the registration and compilation

trade statistics in a Central office. The outlay on the manufacture of aluminium ware, which is expected to be higher, is covered by increased receipts.

XXII. SUPERANNUATION, RETIRED AND COMPASSIONATE ALLOWANCES—29.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue	54	53	62	53	53	45
Expenditure	17.15	16.90	16.42	15.90	15.90	15.65

This head calls for no remarks.

XXIII. STATIONERY AND PRINTING—30.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue	1.07	1.06	1.04	1.16	1.13	1.30
Expenditure	9.89	10.28	10.34	9.81	10.37	9.34

Revenue.—The rise in the revised estimate, as compared with the budget estimate for 1899-1900, is consequent on increased work executed in Government presses for private parties.

Expenditure.—There have been savings in the provision made in the budget estimate for 1899-1900 for "Stationery purchased in the country" in the Land Revenue and Registration departments and for "Stationery supplied from Central Stores."

XXV. MISCELLANEOUS—32.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue	3.13	1.89	1.97	1.79	2.03	1.60
Expenditure	1.96	1.90	1.72	1.48	1.71	1.44

Revenue.—Under PEARL FISHERY RECEIPTS the realizations in 1899-1900 for shark fisheries are expected to fall short of the budget expectation owing to the unfavourable season. In 1900-1901 large receipts are expected from the sale of pearls to be collected off the Tuticorin coast.

Expenditure.—The excess of the revised over the budget estimate for 1899-1900 has been caused by the charges in connection with the appointment of a Special

Commissioner to enquire into the origin of the riots in the Tinnevely and Madura districts; by expenditure on the Tuticorin pearl fishery and in connection with the preliminary examination of the chank-beds on the Madura and Tanjore coasts; and by the writing off of a sum of money lost in remittance from the South Canara district to Coorg.

Expenditure in connection with pearl and chank fisheries also enters into the budget estimate for 1900-1901, which further includes provisions for repairs to the vessels "Margarita" and "Irene."

FAMINE RELIEF—33.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts—Provincial.		
				1898-99.	1897-98.	1896-97.
Expenditure—						
In charge of Civil Officers ...	1.30	1.36	.05	.08	24.83	2.31
Provincial (Civil) ...	1.30	1.36	.05	.08	15.97	1.40
In charge of Public Works Officers ...	1.75	.81	...	.11	...	3.31
Provincial (P.W.D.) ...	1.75	.81	...	.11	...	3.31
Total, Provincial (Civil and P.W.D.)	3.05	2.17	.05	.19	15.97	4.71

The expenditure during 1898-99 represents the cost of relief measures for a few months in Nellore.

The estimates of expenditure in 1899-1900 on famine have necessarily been fluctuating. The latest estimates given above provide for expenditure in the districts of Kurnool, Cuddapah and Nellore.

The budget estimates for 1900-1901 are based on information available at present. The figures given above represent the Provincial share of the expenditure. The total estimated expenditure on Famine is however 10.25 out of which the Government of India have taken under Imperial the balance of 7.20.

CONSTRUCTION OF RAILWAYS—37.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Expenditure ...	..	.02	.22	— .02	.28	.18

The figures of the years previous to 1900-1901 represent the outlay on the Arayavaram-Muttupet Railway. The expenditure on the Muttupet-Avadaiyarkóvil extension of this line will be met direct from Local funds.

XXVI.—STATE RAILWAYS—38.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue—(Gross Traffic) ...	...	1.88	2.60	2.46	2.58	2.57
Provincial.						
Expenditure—(Working Expenses).	...	1.13	1.60	1.70	1.50	1.52

This item now disappears from the accounts.

XXX.—MINOR WORKS AND NAVIGATION—43.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue—						
Civil Officers ...	.10	.10	.10	.09	.09	.11
Public Works Officers ...	1.68	1.60	1.78	1.74	1.74	1.75
Total ...	1.78	1.70	1.88	1.83	1.83	1.86
Expenditure—						
Maintenance and upkeep of Minor Irrigation Works—						
Civil Officers ...	4.65	4.15	4.25	3.94	3.67	4.07
Public Works Officers ...	29.30	30.00	29.80	28.39	28.71	38.32
Total ...	33.95	34.15	34.05	32.33	32.38	42.39

Revenue.—The receipts in the Civil department represent contributions by ryots and fines levied under Act I of 1858.

The decrease in the revised estimates of receipts in the Public Works Department for 1899-1900 and in the budget estimate for 1900-1901, as compared with the budget estimate for 1899-1900, is due to the falling off in the navigation receipts of the Buckingham canal owing to railway competition.

Expenditure.—Under "Civil Officers" the revised estimate for 1899-1900 contemplates a saving under original works and in establishment charges, partly counter-balanced by increases under repairs and maintenance.

The increase in the revised estimate under Public Works officers represents the additional allotment made for tank and monsoon repairs.

The budget estimate for 1900-1901 under Civil officers provides for execution of a large number of works under the supervision of the permanent recently sanctioned.

XXXII.—CIVIL WORKS—45.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue—						
Civil Officers	16	04	04	04	04	03
Public Works Officers	187	187	183	170	188	193
Total ...	203	191	187	174	192	196
Expenditure—						
Civil Officers	182	420	303	187	344	797
Public Works Officers	2172	2380	2216	2516	1779	2424
Unallotted Grant entered by the Government of India	...	...	873	...	...	...
Total ...	2354	2800	3392	2703	2123	3221

* Includes provision for the Sanitary Engineer and his establishment transferred from 24. MEDICAL.

Revenue.—The budget estimate of receipts for 1900-1901 in the Civil department includes a new item, viz., receipts from tolls in the Agency tracts of the Vizagapatam district.

Expenditure.—The revised estimate for 1899-1900 under "Civil Officers" includes grants sanctioned to municipalities for water-supply projects, special contributions to municipalities towards plague expenditure and small grants for constituting Kodaikānal and Nandyal into municipalities. The budget estimate for 1900-1901, which has been placed very low on account of financial pressure, provides a small sum for grants to municipal water-works, but nothing on account of grants to municipalities for plague expenditure.

The increase in the revised estimate for 1899-1900 under Public Works officers is due to additional funds sanctioned from the unallotted grant of 873 lakhs.

CONTRIBUTIONS.

	Budget estimate, 1900-1901.	Revised estimate, 1899-1900.	Budget estimate, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Revenue—Contributions from Local Funds—						
Ordinary	231	255	257	259	269	235
Máyavaram-Muttupet Railway.	46	12	22	...	28	36
Total ...	277	267	279	259	297	271
Expenditure—Contributions to Local Funds—						
Ordinary	290	517	291	248	239	461
Máyavaram-Muttupet Railway.	..	37	47	39	56	50
Total ...	290	554	338	287	295	511

Revenue.—The decrease in the budget estimate for 1900-1901 under ordinary contributions is due to a change in the system of the apportionment of the cost of District and Taluk Special Fund establishments between Provincial and Local Funds. This cost is now divided in equal shares between Provincial funds and the Village Service fund instead of, as previously, the latter fund being debited with the larger share.

Expenditure.—The large increase in the revised estimate under ordinary contributions is due to the inclusion therein of special grants to District Boards for plague expenditure.

Owing to the change as regards the transactions of the Máyavaram-Muttupet Railway already alluded to, the entry on the expenditure side now disappears. That under Revenue represents the Provincial share of the net profits of the original line.

INCORPORATED LOCAL AND SPECIAL FUNDS.

Appendix D shows in abstract the accounts and estimates under Incorporated Local and Special Funds. The Special Funds comprise the Village Service, the Irrigation Cess and the Bhadrāchalam and Rekapalle Road Funds. The administration reports published annually give in detail the working of the several local boards, their revenue and expenditure.

PROVINCIAL LOANS AND ADVANCES.

Appendix E shows the accounts and estimates under Provincial Loans and Advances.

FORT ST. GEORGE,
28th March 1900.

A. T. ARUNDEL.

APPENDIX

PROVINCIAL ACCOUNTS

Heads of Revenue.	Budget Estimate, 1900-1901.	Revised Estimate, 1899-1900.	Budget Estimate, 1899-1900.	Accounts, 1898-99.
LAKHS.	LAKHS.	LAKHS.	LAKHS.	LAKHS.
Principal Heads of Revenue.				
I.—Land Revenue—				
Collections	141.14	133.38	138.63	138.52
Adjustments	+ 16.27	+ 21.52	+ 22.89	+ 35.52
III.—Salt	.88	.88	1.14	.85
IV.—Stamps	62.25	61.59	63.38	62.00
V.—Excise	32.34	33.50	35.50	34.20
VII.—Customs	.76	.71	.75	.75
VIII.—Assessed Taxes	13.75	14.00	13.25	12.99
IX.—Forest	11.13	11.05	11.65	10.55
X.—Registration	6.15	6.10	6.55	6.46
Total	284.67	282.64	293.74	301.84
XII.—Interest				
	2.26	2.47	2.51	2.59
Receipts by Civil Departments.				
XVI.—Law and Justice—				
A.—Courts of law	8.06	7.50	8.04	7.99
B.—Jails	4.45	4.35	4.55	4.21
XVII.—Police	5.24	4.89	4.47	4.50
XIX.—Education	1.75	1.68	1.92	1.81
XX.—Medical	1.09	1.10	1.01	1.15
XXI.—Scientific and other Minor Departments.	5.67	3.70	3.35	2.78
Total	26.26	23.22	23.34	22.44
Miscellaneous.				
XXII.—Receipts in aid of Superannuation ..	.54	.53	.62	.53
XXIII.—Stationery and Printing	1.07	1.06	1.04	1.13
XXV.—Miscellaneous	3.13	1.89	1.97	1.79
Total	4.74	3.48	3.63	3.45

A.

AND ESTIMATES—MADRAS.

Heads of Expenditure.	Budget Estimate, 1900-1901.	Revised Estimate, 1899-1900.	Budget Estimate, 1899-1900.	Accounts, 1898-99.
LAKHS.	LAKHS.	LAKHS.	LAKHS.	LAKHS.
Direct Demands on the Revenue.				
1.—Refunds and Drawbacks	1.34	1.25	1.29	1.42
Charges in respect of Collections.				
3.—Land Revenue	52.07	50.04	51.42	49.17
5.—Salt	4.19	4.15	4.49	3.96
6.—Stamps	2.36	2.17	2.61	2.42
7.—Excise	2.56	2.54	2.61	2.48
9.—Customs	2.55	5.00	2.51	2.42
10.—Assessed Taxes	.15	.15	.15	.14
11.—Forest	8.55	8.15	8.40	7.97
12.—Registration	4.40	4.25	4.22	4.21
Total	76.83	73.93	76.41	72.77
Interest.				
13.—Interest on ordinary debt	1.86	1.90	2.08	2.04
Post Office, Telegraph and Mint.				
15.—Post Office	1.08	1.03	1.08	1.04
Salaries and Expenses of Civil Departments.				
18.—General Administration	9.82	9.82	9.76	9.97
19.—Law and Justice—				
A.—Courts of Law	46.60	46.26	46.79	46.13
B.—Jails	11.31	11.11	11.58	11.88
20.—Police	47.30	46.76	47.72	45.48
21.—Marine	.14	.13	.14	.08
22.—Education	17.60	17.63	17.43	18.05
24.—Medical	14.52	15.05	19.53	16.26
25.—Political	.75	.74	.75	.74
26.—Scientific and other Minor Departments	7.92	5.92	6.10	5.75
Total	155.96	153.42	159.80	151.34
Miscellaneous Civil Charges.				
29.—Superannuation Allowances and Pensions	17.15	16.90	16.42	15.90
30.—Stationery and Printing	9.89	10.28	10.34	9.81
32.—Miscellaneous	1.96	1.90	1.72	1.48
Total	29.00	29.08	28.48	27.19

PROVINCIAL ACCOUNTS

Heads of Revenue.	Budget Estimate, 1900-1901.	Revised Estimate, 1899-1900.	Budget Estimate, 1899-1900.	Accounts, 1898-99.
	LAKHS.	LAKHS.	LAKHS.	LAKHS.
Railways.				
XXVI.—State Railways (Gross Traffic Receipts).	..	1.88	2.60	2.46
Irrigation.				
XXX.—Minor Works and Navigation—				
Civil Officers	..	.10	.10	.09
Public Works Department ..	..	1.68	1.60	1.74
Total ..		1.78	1.70	1.83
Buildings and Roads.				
XXXII.—Civil Works—				
Civil Officers	..	.16	.04	.04
Public Works Department ..	..	1.87	1.87	1.70
Total ..		2.03	1.91	1.74
Contributions from Local Funds.				
Ordinary	..	2.31	2.55	2.59
Máyavaram-Muttupet Railway	..	.46	.12	..
Total ..		2.77	2.67	2.59
Total Revenue and Receipts ..		324.51	319.97	332.36
Opening Balance ..		11.60	23.25	28.03
Grand Total ..		336.11	343.22	360.39
				346.15

AND ESTIMATES—MADRAS—cont.

Heads of Expenditure.	Budget Estimate, 1900-1901.	Revised Estimate, 1899-1900.	Budget Estimate, 1899-1900.	Accounts, 1898-99.
	LAKHS.	LAKHS.	LAKHS.	LAKHS.
Famine Relief and Insurance.				
33.—Famine Relief	..	3.05	2.17	.05
Construction of Railways.				
37.—Construction of Railways, &c. ..	..	..	.02	.22
Railway Revenue Accounts.				
38.—State Railway—Working Expenses ..	..	..	1.13	1.60
41.—Miscellaneous Railways	..	..	..	..
Total ..		..	1.13	1.60
Irrigation.				
43.—Minor Works and Navigation—				
Civil Officers	..	4.65	4.15	4.25
Public Works Department	..	29.30	30.00	29.80
Total ..		33.95	34.15	34.05
Buildings and Roads.				
45.—Civil Works—				
In Charge of Civil Officers	..	1.82	4.20	3.03
In charge of { Public Works Officers ..	..	21.72	23.80	22.16
{ Unallotted Grant	..	..	..	8.73
Total ..		23.54	28.00	33.92
Contribution to Local Funds.				
Ordinary	..	2.90	5.17	2.91
Máyavaram-Muttupet Railway	..	..	.37	.47
Total ..		2.90	5.54	3.38
Total Expenditure ..		329.51	331.62	342.36
Closing Balance ..		6.60	11.60	18.03
Grand Total ..		336.11	343.22	360.39
Surplus ..		..	..	..
Deficit ..		— 5.00	— 11.65	— 10.00
				+ 16.07
				154
				146
				15
				145

APPENDIX B.

DETAILS OF EXPENDITURE UNDER 43. IRRIGATION, MINOR WORKS
AND NAVIGATION.

Particulars.	Budget, 1900-1901.	Revised, 1899-1900.	Budget, 1899-1900.	Actuals, 1898-99.
WORKS FOR WHICH CAPITAL AND REVENUE ACCOUNTS ARE KEPT.	LAKHS.	LAKHS.	LAKHS.	LAKHS.
<i>Capital.</i>				
Lower Coleroon Anicut System	1.49	1.89	1.81	1.26
Other Works	1.13	1.65	2.45	2.26
<i>Revenue.</i>	2.62	3.54	4.26	3.52
Buckingham Canal	.87	.99	.80	1.09
Other Works	2.43	2.62	2.32	2.24
WORKS FOR WHICH NEITHER CAPITAL NOR REVENUE ACCOUNTS ARE KEPT.	3.30	3.61	3.12	3.33
Old Maintenance Charges	4.39	4.15	4.38	4.37
Ordinary Works—				
Major	.65	2.25	.89	1.15
Minor	1.58		1.37	1.02
Repairs	5.01	4.35	4.05	4.00
Establishment	1.68	1.51	1.44	1.36
Tools and Plant	.11	.10	.09	.10
	9.03	8.21	7.84	7.63
Tank Restoration Works—				
Execution—				
Repairs	3.33	2.98	3.09	2.66
Establishment	.76	.68	.71	.61
Tools and Plant	.05	.05	.05	.04
	4.14	3.71	3.85	3.31
Minor Works, Revenue Department	.35	.64	.35	.48
Agricultural Works—				
Works	.83	1.18	1.30	1.39
Repairs	3.53	3.74	3.51	3.25
Establishment	1.01	1.14	1.12	1.04
Tools and Plant	.07	.07	.07	.07
	5.47	6.13	6.00	5.75
Abstract—				
Works	5.91	7.10	7.69	6.96
Repairs	15.54	15.15	14.23	13.87
Establishment	7.58	7.47	7.62	7.27
Tools and Plant	.27	.28	.26	.29
Total, PUBLIC WORKS DEPARTMENT	29.30	30.00	29.80	28.39
IN CHARGE OF CIVIL OFFICERS	4.65	4.15	4.25	3.94
Grand Total ..	33.95	34.15	34.05	32.33

APPENDIX C.

DETAILS OF EXPENDITURE UNDER 45. CIVIL WORKS.

Particulars.	Budget, 1900-1901.	Revised, 1899-1900.	Budget, 1899-1900.	Actuals, 1898-99.
PUBLIC WORKS DEPARTMENT.	LAKHS.	LAKHS.	LAKHS.	LAKHS.
Original Works.				
<i>Civil Buildings.</i>				
<i>Departmental.</i>				
Administration—				
Collectors' offices	.44	.37	.29	.12
Assistant Collectors' offices	..	..	..	.03
Sub-Collectors' offices	..	..	..	.03
Deputy Collectors' offices	..	.05	.14	.13
Deputy Tahsildars' offices	.40	.69	.65	.72
Sub-Magistrates' offices	.08	.15	.11	..
Taluk offices	.37	1.04	.71	1.13
Sub-jails	..	.03	.02	..
Government House, Ootacamund and Madras.	.23	.76	.30	.25
Stamp, &c., offices in High Court	..	.05	..	.10
Excise and Customs	..	.30	.20	.22
Others	.11	.51	.38	.43
	1.63	3.95	2.80	3.16
Law and Justice—				
Munsifs' Courts	.63	.45	.65	.36
High Court buildings	..	.03	..	..
Others	.12	.13	..	..
	.75	.61	.65	.36
Jail buildings	.11	.46	.25	.53
Police buildings	.04	.55	.32	1.31
Minor departments	..	..	..	.09
Ecclesiastical	.09	.13	.16	..
Forest	..	.01	..	..

DETAILS OF EXPENDITURE UNDER 45. CIVIL WORKS—cont.

Particulars.	Budget, 1900-1901.	Revised, 1899-1900.	Budget, 1899-1900.	Actuals, 1898-99.
	LAKHS.	LAKHS.	LAKHS.	LAKHS.
Original Works—cont.				
<i>Civil Buildings—cont.</i>				
<i>Departmental—cont.</i>				
Education—				
Presidency College	..	..02	..	..14
Law College	..	..	..	..06
Engineering College	..20	..10	..	..02
Connemara Library and connected buildings.	..	..	..	..09
Others	..14	..33	..43	..23
	..34	..45	..43	..54
Medical—				
Lunatic Asylum	..	..20	..24	..36
General Hospital	..	..06	..	..
Others	..07	..08	..03	..16
	..07	..34	..27	..52
Miscellaneous—				
Collectors' and Head Assistant Collectors' quarters	..05	..18	..08	..01
Engineers' quarters	..	..	..09	..06
Do. offices	..	..15	..16	..20
Registration offices	..03	..	..	..26
Others	..41	..76	..91	..44
	..49	1.09	1.24	..95
Total, Departmental Works ..	3.52	7.59	6.12	7.50
Minor Works	..68	..80	..95	1.36
Reserve with Government	..60	..	1.08	..
Total, Civil Buildings ..	4.80	8.39	8.15	8.86

DETAILS OF EXPENDITURE UNDER 45. CIVIL WORKS—cont.

Particulars.	Budget, 1900-1901.	Revised, 1899-1900.	Budget, 1899-1900.	Actuals, 1898-99.
	LAKHS.	LAKHS.	LAKHS.	LAKHS.
Original Works—cont.				
<i>Communications.</i>				
Anamalai Division	1.70	2.48	..	..27
Ganjām District	..	..05	..10	..
Kistna Northern Division	..20	..	..	..56
West Coast Division	..70	..61	..55	..
Madura District	..50	..30	..30	..
Coimbatore Division	..10	..38	2.35	1.15
Salem	1.50	..05	..	..03
Chingleput	..	..	..	..01
Architect	..07	..33	..	..
Minor Works	..01	..03	..04	..01
Total, Communications ..	4.78	4.23	3.34	2.03
Miscellaneous Public Improvements—				
Minor	..01	..03	..01	..03
Major	..	..02	..	..57
Total, Mis. Pub. Improvements ..	..01	..05	..01	..60
Total, ORIGINAL WORKS ..	9.59	12.67	11.50	11.49
Repairs—				
Buildings	1.76	2.60	1.61	2.63
Communications	1.09	..93	..76	1.13
Miscellaneous Public Improvements ..	..15	..18	..17	..18
Total, Repairs ..	3.00	3.71	2.54	3.94
Establishment—				
Engineers	6.92	6.90	6.90	7.28
Upper Subordinates	3.75	3.71	3.71	3.81
Lower do.	..29	..29	..29	..28
Petty establishment	1.36	1.36	1.36	1.24
Office do.	3.13	3.11	3.11	3.11
Temporary establishment	2.40	2.31	2.31	2.45
Local allowances	..58	..61	..61	..
Travelling allowances	2.70	2.35	2.35	2.71
Contingencies	..59	..50	..50	..62
Other departmental charges	..	*.19	..	..02
Sanitary Engineer and his establishment ..	..42	..	..	..
Deduct—Cost of the Lighthouse Division establishment directly charged to Port Funds	..20	..33	..33	..38
	21.94	21.00	20.81	21.10
Account Branch	1.56	1.57	1.57	1.60
Total (Gross) Establishment ..	23.50	22.57	22.38	22.72

* Represents the balance of grant which cannot be distributed over other sub-heads, of female
 18 ferry

DETAILS OF EXPENDITURE UNDER 45. CIVIL WORKS—cont.

Particulars.	Budget, 1900-1901.	Revised, 1899-1900.	Budget, 1899-1900.	Actuals, 1898-99.
	LAKHS.	LAKHS.	LAKHS.	LAKHS.
<i>Deduct Contributions from—</i>				
Court of Wards	·05	·04	·04	·02
Imperial Military Works	·15	·15	·13	·11
Imperial Civil Works	·09	·11	·09	·14
Incorporated Local Funds	·06	·08	·08	·09
Excluded Local Funds	·38	·27	·67	·10
35. Protective Works	·05	·10	·06	·10
42. Major Works	6·22	6·05	6·17	6·01
49. Capital Expenditure on Major Works..	1·45	1·37	1·03	·92
43. Minor Works	7·58	7·64	7·62	7·27
Other Works	..	..	..	·09
Total, Contributions ..	16·03	15·81	15·89	14·85
Net Provincial Establishment ..	7·47	6·76	6·49	7·92
<i>Tools and Plant—</i>				
Public Works Workshops	·09	·23	·12	·12
Do. Stores	·38	·25	·50	·33
London Supplies	1·25	·50	1·00	·79
Others.. .. .	·20	·37	·28	·42
<i>Deduct Contributions ..</i>	<i>1·92</i>	<i>1·35</i>	<i>1·90</i>	<i>1·66</i>
	·26	·32	·27	·22
Net Tools and Plant ..	1·66	1·03	1·63	1·44
<i>Abstract.</i>				
Civil Buildings	6·56	10·99	9·76	11·49
Communications	5·87	5·16	4·10	3·16
Miscellaneous Public Improvements ..	·16	·23	·18	·78
Establishment	7·47	6·76	6·49	7·92
Tools and Plant	1·66	1·03	1·63	1·44
Stock and Suspense	..	—·37	..	·27
Unallotted Grant	..	..	8·73	..
Total, Public Works in charge of Public Works Officers ..	21·72	23·80	30·89	25·16

DETAIL OF EXPENDITURE UNDER 43. CIVIL WORKS—cont.

Particulars.	Budget, 1900-1901.	Revised, 1899-1900.	Budget, 1899-1900.	Actuals, 1898-99.
	LAKHS.	LAKHS.	LAKHS.	LAKHS.
In charge of Civil Officers.				
Agency Works	1·82	4·20	·95	1·87
Municipal Works			2·00	
Miscellaneous Public Improvements			·08	
Total, Public Works in charge of Civil Officers	1·82	4·20	3·03	1·87
Grand Total ..	23·54	28·00	33·92	27·03

APPENDIX

INCORPORATED LOCAL AND SPECIAL

Heads of Revenue.	Budget estimate, 1900-1901.			Revised estimate, 1899-1900.			Budget estimate, 1899-1900.			Actuals, 1898-99.		
	Local Funds Act V of 1884.	Special Funds.	Total.	Local Funds Act V of 1884.	Special Funds.	Total.	Local Funds Act V of 1884.	Special Funds.	Total.	Local Funds Act V of 1884.	Special Funds.	Total.
I. Land Revenue.	1-27	25-38	26-65	1-27	21-68	22-95	1-28	22-68	23-96	1-27	19-90	21-17
VI. Provincial rates.	55-94	26-92	82-86	55-10	23-21	79-31	55-00	24-17	79-17	55-72	21-39	77-11
XII. Interest ..	67	..	67	65	..	65	54	..	54	53	..	53
XVI-A. Law and Justice—Courts of Law.	22	..	22	23	..	23	23	..	23	24	..	24
XIX. Education ..	2-47	..	2-47	2-43	..	2-43	2-42	..	2-42	2-35	..	2-35
XX. Medical ..	48	..	48	43	..	43	49	..	49	48	..	48
XXII. Superannuation.	01	..	01	01	..	01	01	..	01	01	..	01
XXV. Miscellaneous.	5-93	..	5-93	6-02	..	6-02	6-07	..	6-07	6-68	..	6-68
XXVI. State Railways Gross traffic receipts.	2-55	..	2-55	54	..	54	..	..	..	..	..	..
XXXII. Civil Works } By P.W.D. }	10-39	01	10-40	10-46	01	10-47	10-27	01	10-28	10-49	01	10-50
Contributions ..	2-90	..	2-90	5-54	..	5-54	3-38	..	3-38	2-89	..	2-89
Balance of Provincial Savings.	..	..	..	..	..	..	..	..	..	..	..	..
Total, Revenue ..	82-83	52-31	135-14	83-68	44-90	128-58	79-69	46-86	126-55	80-66	41-30	121-96
Debt deposits ..	..	..	..	..	..	..	..	..	..	..	..	4-77
Surplus or deficit ..	..	..	11-97	..	..	+ 53	..	..	9-63	..	..	4-43
Opening { Service.. Balance { Debt ..	..	..	33-49	..	..	32-96	..	..	31-15	..	..	35-47

ND ACCOUNTS AND ESTIMATES.

Heads of Expenditure.	Budget estimate, 1900-1901.			Revised estimate, 1899-1900.			Budget estimate, 1899-1900.			Actuals, 1898-99.		
	Local Funds Act V of 1884.	Special Funds.	Total.	Local Funds Act V of 1884.	Special Funds.	Total.	Local Funds Act V of 1884.	Special Funds.	Total.	Local Funds Act V of 1884.	Special Funds.	Total.
Refunds ..	13	02	15	18	02	20	04	02	06	07	08	15
Land Revenue ..	51-14	..	51-14	48-06	..	48-06	50-25	..	50-25	46-82	..	46-82
Interest on other obligations.	01	..	01	02	..	02	02	..	02	03	..	03
General Administration.	3-40	..	3-40	3-36	..	3-36	3-48	..	3-48	3-42	..	3-42
Education ..	10-58	..	10-58	10-52	..	10-52	10-71	..	10-71	10-75	..	10-75
Medical ..	16-80	..	16-80	17-03	..	17-03	22-74	..	22-74	17-67	..	17-67
Superannuation ..	25	..	25	25	..	25	21	..	21	26	..	26
Stationery and Printing.	13	28	41	13	28	41	12	19	31	..	..	..
Miscellaneous ..	3-13	..	3-13	2-92	..	2-92	3-33	..	3-33	3-08	..	3-08
Famine Relief ..	..	..	..	..	..	..	..	..	..	..	..	..
Construction of Railways.	12-73	..	12-73	20	..	20	..	..	..	..	..	..
State Railways, working expenses.	1-63	..	1-63	33	..	33	..	..	..	..	..	..
Minor Works and Navigation, P.W.D.	..	07	07	..	08	08	..	09	09	..	03	08
Civil Works ..	42-74	99	43-73	40-80	84	41-64	40-84	1-03	41-87	40-32	81	41-13
By P.W.D ..	31	..	31	36	..	36	32	..	32	38	..	38
Contributions ..	2-40	37	2-77	2-11	56	2-67	2-21	58	2-79	1-82	80	2-62
Total, Expenditure ..	94-24	52-87	147-11	78-21	49-84	128-05	84-02	52-16	136-18	77-80	48-59	126-39
Opening { Service.. Balance { Debt ..	..	..	21-52	..	..	33-49	..	..	21-52	..	..	..

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FINANCIAL STATEMENT.

APPENDIX E.
PROVINCIAL LOANS AND ADVANCES.

	Budget, 1900-1901.	Revised, 1899-1900.	Budget, 1899-1900.	Accounts.		
				1898-99.	1897-98.	1896-97.
Class I—Advances to Cultivators.	39.71	42.81	43.05	47.61	32.54	30.06
Balance	4.00	4.90	4.90	3.26	17.84	5.53
Advances	4.26	8.00	7.20	8.06	2.78	3.05
Recoveries						
Balance	39.45	39.71	40.75	42.81	47.60	32.54
Class III—Loans to Landholders and Notabilities.						
Balance		.01	.01	.04	.07	.10
Advances		.01	.01	.03	.03	.03
Recoveries				.01	.04	.07
Balance	13.29	12.67	12.90	13.05	12.38	9.06
Class IV (a)—Loans to Mufassal Municipalities.	1.04	1.25	5.52	.38	1.15	3.58
Advances	.58	.63	.51		.48	.26
Recoveries						
Balance	13.75	13.29	17.91	12.67	13.05	12.38
Class IV (b)—Loans to District Boards.						
Balance		.05	1.21	.13	.34	.50
Advances		.05	2.23	.08	.20	.16
Recoveries				.05	.14	.34
Balance	53.00	55.54	57.17	60.83	45.33	38.72
Total, Provincial Loans and Advances.	5.04	6.15	12.65	3.26	18.99	9.11
Recoveries	4.84	8.69	7.77	8.55	3.49	2.50
Balance	53.20	53.00	62.05	55.54	60.83	45.33

MADRAS: PRINTED BY THE SUPERINTENDENT, GOVERNMENT PRESS.

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FORT ST. GEORGE

ASSEMBLED FOR THE PURPOSE OF MAKING

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FOR 1900.

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